
(2009) 03 MAD CK 0145

In the Madras High Court

Case No : Criminal O.P. No. 27333 of 2007 and M.P. No. 1 of 2007

Balasubramaniam, Ramasamy, Vijayakumar and Annadhurai APPELLANT
Vs
The State RESPONDENT

Date of Decision : 12-03-2009

Acts Referred:

Constitution of India, 1950 — Article 20(2)
General Clauses Act, 1897 — Section 26
Insurance Act, 1935 — Section 105
Mines and Minerals (Development and Regulation) Act, 1957 — Section 21(1)(C), 22, 4(1)(A)
Penal Code, 1860 (IPC) — Section 379, 409

Citation : (2009) 03 MAD CK 0145

Hon'ble Judges : K. Mohan Ram, J

Bench : Single Bench

Advocate : R. Murali, for the Appellant; Hasan Mohamed Jinnah, Government Advocate (Crl. Side), for the Respondent

Judgement

K. Mohan Ram, J.—The brief facts which are necessary for the disposal of the above Criminal Original Petition are set out below:

On a complaint lodged by Thiru M. Ravindran, Village Administrative Officer, Velur, Paramathivelur Taluk, Namakkal District, the respondent registered a case in Crime No. 395 of 2007 on his file for the offences under Sections 379 IPC read with Sections 4(1)(A) and 21(1)(C)(ii) of the Mines and Minerals (Development and Regulation) Act, 1957 (Act No. 67 of 1957) (hereinafter referred to as "the Act") against the petitioners herein.

2. The sum and substance of the allegations in the complaint is that at 11.00 a.m. on 03.08.2007 the informant found four lorries on Velur to Mohanur Road bearing the following registration numbers, TN40-A-5463, TN28-B-5477, TN37-W-3916 and TN37-H-9944. The lorries were being driven by the petitioners herein, the lorries were stopped and searched and it was found that the lorries were carrying sand and on enquiry it was found that sand was being transported

from Sri Rama Samuthram Area and the petitioners were transporting sand more than the permitted limit and hence the Village Administrative Officer caused weighing of the lorries at Sri Karthic Weigh Bridge, Pothanur and found that all the four lorries were carrying sand over and above the permitted quantity and thus they had committed theft of sand belonging to the Government worth about Rs. 3,672/-.

3. Being aggrieved by the registration of the case against the petitioners on the basis of the complaint lodged by the Village Administrative Officer the petitioners have filed the above quash petition seeking to quash the First Information Report on the ground that as per Section 22 of the Act no Court shall take cognizance of any offence punishable under the Act or any Rules made thereunder except upon complaint in writing made by a person authorised in that behalf by the Central Government or the State Government and admittedly the Village Administrative Officer is not an authorised person to lodge the complaint and hence even after completing investigation if the respondent files a charge sheet the same cannot be taken cognizance of by the Court.

4. Heard the learned Counsel on either side.

5. Learned Counsel for the petitioner basing reliance on a decision of the Karnataka High Court reported in 1995 Cri. L.J. 3810 (K. Srinivas v. State of Karnataka) and another decision of a learned Single Judge of this Court reported in (2006) 2 M.L.J. (Crl.) 115 (D. Sudharshan v. State) which has followed the said decision submitted that when special enactment has been invoked to deal with the offences invoking general provisions of Indian Penal Code will be meaningless since the special enactment will override the general provisions of law and specific provisions will override the other provisions. In (2006) 2 M.L.J. (Crl.) 115 (referred to supra) Mr. Justice R. Regupathi after referring to the decision of the Karnataka High Court reported in State of Karnataka Vs. Nagesh alias Ramesh, has in paragraph 5 observed as under:

5. I have perused the materials available on record and heard the submissions made by both sides. Admittedly, the Village Administrative Officer is not an authorised person by the State Government to proceed against the accused for the offence alleged in the FIR. Under such circumstance, the decision cited by the learned Counsel for the petitioner is squarely applicable to the present case. Merely because, the general provisions of Indian Penal Code is included, it cannot be contended that the respondent-police has got the jurisdiction to investigate the offence. It has been repeatedly held by the Supreme Court that special enactment will over-ride the general provisions of law and specific provisions will over-ride the other provisions. Under such circumstance, I find that this is a fit case to quash the proceedings.

6. Countering the said submissions the learned Government Advocate (Crl. Side) submitted that though as provided u/s 22 of the Act the complaint in this case had not been filed by the authorised person, the registration of the First

Information Report as far as the offences arising out of the violation of the provisions of the Act alone are concerned can be said to be vitiated but the registration of the case for the offence u/s 379 IPC on the basis of the complaint lodged by the Village Administrative Officer cannot be said to be either illegal or unsustainable. He submitted that the same set of facts can constitute offences under two different laws. In this case, according to him, the removal of sand belonging to the Government over and above the permitted quantity may amount to violation of Sections 4(1)(A) and 21(1)(C)(ii) of the Act and at the same time the same will also amount to commission of theft of sand belonging to the Government and in such circumstances on the same set of facts when two different offences under two different enactments have been committed two separate prosecutions under the said enactments is not barred. In support of his contention the learned Government Advocate (Crl. Side) relied upon the provisions contained in Section 26 of the General Clauses Act, 1897 (10 of 1897) and also a decision of the Apex Court reported in AIR 1989 Supreme Court 1 (State of Bihar v. Murad Ali Khan).

7. I have considered the said submissions made by the learned Counsel on either side carefully and perused the materials available on record.

8. As pointed out above the learned Government Advocate (Crl. Side) has conceded that the impugned First Information Report ought not to have been registered for the alleged violation of Sections 4(1)(A) and 21(1)(C)(ii) of the act in the absence of a valid complaint by an authorised person as contemplated u/s 22 of the Act. Hence the First Information Report as far as it relates to the offences under Sections 4(1)(A) and 21(1)(C)(ii) of the Act is concerned has to be quashed and accordingly quashed.

9. The remaining question to be decided is as to whether the respondent is right in registering the case for the offence u/s 379 IPC on the basis of the allegations contained in the First Information Report lodged by the Village Administrative Officer who is admittedly not the authorised person u/s 22 of the Act.

10. To appreciate the contentions put forth by the learned Government Advocate (Crl. Side) it will be useful to refer to the provisions contained in Section 26 of the General Clauses Act, 1897 which reads as follows:

26. Provision as to offences punishable under two or more enactments:

Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence.

In AIR 1989 Supreme Court 1 (referred to supra) the Apex Court has observed as under:

8....

In *The State of Bombay Vs. S.L. Apte and Another*, the question that fell for consideration was that in view of earlier conviction and sentence u/s 409, IPC a subsequent prosecution for an offence u/s 105 of Insurance Act, 1935, was barred by Section 26 of the General Clauses Act and Article 20(2) of the Constitution. This Court observed (at Pp. 581 and 583 of AIR):

To operate as a bar the second prosecution and the consequential punishment thereunder, must be for "the same offence". The crucial requirement therefore for attracting the Article is that the offences are the same i.e., they should be identical. If, however, the two offences are distinct, then notwithstanding that the allegations of facts in the two complaints might be substantially similar, the benefit of the ban cannot be invoked. It is, therefore, necessary to analyse and compare not the allegations in the two complaints but the ingredients of the two offences and see whether their identity is made out....

...Though Section 26 in its opening words refer to "the act or omission constituting an offence under two or more enactments," the emphasis is not on the facts alleged in the two complaints but rather on the ingredients which constitute the two offences with which a person is charged. This is made clear by the concluding portion of the section which refers to "shall not be liable to be punished twice for the same offence". If the offences are not the same but are distinct, the ban imposed by this provision also cannot be invoked....

The same set of facts, in conceivable cases, can constitute offences under two different laws. An act or an omission can amount to and constitute an offence under the IPC and at the same time constitute an offence under any other law....

11. If the facts of the present case are considered in the light of the provisions contained in Section 26 of the General Clauses Act and the above decision of the Apex Court it could be seen that the facts alleged in the First Information Report disclose the commission of the offences under the Mines and Minerals (Development and Regulation) Act, 1957 as well as the Indian Penal Code and therefore the offenders are liable to be prosecuted and punished under either the Mines and Minerals (Development and Regulation) Act, 1957 or under the Indian Penal Code but shall not be liable to be punished twice for the same offence. In this case admittedly no complaint has been lodged by the authorised person under the Mines and Minerals (Development and Regulation) Act, 1957 but the only complaint lodged is by the Village Administrative Officer based on which the present First Information Report has been registered. Therefore this Court is constrained to hold that in registering the First Information Report as far as the offence u/s 379 IPC is concerned no illegality has been committed and therefore if ultimately after investigation if a final report is filed against the petitioners there cannot be any legal bar for the jurisdictional Magistrate to take cognizance of the final report.

12. Neither the Karnataka High Court in 1995 CRI. L.J. 3810 (referred to supra) nor the learned Single Judge of this Court in (2006) 2 M.L.J. (Cri.) 115 (referred

to supra) had an occasion to consider the scope of Section 26 of the General Clauses Act but in both the decisions the learned Judges have quashed the proceedings solely basing reliance on the bar contained u/s 22 of the Mines and Minerals (Development and Regulation) Act, 1957. Therefore, with great respect to them, I am unable to agree with their decisions.

13. For the aforesaid reasons the Criminal Original Petition is partly allowed namely the First Information Report in Crime No. 395 of 2007 on the file of the respondent-the Inspector of Police, Velur Police Station, Namakkal District, in so far as it relates to the offences under Sections 4(1)(A) and 21(1)(C)(ii) of the Mines and Minerals (Development and Regulation) Act, 1957 is concerned is quashed but so far as it relates to the offence u/s 379 IPC is concerned it is held to be valid and it is open to the respondent to complete the investigation and file the final report in accordance with law. The connected Miscellaneous Petition is closed.