

(2006) 03 MAD CK 0089

In the Madras High Court

Case No : Criminal R.C. No's. 175 and 176 of 2006 and Criminal M.P. No's. 962 and 1708 of 2006

E. Damodaran

APPELLANT

Vs

State by Inspector of Police, Central Crime Branch

RESPONDENT

Date of Decision : 31-03-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 227, 482

Penal Code, 1860 (IPC) — Section 34, 384, 407, 420, 506

Tamil Nadu Prohibition of (Harassment of Woman) Act, 1998 — Section 4

Citation : (2006) 2 LW(Cri) 611

Hon'ble Judges : M. Jeyapaul, J

Bench : Single Bench

Advocate : R. Sankarasubbu, in Criminal RC 175/2006 and N.R. Elango, in Criminal RC 303/2006, for the Appellant; S. Jeyakumar, Public Prosecutor, for the Respondent

Judgement

M. Jeyapaul, J.—As against the order of dismissal passed by the Mahila Court, Chennai in Crl. M.P. No. 7290 of 2005 filed u/s 227 of the

Code of Criminal Procedure, Crl.R.C. 175 of 2006 has been preferred.

2. As against the order of dismissal passed by the Mahila Court, Chennai in Crl. M.P. No. 10381 of 2005 filed u/s 227 of the Code of Criminal

Procedure, Crl.R.C.303 of 2006 has been preferred.

3. As both the criminal revision cases have arisen out of the very same sessions case in S.C. No. 387 of 2005 seeking very same relief of

discharge, both the criminal revision cases are taken up for a common disposal.

4. Having been aggrieved against the order of dismissal passed by the learned Sessions Judge, Mahila Court, Chennai in Crl.M.P.No.7290 of

2005, the 7th accused, Damodaran, who was chargesheeted for the offences

punishable under Sections 384 r/w Section 34, 420 r/w Section 34, 407 r/w Section 34 and 506(i) of the Indian Penal Code and Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 1998,

moved Crl.R.C.No.175 of 2006 and against the order of dismissal passed by the learned Sessions Judge, Mahila Court, Chennai in

Crl.M.P.No.10381 of 2005, the 5th accused, Kalki Manoharan @ N.Manoharan, who was chargesheeted for the offences punishable under

Sections 384 r/w Section 34, 420 r/w Section 34, 407 r/w Section 34 and 506(ii) of the Indian Penal Code and Section 4 of the Tamil Nadu

Prohibition of Harassment of Women Act, 1998, moved Crl.R.C.No.303 of 2006.

5. The 7th accused Damodaran has been chargesheeted alleging that he forcibly collected donations from the complainant and other innocent

devotees to an extent of Rs. 8 lakhs and issued receipts in the name of Thiru Ramanujam Mission Trust and Shri Bashyakara Charitable Trust,

when actually there was no activity in the trust. Having colluded with the first accused in his capacity as a Secretary of the said trust committed the

offences punishable under the aforesaid provision of law. It has been further alleged that he had written a threatening letter to the defacto

complainant.

6. The contention of the 7th accused in the discharge application filed by him is that he signed and passed on receipts on behalf of the trust for the

monies received by the trust in his capacity as an authorised person. The complaint is false and motivated. When his name did not figure in the first

information report as well as in the statement of witnesses recorded at the first instance, he has been implicated to wreak vengeance as he chose to

appear for the first accused. There was no threat communicated to the defacto complainant through the controversial letter. It is further contended

that the process of law has been misused and abused by the Investigating Agency.

7. As regards the 5th accused Kalki Manoharan @ N.Manoharan, the prosecution has alleged that he along with the first accused extorted a sum

of Rs. 7 lakhs and odd in cash, silver, utensils, gold jewels etc. When the defacto complainant refused to pay a sum of Rs. 50,000/-, he was

abused in filthy language and was threatened with dire consequences. The 5th accused has contended in his discharge petition that there was no

specific overtact attributed to him. A false and motivated complaint has been lodged by the defacto complainant in order to recover the amount given by him to the 5th accused, it is submitted.

8. The trial Judge, having analysed the incriminating materials collected and the statements recorded by the Investigating Agency, has come to a conclusion that there is prima facie case as against the petitioners herein.

9. Learned counsel for the petitioner in CrI.R.C.No.175 of 2006 would submit that the petitioner has been implicated when nothing was on record

to show prima facie that the petitioner committed some sort of offence. It is his submission that the petitioner who defended the first accused was

roped in, in order to wreak vengeance against him by the Investigating Agency. The letter written by him in his capacity as a Secretary of the Trust

is not at all in the threatening posture. He would further submit that instead of implicating the Trust, the petitioner who acted as a Secretary under

authorisation was arraigned as one of the accused. When ample provisions are there under the Trust Act to proceed against the malpractices of the

Trust, the petitioner should not have been implicated in this case.

10. Learned counsel for the petitioner in CrI.R.C.No.303 of 2006 would submit that a very vague allegation has been made against the petitioner

and the date and time of the occurrence as regards the petitioner do not find a place in the chargesheet. It is further contended that there is an

allegation of threat only as against the first accused and that there is virtually no allegation as against the petitioner with regard to the threat alleged

to have been wielded against the defacto complainant.

11. The learned Public Prosecutor would submit that the trial Court has rightly come to a conclusion that there is prima facie material available as

against the 5th and 7th accused, who are the petitioners in these criminal revision cases and that the petitions seeking discharge merited no

consideration.

12. Of course in framing the charge as against the accused, the Court cannot act blindly. If the existing materials do not provide a ground for

presuming that the accused has committed an offence, there can hardly be any point in framing the charges. At the stage of framing the charge, the

trial Court is not supposed to embark upon a process of evaluation of the evidence collected by the Investigating Agency to decide whether there

is credibility in the testimony. Whether the materials placed by the prosecution are sufficient for the Court to proceed further alone will have to be found out at the stage of framing the charges.

13. It is a well settled proposition of law that when the evidence produced, if unrebutted, warrants a conviction, then the Court has to frame the charges and proceed with the trial. It is the look out of the trial Court to find whether a prima facie case is made out, but it is not the look out of the trial Judge to go into the merits of the case. Charge can very well be framed if there are materials showing the possibility about the commission of the crime as against certainty.

14. Only when there is no material on record to connect the accused with the offence, the High Court, invoking the provision u/s 482 of the Code of Criminal Procedure, can quash the proceedings as against the accused.

15. Where a criminal proceeding is manifestly attended with mala fides and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private or personal grudge, the proceedings can be quashed as laid down in *State of Haryana v. Bhajan Lal* 1992 SCC (Cri) 426. The said judgment has been quoted with approval in *Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful haque* 2005 SCC (Cri) 283 .

16. It is a well settled proposition of law that where the allegations made against the accused person do not constitute the offence alleged or where there is either no legal evidence adduced in support of the case or the evidence adduced clearly or manifestly fails to prove the charge, the High Court would exercise its inherent jurisdiction.

17. This Court, in *V.R. Nedunchezian v. State by Deputy Superintendent of Police, CB CID ETC.* 1999 1 L.W. (Cri) 358 , has observed that the Court would be justified in framing the charges against an accused if the prosecution has sown the seed in the form of some incriminating material which has got the potential to develop itself into a full fledged tree during trial.

18. The Hon''ble Supreme Court in *State of Maharashtra Vs. Priya Sharan Maharaj and Others*, has categorically held that at the stage of framing the charge, the Court has to consider the material with a view to find out if there is sufficient ground for presuming that the accused has committed

the offence and not for the purpose of arriving at the conclusion that it is not likely to lead to a conviction.

19. Let me first deal with the materials available as against the 7th accused in Crl.R.C.No.175 of 2006 to frame the charge as against him. A

witness by name Priyamvada, a school going girl, has given statement before the Investigating Officer that when she informed the petitioner viz.,

Damodaran about the sexual harassment committed by the first accused, the petitioner informed her that a very good relationship had unfolded

with the agent of God. The said advice was laced with a threat, she has categorically stated.

20. It is the categorical version of the prosecuting agency that there was no Trust existing, but the petitioner styling himself as the Secretary of the

Trust formed by the first accused collected money forcibly from the devotees including the first informant. The Investigating Agency has chosen to

examine the alleged trustees found in the registered trust deed. All those trustees have categorically stated before the Investigating Officer that they

do not have connection with such a Trust and the Trust was non-functional. The prosecution has collected materials to show that the petitioner

herein passed on receipts as though the Trust received donations from the devotees, when actually there was no Trust in existence as per the case

of the prosecution.

21. It is true that the petitioner, exercising his professional duty, has defended the first accused in this case. It is also true that the first information

report does not name the petitioner as one of the accused. The statements u/s 161 of the Code of Criminal Procedure recorded at the first instance

also did not indicate anything about the first accused.

22. The fact remains that in the first information report itself, the first informant has categorically stated that there was an extortion from the

devotees in the name of the Trust by the first accused. Only during the course of investigation, the Investigating Agency could fix the role of the

petitioner in the non-existing Trust. In many of the receipts passed on by the Trust, the petitioner has signed in his capacity as a Secretary of the

said Trust. The prosecuting agency had to rope-in the petitioner as some material during the course of investigation has surfaced incriminating the

petitioner herein. The further statement recorded by the Investigating Agency

would also implicate the accused herein. The reliability of such further statements will have to be tested only during the course of trial.

23. When the wife and the elder daughter of the petitioner was in the custody of the first accused, the petitioner has shot off a letter not to come

and participate in the birthday celebration of the first accused, in the interest of the first informant and also in the interest of his daughter. When the

wife and the daughter of the first informant were in the custody of the first accused, such a letter has been received by the first informant. The

Investigating Agency projects the said letter as a letter of threat wielded to the first informant. If we read the letter as such separately, it does not

prima facie look like a letter with threatening posture. But if such a letter is read in the background of alleged illegal custody of the wife and

daughter of PW.1, there is some scope to allege that such a letter carries a threatening message to the first informant.

24. The Court finds that there is sufficient material to charge the accused for the offence of extortion, criminal breach of trust, cheating and criminal

intimidation. The trial Court has rightly rejected the plea of the petitioner that just because he appeared for the first accused in his professional

capacity he has been implicated falsely. The evidence collected by the Investigating Agency based on the clue found in the first information report

about the extortion made by the first accused in the name of the Trust formed by him, cannot be totally ignored at the stage of framing of charge.

There is no illegality or impropriety in framing the charge as against the petitioner herein as there are materials to indicate prima facie that the

petitioner has committed the offences as stated supra.

25. Let me now take up the case of the 5th accused, who is the petitioner in CrI.R.C.No.303 of 2006. There is a specific allegation in the

statement of the first informant that the first accused Chaturvedi in culmination of the conspiracy hatched by him with the petitioner herein extorted

a sum of Rs. 47,000/- for the purpose of purchasing train ticket. It has also been alleged therein that the petitioner having abused the first informant

and his family members, threatened him not to take any legal action for the dishonour of the cheque issued by the petitioner to discharge the said

sum of Rs. 47,000/-. A witness by name Kumaresan has also given statement before the Investigating Officer with reference to the above

occurrence. Another witness by name Prasanna has also spoken to the criminal intimidation emanated from the petitioner herein, when the defacto complainant refused to part with any amount for purchasing train ticket as ordered by the first accused Chaturvedi. A witness by name Raghav has given a statement u/s 161 of the Code of Criminal Procedure before the Investigating Officer to the effect that the 5th accused and the 7th accused acted as a henchmen of the first accused and facilitated the sexual harassment emanated from the first accused. It is not as if a very vague charge has been laid as against the petitioner herein. There is ample allegation as against the petitioner for the offences punishable under Sections 384 r/w Section 34, 420 r/w Section 34, 407 r/w Section 34 and 506(ii) of the Indian Penal Code and Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 1998.

26. The trial Court has thoroughly analysed the material available on record and has come to a fair conclusion that there is sufficient materials to frame charge as against the 5th and 7th accused. Therefore the criminal revision petitions merit no consideration and are liable to be dismissed.

27. In the result, the Criminal Revision Case Nos. 175 of 2006 and 303 of 2006 stand dismissed. Consequently, connected criminal miscellaneous petitions also stand dismissed.