

(2013) 07 MAD CK 0335

In the Madras High Court

Case No : Criminal R.C. No. 616 of 2012

D. Muralidharan

APPELLANT

Vs

Inspector of Police, Bharathi Airtel Ltd., Aircel Centre and
Vodafone South Limited

RESPONDENT

Date of Decision : 09-07-2013

Acts Referred:

Citation : (2013) 2 LW(Cri) 668 : (2013) 4 MLJ(Cri) 519

Hon'ble Judges : C.S. Karnan, J

Bench : Single Bench

Advocate : R. Sankarasubbu, for the Appellant; C. Balasubramaniam Additional Public Prosecutor for R-1, for the Respondent

Judgement

C.S. Karnan, J.—The short facts of the case are as follows:- One Siva, the defacto complainant had lodged a complaint before the first respondent herein and the same has been registered in Crime No. 1210 of 2010 as against the petitioner and his father Duraisamy for the offence under Sections 294(b), 323, 506(i), 420 IPC r/w 34 IPC. The allegation made in the complaint was that the defacto complainant, viz., Siva, on the advice of the petitioner herein had resigned his earlier job and started own business along with the petitioner. It was alleged that the petitioner herein failed to pay him a sum of Rs. 60,000/- towards salary, commission etc.

Hence, the prosecution case has been levelled against the accused.

Subsequently, the Inspector of Police had conducted an enquiry and submitted the charge sheet before the learned X Metropolitan Magistrate, Egmore, Chennai. The said case was numbered as C.C. No. 5082 of 2010. While the case was pending, the petitioner herein has filed CrI. M.P. No. 555 of 2011 and the same is pending. While so, the petitioner in order to prove his case filed another petition in CrI. M.P. No. 628 of 2011 in CrI. M.P. No. 555 of 2011 in C.C. No. 5082 of 2010, u/s 91 on the file of X Metropolitan Magistrate, Egmore, to call for the tower report of the mobile number of the following persons, viz.,

- 1) N.P. Rajendran-Inspector of Police (Special IO) 9840379749
- 2) Mrs. Kalarani, Inquiry Officer (SI of Police) 9840881976
- 3) Mr. Siva J., complainant in Cr. No. 1210 of 2010-992728944
- 4) Mr. Nandakumar LW 3 in the case -9841506959
- 5) Mr. Mani LW 2-9884807807

2. The learned Magistrate after hearing the arguments on this petition and perused the petition filed u/s 91 Cr.P.C. The learned Magistrate observed that the petitioner herein and his father had filed two petitions in M.P. Nos. 555 of 2011 and 554 of 2011 u/s 239 Cr.P.C. and that the petitions had been filed to call for the tower report from the aircel, Vodafone, South Limited, Bharati Airtel Limited etc. However, the learned Magistrate on observing the contentions of the prosecution that the report as requested by the petitioner from the various Departments is not maintainable as per law and that he is not entitled to disprove the case, held that the petition is not maintainable as per the facts of the case and on observing that the M.P. Nos. 555 and 554 of 2011 are pending, opined that the said report cannot be called for as requested by the petitioner and hence, dismissed the petition.

3. Aggrieved by the said dismissal order, the above revision has been filed.

4. The Inspector of Police, has filed a counter statement and resisted the petition after narrating the facts of the case.

5. The learned counsel for the petitioner contended that the allegation made in the complaint was that the defacto complainant, viz., Siva on the advice of the petitioner herein had resigned his earlier job and started own business along with the petitioner. It was also alleged that the petitioner herein had failed to pay him a sum of Rs. 60,000/- towards salary, commission etc. The learned counsel further submits that after investigation, the first respondent has filed a charge sheet before the X Metropolitan Magistrate, Egmore, Chennai and the same was taken on file as C.C. No. 5082 of 2010. The learned counsel submitted that no such incident had happened and that the petitioner was falsely implicated in the said case. Hence, a discharge petition was filed u/s 239 of Cr.P.C. in CrI. M.P. No. 555 of 2011 in C.C. No. 5082 of 2010 and the same is pending. While so, the petitioner herein filed a petition u/s 91 of Cr.P.C. in CrI. M.P. No. 628 of 2011 in CrI. M.P. No. 555 of 2011 in C.C. No. 5082 of 2010, to call for the tower report of the mobile number of the following persons, viz.,

- 1) N.P. Rajendran-Inspector of Police (Special IO) 9840379749
- 2) Mrs. Kalarani, Inquiry Officer (SI of Police) 9840881976
- 3) Mr. Siva J., complainant in Cr. No. 1210 of 2010-992728944
- 4) Mr. Nandakumar LW 3 in the case-9841506959

5) Mr. Mani LW 2-9884807807

6. The learned counsel for the petitioner further submitted that the present case in Crime No. 1210 of 2010 in C.C. No. 5082 of 2010 is a false and an imaginary one since it was alleged that the occurrence date was on 14.10.2010 at about 8 a.m., but the case was registered on the basis of the complaint only at 6 p.m. It was submitted that if the tower report of the said persons are provided, it would prove that the said investigation officer who registered the case, i.e., Mr. N.P. Rajendran (Special Investigation Officer), Mrs. Kalarani (Investigation Officer), the complainant, Mr. Siva, the witnesses Mr. Nandakumar and Mr. Mani, were not present in the police station at the time of registration of the case. The learned counsel further contended that the petitioner is a B.E. and M.B.A. graduate and highly qualified person and his father is working as a Divisional Engineer in B.S.N.L. It was contended that the petitioner had filed CrI. O.P. No. 5004 of 2012 before the High Court and when the petition came up before this Court, the Court by its order dated 06.06.2012 observed that:-

....2. In view of the above submission and endorsement made, these Criminal Original Petitions are dismissed as not pressed however with liberty to the petitioner to file revision against the orders impugned in these petitions

Hence, the learned counsel has prayed to set-aside the order made in CrI. M.P. No. 628 of 2011 in C.C. No. 5082 of 2010, on the file of the learned X Metropolitan Magistrate, Egmore, Chennai. The highly competent counsel for the petitioner submits that the accused is unable to appear before the trial Court for each and every hearing in all cases as his health does not permit him to appear before the learned Magistrate.

7. Mr. C. Balasubramaniam, learned Additional Public Prosecutor, argued that on 14.10.2010, Thiru. J. Siva, the defacto complainant lodged a complaint stating that on the advice of the petitioner, he resigned his earlier job and started own business viz., M/s. RDM Airtel Agencies along with the petitioner/accused. The petitioner fixed the salary of the defacto complainant at Rs. 15,000/- and incentive of Rs. 250/- for each card sold. In order to improve the business, the petitioner/accused demanded Rs. 20,000/- and the defacto complainant had given the said amount to him. After two months, the said company was closed by the petitioner/accused and he failed to pay the defacto complainant two months salary due, incentive and also Rs. 20,000/- which was paid by the defacto complainant for the improvement of the business. On demand made by the defacto complainant, to return his money to the tune of Rs. 60,000/-, the petitioner/accused along with his father attacked the defacto complainant and threatened him and sent him out of the house. Hence, the defacto complainant had preferred a complaint before the respondent police. It was submitted that based on the complaint, a case was registered on 14.10.2010 at 18.00 hours by Smt. Kalarani, the then Sub Inspector of Police, V-5 Thirumangalam Police Station against the petitioner/accused in Crime No. 1210 of 2010 u/s 294(b), 323, 506(ii), 420 IPC. On the same day, the said Smt. Kalarani went to the scene

of occurrence and prepared rough sketch and observation mahazar and also examined 9 witnesses. On 16.10.2010, the petitioner and his father were arrested and confession statement was also recorded and both of them were remanded to judicial custody. It was submitted that based on the examination of the witnesses and also based on the opinion from the Assistant Public Prosecutor, X Metropolitan Magistrate Court, Chennai-8, Thiru. N.P. Rajendran, Inspector of Police laid a charge sheet against the accused and the same was submitted before the X Metropolitan Magistrate Court, Egmore, Chennai, which was taken on file as C.C. No. 5082 of 2010, dated 09.12.2010. Now, the case is pending trial before the said Court. The hearing was posted on 12.07.2012 for examination of the accused. It was submitted that in the meanwhile, the petitioner filed a discharge petition before the X Metropolitan Magistrate Court, Egmore, Chennai vide CrI. M.P. No. 555 of 2011 and the same was pending. The petitioner filed another petition u/s 91 Cr.P.C. before the X Metropolitan Magistrate Court, Egmore, Chennai vide CrI. M.P. No. 628 of 2011 to call for the tower report of the mobile number of the investigation officer (i.e., Inspector of Police) along with enquiry officer, complainant, L.W. 2 and L.W. 3's cell tower report from Aircel, Vodafone, South Ltd., Bharathi Airtel Ltd., etc. and the same was dismissed on 16.02.2012 on the ground that the report as requested by the petitioner from the various Department is not maintainable as per the law and the accused is not at all entitled to disprove this case. It was submitted that during the course of the pendency of the trial, the petitioner has filed a quash petition in CrI. O.P. No. 5004 of 2012 before the High Court and the same was dismissed on 06.06.2012 with the observation that the petitioner has liberty to file a criminal revision against the orders. The learned Public Prosecutor further submits that the petitioner's request for call details report is not at all related to this case. He further submitted that apart from this case, there are two other cases pending trial before the competent Court and hence, it is evident that the petitioner/accused is a habitual offender. Hence, the learned Public Prosecutor entreats the Court to dismiss the petition filed by the petitioner/accused.

8. On verifying the facts and circumstances of the case and arguments advanced by the learned counsels on either side and on perusing the impugned order of the learned Magistrate, this Court does not find any discrepancy in the said prosecution case. Now, this case is pending for about three years for trial.

9. This court's further view is that the duty of the prosecution is to prove the criminal case beyond reasonable doubt and without lacuna. Therefore, this Court is not inclined to interfere with the impugned order of the learned Magistrate. This Court directs the learned X Metropolitan Magistrate to dispose the case in C.C. No. 5082 of 2010 on topmost priority basis without being influenced by this Court's discussion. However, the said case is pending for more than 2 years before the Trial Court, which has caused inconvenience to the accused. Therefore, his appearance is dispensed with before the Trial Court. However, he has to appear before the Trial Court, if the learned Magistrate so decides that the petitioner's appearance is absolutely necessary. In the result, the above revision

is dismissed. Consequently, the order passed in CrI. M.P. No. 628 of 2011 in C.C. No. 5082 of 2010, on the file of X Metropolitan Magistrate, Egmore, Chennai, dated 16.02.2012, is confirmed.