

(2008) 04 MAD CK 0015

In the Madras High Court

Case No : Criminal O.P. No. 5448 of 2008 and M.P. No. 1 of 2008

E. Valsaraj, Honorary President, Mahe Cooperative Centre far
Information Technology Ltd., No. P689, Cemetery Road, Make
673 310, Puducherry State

APPELLANT

Vs

V. Sudhakaran and Union Territory of Puducherry

RESPONDENT

Date of Decision : 28-04-2008

Acts Referred:

Citation : (2008) 04 MAD CK 0015

Hon'ble Judges : M. Jeyapaul, J

Bench : Single Bench

Advocate : Ravindran, for M/s. Krishna Ravindran, for the Appellant; K.S. Madhusudhanan for RI and Mr. Murugesan, Public Prosecutor (Pondy) for R2, for the Respondent

Final Decision : Dismissed

Judgement

M. Jeyapaul, J.—The petition is filed seeking to quash the entire criminal proceedings in Crime No.1 of 2008 pending on the file of the

second respondent Inspector of Police, Vigilance and Anti-Corruption Police, Puducherry.

2. The first respondent presented a complaint on 19.2.2008 before the Special Court, Puducherry alleging that the petitioner herein, who is the

President of Mahe Co-operative Centre for Information Technology Limited and the other accused, who are the Directors of the said Society,

having intended to misappropriate the funds of the Society by paying far less consideration to the vendors than the consideration shown in the sale

deeds, misappropriated the balance amount of Rs. 85,46,000/ = in furtherance of a conspiracy hatched among themselves for their own use and

thereby they committed offences punishable under sections 120B, 403, 420, 468 read with 34 of the Indian Penal Code and sections 7 and 9 of

Prevention of Corruption Act, 1988.

3. The petitioner seeks quashment on the ground that the first respondent, who is neither an office bearer or a member of Mahe Co-operative

Centre for Information Technology Limited, has come out with a complaint without any locus standi to launch the prosecution against the President

and other office bearers of the said Society. The sale transaction was clinched by the petitioner herein representing the Society in a transparent

way. Cheque payment was made towards the consideration for the sale deed executed by six vendors from whom, the Society purchased the

property. The first respondent, who is a land broker, has come out with a vague and concocted allegation as against the petitioner. Therefore, the

petitioner seeks for quashment of the entire criminal proceedings initiated by the first respondent.

4. Learned Senior Counsel appearing for the petitioner would contend that the investigating agency has already examined the veracity of the

complaint. The vendors and the officers of the Society were already examined and the records of the bank and the Society were also verified by

them. There was no underhand dealing as focused in the complaint lodged by the first respondent. When the entire sale consideration has been

paid by cheque and proper accounts have been maintained by them by the purchasers and the vendors, the question of implicating the petitioner

who has embarked upon accumulating the wealth of the coffers of the society cannot be sustained.

5. Learned counsel appearing for the first respondent/de facto complainant would vehemently submit that the first respondent, though not a

member of the Society, has every right to lodge a complaint as there was no bar under the scheme of the Code of Criminal Procedure to lodge a

complaint by a person who comes to know of certain facts and circumstances which constitute the commission of some offence. When the

investigation has not been completed, the question of quashing the entire criminal proceedings as claimed by the petitioner does not arise. The

materials so far collected cannot be a basis for quashing the criminal proceedings. The first information report reflects the commission of cognizable

offence. The gravity of the charge leveled against the petitioner as well as the office bearers of the Society will have to be thoroughly probed into

by the second respondent. It is premature to claim that no case has been made out as against them, it is submitted.

6. Learned Public Prosecutor for the State of Pudhucherry would submit that the investigation was almost completed. The investigation would

reveal that there was no misappropriation committed by the petitioner as alleged in the complaint. The second respondent has thoroughly

investigated the matter having examined all the buyers in the sale transaction and the relevant documents revolving around the sale transaction. It

has come to light that there was no corrupt practice and the entire transaction has been clinched by the petitioner in a fair and transparent manner,

it is submitted.

7. As far as locus standi of the first respondent in lodging a criminal complaint as against the petitioner and other accused, it is beneficial to refer to

the observation of the Supreme Court in A.R. Antulay Vs. Ramdas Srinivas Nayak and Another, which reads as follows:-

It is a well recognised principle of criminal jurisprudence that anyone can set or put the criminal law into motion except where the statute enacting

or creating an offence indicates to the contrary. The scheme of the Criminal Procedure Code envisages two parallel and independent agencies for

taking criminal offences to Court. Even for the most serious offence of murder, it was not disputed that a private complaint can, not only be filed

but can be entertained and proceeded with according to law. Locus standi of the complainant is a concept foreign to criminal jurisprudence save

and except that where the statute creating an offence provides for the eligibility of the complainant, by necessary implication the general principle

gets excluded by such statutory provision.

As far as the criminal prosecution is concerned, even for the commission of a heinous crime, any person for that matter can set the law in motion as

laid down by the Supreme Court. Therefore, the submission made by the learned Senior Counsel appearing for the petitioner that the first

respondent has no locus standi to lay a complaint as against the petitioner and other accused does not have a leg to stand upon.

8. It is found that the second respondent has examined all the vendors viz., A.C.

Balaraman, Savitha, T.P. Balan who executed five sale deeds in favour of Mahe Co-operative Centre for Information Technology Limited. All the sale deeds have been thoroughly perused by the second respondent. The bank account of the Society and the bank account of the vendors were examined by the second respondent. The second respondent has now come to the conclusion that the sale transaction clinched by the Society represented by the petitioner reflects real transaction. The consideration also has been passed on only through cheque. The vendors also have spoken to the fact that they have received only the consideration specified in the sale deeds by way of cheques. The examination of the witnesses by the second respondent would disclose that the sale transaction in all the five sale deeds have been clinched by mutual understanding between the Society and the respective vendors. The second respondent, in the above facts and circumstances, has come to the conclusion that no materials are available for sustaining the allegation of misappropriation and the commission of the other consequential offences focused in the complaint. It appears that the sale transaction has been entered into by the petitioner only to enrich the coffers of the Society. There is no semblance of truth in the allegation that the consideration handed over to the vendors is below Rs. 54,00,000 and the balance amount of Rs. 85,46,000/- was misappropriated by the first accused jointly with the other accused.

9. The second respondent has almost completed the process of investigation. But for the stay granted by this court, the second respondent would have, by this time, filed the final report. The Supreme Court in State of Karnataka and Another Vs. Pastor P. Raju, has held as follows:-

There is another aspect of the matter which deserves notice. The FIR in the case was lodged on 15.1.2005 and the petition u/s 482 of the Code of

Criminal Procedure was filed within 12 days on 27.1.2005 when the investigation had just commenced. The petition was allowed by the High

Court on 23.2.2005 when the investigation was still under progress. No report as contemplated by Section 173 of the Code of Criminal

Procedure had been submitted by the in-charge of the police station concerned to the Magistrate empowered to take cognizance of the offence.

Section 482 of the Code of Criminal Procedure saves inherent powers of the High

Court and such a power can be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice. This power can be exercised to quash the criminal proceedings pending in any court but the power cannot be exercised to interfere with the statutory power of the police to conduct investigation in a cognizable offence.

That was a case where the High Court was pleased to quash the criminal proceedings invoking the provisions u/s 482 of the Code of Criminal

Procedure when the investigation was at a nascent stage. In the above facts and circumstances, the Supreme Court has observed that when

investigation has just commenced, the High Court should not have invoked inherent jurisdiction to interfere with the statutory power of the police to

investigate the complaint more especially when the complaint reflected cognizable offence.

10. In a similar case reported in State of Madhya Pradesh Vs. Awadh Kishore Gupta and Others, , the Supreme Court has held as follows:-

The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally

refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so, when the evidence has not been

collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true

perspective without sufficient material.... It is to be noted that the investigation was not complete and at that stage, it was impermissible for the High

Court to look into materials, the acceptability of which is essentially a matter for trial.

But, here is a case where the prosecution has come out with a version that investigation was almost completed. The materials collected would

unerringly point the fact that the transaction was real and the consideration has been rightly-shown in the sale deeds. Therefore, the above authority

does not come to the rescue of the first respondent.

11. The Supreme Court in State of Bihar and Another Vs. P.P. Sharma, IAS and Another, has observed as follows:-

It is thus obvious that "the Annexures" are neither part of the police-reports nor were relied upon by the investigating officer. These documents

were produced by the respondents before the High Court along with the writ

petitions. By treating "the Annexures" and affidavits as evidence and by converting itself into a trial court the High Court pronounced the respondents to be innocent and quashed the proceedings. The least we can say is that this was not at all a case where High Court should have interfered in the exercise of its inherent jurisdiction. This Court has repeatedly held that the appreciation of evidence is the function of the criminal courts. The High Court, under the circumstances, could not have assumed jurisdiction and put an end to the process of investigation and trial provided under the law. Since the High Court strongly relied upon "the Annexures" in support of its findings, we may briefly examine these documents. It appears, in that case, the High Court, while quashing the criminal proceedings, relied upon the Annexures which did not form part of the police report. Neither the petitioner nor the second respondent in this case relied upon any affidavit or other materials produced to buttress their claim for quashment made by the petitioner. It is made clear that this court has got authority to peruse the entire materials collected by the investigating agency during the course of investigation to come to a decision whether prima facie case was made out to continue the prosecution as against the accused concerned.

12. The court finds that the first respondent has come out with a complaint as against the petitioner and other accused without any legal basis. The investigation discloses that the transaction clinched by the petitioner on behalf of the Society was real. There was no corrupt practice adopted or misappropriation committed either by the petitioner or by the other accused in this case, it has been shown before this court. Therefore, it is not just to continue the criminal prosecution not only as against the petitioner but also as against the other accused in this case.

13. In view of the above, the entire criminal proceedings not only as against the petitioner but also as against the other accused in this case who have not come before this court seeking quashment are quashed. The petition stands allowed. The connected Miscellaneous Petition stands closed.