

(1989) 02 MAD CK 0045

In the Madras High Court

Case No : Criminal M.P. No. 5957 of 1986

C. Mani-(A1) and 6 Others

APPELLANT

Vs

Saleem

RESPONDENT

Date of Decision : 03-02-1989

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 202, 204, 482

Customs Act, 1962 — Section 155

Penal Code, 1860 (IPC) — Section 323, 324, 342, 355, 448

Citation : (1989) LW(Cri) 187

Hon'ble Judges : David Annoussamy, J

Bench : Single Bench

Advocate : A.A. Selvam, for the Appellant; V. Gopinath, for the Respondent

Judgement

David Annoussamy, J.—This is a petition u/s 482 of the Code of Criminal Procedure to call for the records in C.C No. 237 of 1986 on the file of the Judicial First Class Magistrate No. 2 Madurai and quash the same.

2. The case of the Petitioners is that they apprehended the Respondent in respect of some acts of smuggling on 16-1-1986 and that in order to forestall the subsequent detention or prosecution of the Respondent for his offence, he has filed this complaint against the customs officers concerned, seven in number. The complaint is for offences under Ss. 448, 342, 355, 323, 324 and 506 Part II of the Indian Penal Code.

3. The first ground urged by the learned Counsel for the Petitioners is that the alleged acts took place upon the apprehension of the complainant on 16-1-1986 and that the complainant was filed only on 6-3-1986 belatedly and therefore, the magistrate ought not to have taken the complaint on file. This contention is utterly unacceptable. The delay in filing the complaint will have to be explained by the complainant, and the magistrate, while ascertaining the truth of the case, will take into account the delay. But the lapse of time between 16-1-1986, the date of the alleged occurrence and 6-3-1986, the date of complaint, does not

make the complaint void.

4. The second ground urged is that the complaint was made without the statutory notice contemplated u/s 155 of the Customs Act and therefore, the proceedings should be quashed. Sub-S. 2 of Section 155 of the Act on which reliance is placed reads as follows:

No proceedings other than a suit shall be commenced against the Central Government or any officer of the Government or a local authority for anything purporting to be done in pursuance of this Act without giving the Central Government or such officers a month's previous notice in writing of the intended proceeding and of the allegations thereof, or after the expiration of three months from the accrual of such cause.

It is clear therefrom that no proceeding can be commenced for anything purporting to be done in pursuance of the Act without notice. When I read the complaint, the acts imputed to the officers consist of threat of implicating the complainant and his family members and torturing them, slapping the complainant on the cheek, stripping off the clothes of the complainant, kicking the complainant with boots, beating with stick, fisting on the face of the complainant, compelling the complainant to sign on a paper without allowing him to see the contents thereof, beating with chap-pals and threatening with dire consequences if the complainant dared to take steps against the ill-treatments meted out by them. The above acts obviously cannot be said to have been accomplished as purporting to be done in pursuance of the Act and therefore, Section 155 is not attracted and no notice is necessary to file a complaint against the officers concerned regarding such acts. The learned Counsel for the Respondent brought to my notice a judgment on the same line of the Kerala High Court reported in Kutty Krishnan Nair v. Mohammed 1974 M.L.J. (Cri.) 8, in which the decision of this Court in Sakuntala Bai v. Venkatakrishna Reddi 1952 (1) M.L.J. 545, has been referred to. Therefore, it is clear that the proceedings cannot be quashed on account of absence of notice, taking into account the nature of the acts imputed to the officers.

5. It was, however, contended by the learned Counsel for the Petitioners that this complaint was filed by the Respondent in order to deter the officers from taking further action against him and that if the officers were to be exposed to frivolous complaints by smugglers, the officers would become reluctant to perform their duties effectively.

6. Proneness to perform duties should in no manner be discouraged and no officer should suffer in the slightest way for anything purported to be done in pursuance of the Act. Therefore, in a case of this nature, after receiving the complaint and taking the sworn statement, the Magistrate should have also either postponed the issue of the process u/s 202 of the Code of Criminal Procedure and should make sufficient enquiry or at least examined upon oath the witnesses listed in the complaint. Issuing the process without satisfying himself

that there was sufficient ground, upon the sole statement of the complainant is certainly an act which is not in accordance with the established procedure. Therefore, the issue of process will have to be quashed and the magistrate directed to proceed afresh with the complaint in accordance with law.

7. In the result, the issue of process to the accused-Petitioner is cancelled. The magistrate shall have further evidence before satisfying himself that there is sufficient ground for proceeding and then issue the process u/s 204 of the Criminal Procedure Code.