

(2008) 01 MAD CK 0185

In the Madras High Court

Case No : Criminal O.P. No. 34216 of 2007 and M.P. No. 1 of 2007

Dr. L. Prakash

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 01-01-2008

Acts Referred:

Arms Act, 1959 — Section 27
Criminal Procedure Code, 1973 (CrPC) — Section 173, 190, 482
Immoral Traffic (Prevention) Act, 1956 — Section 5, 6
Indecent Representation of Women (Prohibition) Act, 1986 — Section 4, 6
Information Technology Act, 2000 — Section 67
Penal Code, 1860 (IPC) — Section 120(B), 307, 366, 376, 506

Citation : (2008) 01 MAD CK 0185

Hon'ble Judges : M. Jeyapaul, J

Bench : Single Bench

Advocate : R. Karuppan, for the Appellant; P. Kumaresan, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

M. Jeyapaul, J.—The petition is filed by the accused seeking to quash the criminal proceedings in S.C. No. 9 of 2002 on the file of the V

Fast Track Court, Chennai.

2. The petitioner, who is the first accused is facing a trial for the offences punishable u/s 67 of the Information Technology Act, 2000, Section 4

read with Section 6 of the Indecent Representation of Women (Prohibition) Act, 1986, Sections 5 and 6 of the Immoral Traffic (Prevention) Act,

Section 27 of the Arms Act, 1959 and Sections 120B, 366, 307, 376 and 506(ii) of the Indian Penal Code.

3. It is contended by the petitioner ranked as first-accused that the investigating officer demanded a sum of Rs. 5,00,000/= to drop the case

against him and as the petitioner refused to accede to such a demand of the investigating officer, the latter has falsely implicated the petitioner. The.

investigating officer in this case has chosen to tamper with the charge sheet laid earlier before the learned Judicial Magistrate concerned. The whole

trial initiated based on two sets of charge sheets is completely vitiated. Therefore, the petitioner has sought for quashment.

4. Learned Counsel appearing for the petitioner would vehemently contend that a copy of the charge sheet received by the petitioner on his

application seeking certified copy of the charge sheet is different from the one which is now on record. When the foundation laid by the

investigating officer is shaky on account of the manifest manipulation committed by the investigating officer, the whole trial is completely vitiated.

There can be additional charge sheet based on further investigation done by the investigating officer, but, there cannot be two different charge

sheets for the same case as against an accused. The serious allegation of the petitioner that the investigating officer did demand a sum of Rs.

5,00,000/= to give a clean chit to the petitioner has been put forth by him strongly before the court of law. But, the same has not been seriously

taken into consideration by the court. The fate of the petitioner cannot be decided based on the charge sheet laid by the investigating officer who,

with a mala fide intention to wreak vengeance on the petitioner, has investigated the case and authored the charge sheet. The case of the petitioner

seeking quashment will have to be accepted as the allegations found therein were not controverted by way of any counter affidavit from the State.

5. Learned Additional Public Prosecutor would contend before this Court that the case has reached the stage of arguments on the side of the

accused. As the petitioner has got an opportunity to canvass all his defence before the Trial Court, this Court cannot quash the trial proceedings at

this distance of time. It is his further submission that no suggestion has been put to the investigating officer that he demanded a sum of Rs. 5,00,

000/= to give up the case against the petitioner. He would further contend that the charge sheet originally filed was returned and thereafter, the

present charge sheet on file was laid before the learned Judicial Magistrate concerned. The petitioner cannot validly contend based on the certified

copy of the charge sheet originally laid that two charge sheets have been laid in this case. At any rate, that can be effectively canvassed before the

Trial Court, he would further submit.

6. If the allegation of mala fides and personal ill-will made against the authority concerned in the writ petition have not been countered by way of

counter affidavit and the version or denial of such authority has not been placed on record before the court, such uncontroverted allegations made

in the writ petition as against the authority concerned will have to be held as unrebutted. See: R.P. Kapur and Others Vs. Sardar Pratap Singh

Kairon and Others, ; S. Pratap Singh Vs. The State of Punjab, ; and C.S. Rowjee and Others Vs. Andhra Pradesh State Road Transport

Corporation, .

7. But, in this case, the charges laid by the respondent as against the petitioner and the defence set up by the petitioner in the criminal case

launched against him are being scanned and processed by the Trial Court in accordance with law. This is only a petition seeking quashment. The

point that arises before this Court is whether the quashment of the criminal proceedings at this distance of time would arise in the facts and

circumstances of the case. The ground of attack of the petitioner herein shall be met by the prosecution before the Trial Court and not before this

court. It is not necessary that in a proceeding u/s 482 of the Code of Criminal Procedure, the respondent should come out with a counter affidavit

to rebut all the allegations made in the complaint as otherwise, adverse inference will be drawn as against the respondent. The respondent can

smash the entire allegations found in the petition seeking quashment by projecting the facts and circumstances of the case right from the date of

commission of the offence till the conclusion of trial proceedings. The failure to file a counter affidavit to controvert the allegations in the complaint

will not provide any leverage to the petitioner to fortify his plea for quashment.

8. It has been held in *Vikram Malhotra v. Central Bureau of Investigation* 2004 (2) Cri 442 as follows:

From the bare reading of the Section 173 Cr.P.C., it is manifest that Section requires such police report to be in a particular form and supported

by specified documents. Unless police report submitted does not fulfil the legal requirements as incorporated in the section, it cannot be a valid

report u/s 173 Cr.P.C. If such is the case, what is the course, open to the Magistrate. Can such Magistrate return the police report for submitting

to again after complying with the legal requirements of Section 173 Cr.P.C.? There is no provision in the Cr.P.C. enabling such Magistrate to

return the charge sheet. Once a charge sheet is filed before a Magistrate, he is required to act u/s 190 Cr.P.C. and consider the question whether

he should take cognizance thereon. If the police report is incomplete, he can defer the taking of the cognizance till such time the deficiency in the

police report/challan is removed by the Prosecution. In no case a Magistrate who is competent to take cognizance can legally return the police

report for completion of the formalities.

9. With great respect, in my considered opinion, the aforesaid observation of the Jammu and Kashmir High Court does not reflect the correct

position of law. It is true that there is no enabling provision in the Code of Criminal Procedure to return the charge sheet by the learned Judicial

Magistrate, concerned. If the police report has been filed not in consonance with Section 173 of the Code of Criminal Procedure, the learned

Judicial Magistrate concerned has the discretion to defer the process of taking cognizance or to return the defective police report for compliance. If

minor defect is found in the police report, the learned Judicial Magistrate need not return the police report, but, in a case where completely

defective and incongruous police report has been filed, it is the discretion of the Judicial Magistrate to return the police report for proper

compliance of the defects.

10. In the case on hand, the petitioner has taken a defence that two charge sheets have been laid, but the one which was filed at the first instance

has been burked for the reasons best known to the prosecution. Such a defence can be taken before the Trial Court. Even assuming for the sake

of argument that two charge sheets have been filed in this case, it may reflect the conduct of the investigating officer, but, definitely that cannot be a

ground for quashment.

11. The order of conviction is liable to be set aside if it is found that interpolations had been made in the case diary to keep sequence of entries in

order and prove the time of arrest of the accused. Cooking up a false story by the investigating agency will be a death knell to the case of the

prosecution. See: Mohd. Zahid Vs. The Govt. of NCT of Delhi, . The alleged interpolation made by the investigating officer in this case can be

gone into only by the Trial Court and not by this Court under the inherent jurisdiction conferred u/s 482 of the Code of Criminal Procedure.

12. Where a criminal proceeding is manifestly attended with mala fides or the proceedings is maliciously instituted with an ulterior motive for,

wreaking vengeance on the accused with a view to spite him due to private and personal grudge, it is a good ground for quashing" the criminal

proceedings u/s 482 of the Code of Criminal Procedure. See T.T. Antony v. State of Kerala (2001) 6 SCC 181.

13. In this case, 56 prosecution witnesses were examined, 267 M.Os and 214 Exhibits were already marked and 11 defence witnesses were also

examined. The prosecution had already advanced its arguments. The defence has now taken up the arguments from 17.12.2007. The question is

whether the petition for quashment at this fag end of the trial is sustainable. The mala fides attributed to the investigating agency can very well be

canvassed before the Trial Court. It is brought to the notice of this Court that the demand of Rs. 5,00,000/= by the investigating officer to give a

clean chit to the petitioner was not even suggested to the investigating officer when he was examined by the prosecuting agency. The petitioner had

an opportunity to canvass all these pleas before the Trial Court. Now, the termination of trial is only at the hands of the defence, as the matter has

been posted for the defence arguments. Therefore, the court finds that the petition seeking quashment at this fag end of the trial, for the foregoing

reasons, is not at all warranted.

Therefore, the petition stands dismissed. The Miscellaneous Petition also stands dismissed.