

(1999) 08 MAD CK 0010
In the Madras High Court
Case No : Criminal O.P. No. 12835/99

Gladya Lilly

APPELLANT

Vs

The Superintendents, Narcotic Control Bureau, South Zonal
Units, Chennai

RESPONDENT

Date of Decision : 09-08-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 193

Citation : (1999) 08 MAD CK 0010

Hon'ble Judges : A. Ramamurthi, J

Bench : Single Bench

Advocate : S. Shanmugavelayutham, for the Appellant; P. Rajamanikam, Special Public Prosecutor Criminal Original Petition No. 12835 of 1999, for the Respondent

Final Decision : Dismissed

Judgement

A. Ramamurthi, J.—Petitioner/accused No. 2 in C.C. 521 of 1998 on the file of learned Additional Sessions Judge and Special Judge for

N.D.P.S. Act Cases, Madurai, has filed this petition u/s 482 of the Code of Criminal Procedure to quash the proceedings so far as she is concerned.

2. The case in brief is as follows:

The petitioner has been charged for offences under sections 27-A, 28, 29 of the N.D.P.S. Act and sections 120 (b) and 193 of IPC and she is the

second accused. Her husband is the first accused. Her husband Paulsamy was working as Superintendent, Central Excise, Madurai and she was

working as Superintendent, Central Excise, Thanjavur. It is alleged that she was indulging in drug trafficking. The 1st accused was in possession of

2 kgs. of heroin at his room No. 116, Thiruchendooran Mansion, Vasantha Nagar, Madurai. The room was searched on 8.5.98 by the officers of Narcotic Control Bureau, South Zonal Unit, Chennai and 2 kgs. of heroin was seized under a mahazar in the presence of two witnesses. He was arrested on 8.5.98 and produced before the court on 9.5.98 and remanded to custody. Four samples were drawn at the time of seizure and analyst report was received, showing that the contraband was heroin, a narcotic drug covered under N.D.P.S. Act. During the course of investigation, it was revealed that accused 1 and 2 entered into criminal conspiracy in the month of May" 98 with the object to procure narcotic drug and to transport and in pursuance of the conspiracy, accused No. 1 was found in possession of 2 kgs. of heroin in his possession, which was seized by Narcotic Control Bureau Officials. The 2nd accused in order to screen the said offence of possession of heroin seized in this case by arranging the recording of statements u/s 164 Cr.P.C. of Sekar, Mani, Vivekanandhan, Karuppaiah and Prabakar as an attempt to destroy the case of the prosecution and that she was fabricating false evidence for being used in Court and committed an offence u/s 193 IPC. The 2nd accused is said to have financed for the transportation of the contraband from Madurai to her place and committed an offence u/s 27-A of N.D.P.S. Act and other offences.

3. The respondent cannot file a complaint against the petitioner for the offence u/s 193 IPC unless he satisfies the provision u/s 195 Cr.P.C. There is a specific legal bar to take cognizance of the offence. The court cannot take cognizance of any complaint u/s 193 IPC except on the complaint in writing of that court or of some other court to which the court is subordinate. In this case, the complaint has not been preferred by the court, in which the offence of giving false evidence has been committed. The ingredients of the other offences under N.D.P.S. Act are also not made out. None of the witnesses examined by the prosecution during investigation stated that she had financed anybody to transport the drug from Madurai to Nagorcoil. The statement is very bald and it does not refer to the place, where the contraband was available. It also does not specify the place to be transported. The mahazar drawn by the seizing officer did not mention about the petitioner's overt act or part played by her. To satisfy the

definition of conspiracy, there must be meeting of minds between the accused party. It is crystal clear that Dominic and another witness cited as

Sam Imanuel are hand in glove in foisting the case against them. The continuance of the proceedings is an abuse of process of the court and to

secure the ends of justice, the proceedings are liable to be quashed. The only allegation against her is that she had made an alleged phone call to

the informant. They have also filed another document, which is a fax message addressed to one Krishnamoorthy, Assistant Director, N.C.B. and it

carried the information that the petitioner was relieved from Thanjavur to proceed on transfer to Tirunelveli on 8.5.98. The entire case of

prosecution is fabricated one to implead her in the Narcotic Drugs Psychotropic Substances Act cases. Hence, the petition.

4. Learned counsel for the complainant raised a preliminary objection that the present application is not maintainable under law. The petitioner,

who is accused No. 2, has not appeared before the court from the inception and she has been absconding and now non-bailable warrant is

pending. She has not appeared before the court and received any copies u/s 207 of the Code of Criminal Procedure and under the circumstances,

she is not entitled to invoke the inherent power of this court u/s 482 of the Code of Criminal Procedure.

5. The respondent/complainant filed the complaint against the petitioner as well as her husband for offences under sections 27-A. 28 and 29 of

N.D.P.S. Act and also under sections 120(b) and 193 IPC. Both of them were working as Superintendent, Central Excise in Madurai and

Thanjavur respectively. The 1st accused was found in possession of 2 kgs. of heroin at his room No. 116, Thiruchendooran Mansion, Vasantha

Nagar, Madurai and the room was searched on 8.5.98 by the officers of N.C.B. South Zonal Unit. Chennai and the heroin was seized under the

mahazar in the presence of independent witnesses. The voluntary statement of the 1st accused was also recorded and he was produced and

remanded. The samples were taken in accordance with law and the report of the analyst disclosed that the contraband was heroin. During the

course of investigation, it has come to light that the husband and wife entered into a criminal conspiracy with the object to procure narcotic drug

and transport. She in order to screen the offence of possession of heroin seized in the case from the room of the first accused, arranged for

recording statements u/s 164 Cr.P.C. of five persons as an attempt to destroy the prosecution and she was fabricating false evidence for being

used in Court and committed an offence u/s 193 I.P.C.

6. Learned counsel for the petitioner mainly contended that section 193 IPC cannot be invoked without the complaint from the court in writing and

there is a bar u/s 195 Cr.P.C. Learned counsel for the petitioner further stated that the materials collected during investigation, even if they are

taken in entirety as true, will not make an offence against the petitioner, and on these grounds, the proceedings in C.C. 521/98 has to be quashed.

7. Learned counsel for the petitioner relied upon Daulat Ram Vs. State of Punjab, for the proposition that the prosecution u/s 182 IPC must be on

complaint in writing by the Tahsildar. He also relied upon Govind Mehta v. State of Bihar (AIR 1978 SC 1708) that non-compliance with section,

which imposes a limitation on power of magistrate to take cognizance of the offences mentioned in section deprives him of jurisdiction to take

cognizance of offences. Reliance was also placed upon another decision in P.C. Gupta v. State (1974 Cr.L.J. 945) and it also relates to the bar

created u/s 195 Cr.P.C. Another decision of this court in Ponnuchamy, Inspector Of Police v. Suyambanandam (1989 L.W.(Cr.) 411) was

relied, wherein it is observed that prosecution cannot circumvent section 195 Cr.P.C. by resorting to prosecute for other offences and lastly,

reliance was placed on another decision of this court in A. Varghese and another v. Chellappan (1998 (1) Crimes 154) reiterating the very same

proposition.

8. Learned counsel for the respondent relied upon State through C.B.I. v. Dawood Ibrahim Kaskar and others (1997 (2) Crimes 92 SC) and also

Emperor v. Purshottam Ishwar (Vol. XLV ILR 834) and they also relate to section (?) I.P.C. as well as section 73 Cr.P.C.

9. Now, the learned counsel, for the respondent raised only a preliminary question relating to the maintainability of the present petition. u/s 482

Cr.P.C. inherent power is given to this court to prevent the abuse of process or to secure, otherwise the ends of justice. Now admittedly, in the

present case, the petitioner is an absconding accused from the inception. Non-bailable warrant is pending against her. Even after the filing of the

charge sheet, petitioner has not appeared before the court to receive the copies

u/s 207 Cr.P.C. Now voluminous typed set of documents have been filed by the petitioner thereby showing that these copies might have been received by her husband, who is the 1st accused in the case and with the help of these copies only, she has come forward with a petition to quash the proceedings. The question whether section 193 IPC can be invoked against the petitioner and whether there is a legal bar u/s 195 Cr.P.C. are matters that can be decided only at a later stage. Even according to the petitioner, certain materials have been disclosed showing the part played by her. Considering the fact that the petitioner is absconding right from the inception and even after the filing of the charge sheet, has not appeared before the court coupled with the fact that non-bailable warrant is still pending. I am of the view that the inherent power of this court u/s 482 Cr.P.C. cannot be invoked to consider the case of the petitioner. I am of the view that section 482 Cr.P.C. can be rarely invoked only to prevent abuse of process of any court or otherwise to secure the ends of justice. In the present case, as the accused is absconding from the inception and she is not appearing before the court, she is not entitled to invoke section 482 Cr.P.C. and maintain this petition.

10. In the result, the petition u/s 482 Cr.P.C. by the petitioner is not maintainable and it is dismissed. It is, however, open to the petitioner to surrender before the court and after receiving copies u/s 207 Cr.P.C. if advised, she can approach the court for appropriate relief. Consequently CrI.M.Ps. 5936 and 5937 of 1999 are also dismissed.