

(2013) 01 MAD CK 0189
In the Madras High Court
Case No : Criminal R.C. No. 1599 of 2007

Hema Mohnot

APPELLANT

Vs

State by Chief Commissioner (Administration) and Another

RESPONDENT

Date of Decision : 21-01-2013

Acts Referred:

Citation : (2013) 356 ITR 602

Hon'ble Judges : B. Rajendran, J

Bench : Single Bench

Advocate : V.V. Sairam for A. Anhamuthu, for the Appellant; Ramasamy K., Special Public Prosecutor (Taxes), for the Respondent

Final Decision : Dismissed

Judgement

B. Rajendran, J.—This revision is filed against the order of dismissal of the discharge petition, passed by the learned Additional Chief Metropolitan Magistrate, E.O.I, Egmore, Chennai, in M.P. No. 1914 of 2007 in E.O.C.C. No. 179 of 1985 dated August 7, 2007. The learned counsel appearing for the revision petitioner would contend that the petitioner has been falsely and unnecessarily implicated in the case and that she has no nexus, but, for the fact that she is the wife of the first accused. He would further contend that in this case, even according to the complaint itself barring one allegation of encashment of a cheque for a sum of Rs. 3,690 from a fictitious person, there is no other allegation as against the petitioner.

2. The learned counsel appearing for the revision petitioner would further contend that, earlier the petitioner filed a petition to discharge, but it was dismissed and against that, a revision was preferred before this court and that was also dismissed, but, subsequently, the petitioner brought to the notice of this court that there is an assessment order pertaining to the year 1984-85 which is the relevant year for the complaint made by the income tax authority and because of the subsequent development, a second application for discharge was filed. But even that was dismissed at a threshold without giving any opinion on

the order, namely, the subsequent assessment order. Therefore, the lower court has committed grave error in coming to the conclusion without looking into the order and no finding is given but dismissed the discharge petition only on the ground that the earlier application for discharge was dismissed and it was upheld by this court. Aggrieved against the same, the present revision is filed.

3. The learned Special Public Prosecutor (Taxes), brought to the notice of this court that it is a classic example of a case being dragged on for years together. In this connection, he also referred to the revision filed by the very same parties, which has been dismissed by this court and which is reported in Hema Mohnot Vs. State, , in which also this court has held that this is a classic example as to how the criminal case could be protracted for several decades. In spite of such an finding given by this court, even, as early as in the year 2006, the petitioner had the audacity to file yet another discharge petition citing the very same reasons and only adding that the assessment order for the year 1984-85 is filed which is nothing but to drag on the matter.

4. In this connection, the learned Special Public Prosecutor (Taxes), would also vehemently point out referring to the various pages in the complaint, namely, paragraph 2.15 in page 5, paragraph 5.1 in page 9, paragraph 5.1 in page 10, paragraph 5.2 in page 10, paragraph 5.3 in page 12, paragraph 14.2 in page 24, paragraph 17.3 in page 28 and paragraph 19 in page 31 which says about A12 the present petitioner and that the petitioner is not only the wife of the first accused but she is also a party to the crime. The house was raided and many documents were seized. Therefore, at the time of framing of the charge what all required is only to have a prima facie evidence to record. There is a charge in this case, the offence has been clearly made out.

5. The learned Special Public Prosecutor (Taxes), would further contend that even by the decision of this court, which is reported in Hema Mohnot Vs. State, , this court has come to the conclusion that there is a prima facie evidence and also brought to the notice of this court that merely by production of a document, the court need not consider those extraordinary documents for the purpose of arriving to frame a charge. In this connection, he also relied upon a decision of the hon"ble Supreme Court reported in Amit Kapoor Vs. Ramesh Chander and Another, , wherein, the hon"ble Supreme Court has categorically held the guideline in respect of discharge petitions and for quash petitions. One such guideline is for discharge, the court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of acquittal. The court has to consider the record and documents annexed therewith by the prosecution.

6. The learned Special Public Prosecutor (Taxes), would further contend that, the petitioner has been dragging on the case and on earlier occasions, the other accused have dragged on. This petitioner lost her battle in the first time and has come with a second one. Above all, the petitioner is a fugitive and non-bailable warrant is pending at least for the past six months and the petitioner did not

even appear for question u/s 313 of the Code of Criminal Procedure. In spite of all these things, a classic case of inordinate delay in defending the case has been made by the petitioner and, hence, it was rightly dismissed by the lower court and, hence, prayed for dismissal of the revision.

7. Heard both sides. By consent of both the parties, the main revision itself is taken up for final disposal.

8. This is an unfortunate case which has been kept pending in this court for the past several years. In spite of the earlier stringent order of this court as reported in Hema Mohnot Vs. State, , the petitioner had filed the application once again before the lower court for the very same relief of discharge. Since the main case is pending, this court does not want to divulge or go into all the details, suffice to state that while considering the discharge petition, the lower court is well within the limits to find out whether a prima facie case is made out. They need not dwell into the documents produced or otherwise produced by the prosecution. In this case, the accused participated in the crime by getting refund certificate of the income tax under fictitious name.

9. It is suffice to state that this court in the revision filed by the very same parties which is reported in Hema Mohnot Vs. State, , has held as follows (page 411):

From the judgments of the hon''ble Supreme Court, cited above, it is clear that the question whether a charge should be framed or not when the court is considering u/s 245(1) of the Code of Criminal Procedure, the court has to take into account whether any case has been made out against the accused which if unrebutted would warrant his conviction. The hon''ble Supreme Court has gone to the extent of saying that the trial court has to consider the question as to framing of charge on a general consideration of the materials placed before him by the investigating police officer. Even a very strong suspicion founded upon materials before the magistrate, which leads him to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged, may justify the framing of charge against the accused in respect of the commission of that offence.

In this case, there is a strong circumstance to presume that a prima facie case exists against the petitioner (i) as she is the wife of A1; (ii) several documents were seized from the residential house occupied by her along with her husband; (iii) a cheque for Rs. 3,690 issued in the name of her company has been encashed by her, the said cheque was issued by a fictitious person; (iv) the allegation is that she conspired along with her husband and other accused, of which some of them are employees of the Race Club to dupe the income tax Department for the purpose of making unlawful gain by producing bogus tax deducted at source certificates or original tax deducted at source certificates in the name of fictitious persons by opening bank accounts in the name of fictitious persons in different banks and, therefore, it cannot be easily held that there is no

prima facie case as against the petitioner at this stage.

As rightly held by the learned Special Public Prosecutor, revisions of this nature are filed only to protract the proceedings.

Crl. M.P. Nos. 3409, 3412, 3679, 3695, 3711 and 3879 of 1985 filed by various accused persons have been dismissed by this court and the same is reported in Kumudini Subhan and Another Vs. Commissioner of Income Tax, . The revision petitioner herein also filed Crl. M.P. Nos. 4181 of 1988. Her mother-in-law, A-11 also filed Crl. M.P. No. 6457 of 1988. Both the Crl. M.P.s were also dismissed by this court, which is also reported in Hema Mohnot Vs. State, . Similarly, the petition filed by A-1 was also dismissed by this court, as reported in N.K. Mohnot Vs. Chief Commissioner of Income Tax (Admn.) and Another, . The main criminal original petitions in Crl. O.P. Nos. 9363 of 1989, 7683 of 1991 and 8990 of 1993, filed by A-6, A-13 and A-19 respectively were also dismissed by this court with a direction to the trial court to dispose of the case expeditiously. Though this direction was issued in the said order as on January 12, 1994, the stalemate continues and one after another petitions are filed to protract the proceedings. It is now by A-12. The contentions raised by A-12 now had already been raised by her in Crl. M.P. No. 4181 of 1988 and the same has been dismissed by this court (see Hema Mohnot Vs. State,). Again and again such kind of petitions are filed by the accused at different forums on the same grounds and the purpose could be only to protract the proceedings. This is a classic example as to how the criminal case could be protracted for several decades.

In the judgment in Smt. Om Wati and Another Vs. State, through Delhi Admn. and Others, , the hon''ble Supreme Court held as follows:

12. We would again remind the High Courts of their statutory obligation to not to interfere at the initial stage of framing the charges merely on hypothesis, imagination and far-fetched reasons which in law amount to interdicting the trial against the accused persons. Unscrupulous litigants should be discouraged from protracting the trial and preventing culmination of the criminal cases by having resort to uncalled for and unjustified litigation under the cloak of technicalities of law.

As far as this case is concerned, the petitioner's earlier petition was dismissed by this court as mentioned earlier and this court has become functus officio and is disentitled to entertain a fresh prayer for the same relief unless the former order of final disposal is set aside by a court of competent jurisdiction in a manner prescribed by law. The court becomes functus officio the moment the official order disposing of a case is signed. Such an order cannot be altered except to the extent of correcting a clerical or arithmetical error as observed by the hon''ble Supreme Court in Hari Singh Mann Vs. Harbhajan Singh Bajwa and Others, .

10. The only argument put forth by the petitioner is that in so far as the cheque of Rs. 3,690, it was covered in the earlier order. Therefore, that does not need

any revision at this stage. Further, he would only state that he had produced the income tax assessment order for the particular year 1984-85, in which there is no adverse remark regarding the cheque of Rs. 3,690, no finding has been given by the court below.

11. An argument was raised by the learned Special Public Prosecutor (Taxes), that in so far as the documents produced externally, there is no need to consider the same as per the decision of the hon''ble Supreme Court reported in State of Orissa Vs. Debendra Nath Padhi, .

12. In this connection, this court would like to quote the decision of the hon''ble Supreme Court reported in State of M.P. Vs. S.B. Johari and Others, , wherein in paragraph 4, it was held as follows:

4 . . . The court is not required to appreciate the evidence and arrive at the conclusion that the materials produced are sufficient or not for convicting the accused. If the court is satisfied that a prima facie case is made out for proceeding further then a charge has to be framed. The charge can be quashed if the evidence which the prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged by cross-examination or rebutted by defence evidence, if any, cannot show that the accused committed the particular offence.

13. Similarly, in the decision reported in Smt. Om Wati and Another Vs. State, through Delhi Admn. and Others, , it was held as follows:

7. Section 227 of the Code provides that if upon consideration of record of the case and the documents submitted therewith, the judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused for which he is required to record his reasons for so doing. No reasons are required to be recorded when the charges are framed against the accused persons. . . .

8. At the stage of passing the orders in terms of section 227 of the Code, the court has merely to peruse the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. If upon consideration the court is satisfied that a prima facie case is made out against the accused, the Judge must proceed to frame charge in terms of section 228 of the Code. Only in a case where it is shown that the evidence which the prosecution proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged in the cross-examination or rebutted by defence evidence cannot show that the accused committed the crime, then and then alone the court can discharge the accused. The court is not required to enter into meticulous consideration of evidence and material placed before it at this stage. . . .

10. A three-judge Bench of this court in Supdt. and Remembrancer of Legal Affairs, West Bengal Vs. Anil Kumar Bhunja and Others, reminded the courts that at the initial stage of framing of charges, the prosecution evidence does not

commence. The court has, therefore, to consider the question of framing the charges on general considerations of the material placed before it by the investigating agency. At this stage, the truth, veracity and effect of the judgment which the prosecution proposes to adduce are not to be meticulously judged. The standard of test, proof and judgment which is to be applied finally before finding an accused guilty or otherwise is not exactly to be applied at the stage of framing the charge. Even on the basis of a strong suspicion founded on materials before it the court can form a presumptive opinion regarding the existence of factual ingredients constituting the offence alleged and in that event be justified in framing the charges against the accused in respect of the commission of the offence alleged to have been committed by them. . .

14. As per the decision cited supra, it is known that the three-judge Bench of the hon''ble Supreme Court, in a case has held that, even on the basis of a strong suspicion founded on materials before it, the court can form a presumptive opinion regarding the existence of factual ingredients constituting the offence alleged and in that event be justified in framing the charges against the accused in respect of the commission of the offence alleged to have been committed by them.

15. As per the latest decision of the hon''ble Supreme Court reported in Amit Kapoor Vs. Ramesh Chander and Another, , wherein, the hon''ble Supreme Court has culled out various principles, which is extracted hereunder:

27 At best and upon objective analysis of various judgments of this court, we are able to cull out some of the principles to be considered for proper exercise of jurisdiction, particularly, with regard to quashing of charge either in exercise of jurisdiction u/s 397 or section 482 of the Code or together, as the case may be:

27.1. Though there are no limits of the powers of the court u/s 482 of the Code but the more the power, the more due care and caution is to be exercised in invoking these powers. The power of quashing criminal proceedings, particularly, the charge framed in terms of section 228 of the Code should be exercised very sparingly and with circumspection and that too in the rarest of rare cases.

27.2. The court should apply the test as to whether the uncontroverted allegations as made from the record of the case and the documents submitted therewith prima facie establish the offence or not. If the allegations are so patently absurd and inherently improbable that no prudent person can ever reach such a conclusion and where the basic ingredients of a criminal offence are not satisfied then the court may interfere.

27.3. The High Court should not unduly interfere. No meticulous examination of the evidence is needed for considering whether the case would end in conviction or not at the stage of framing of charge or quashing of charge.

27.4 Where the exercise of such power is absolutely essential to prevent patent

miscarriage of justice and for correcting some grave error that might be committed by the subordinate courts even in such cases, the High Court should be loath to interfere, at the threshold, to throttle the prosecution in exercise of its inherent powers.

27.5. Where there is an express legal bar enacted in any of the provisions of the Code or any specific law in force to the very initiation or institution and continuance of such criminal proceedings, such a bar is intended to provide specific protection to an accused.

27.6. The court has a duty to balance the freedom of a person and the right of the complainant or prosecution to investigate and prosecute the offender.

27.7. The process of the court cannot be permitted to be used for an oblique or ultimate/ulterior purpose.

27.8. Where the allegations made and as they appeared from the record and documents annexed therewith to predominantly give rise and constitute a "civil wrong" with no "element of criminality" and does not satisfy the basic ingredients of a criminal offence, the court may be justified in quashing the charge. Even in such cases, the court would not embark upon the critical analysis of the evidence.

27.9. Another very significant caution that the courts have to observe is that it cannot examine the facts, evidence and materials on record to determine whether there is sufficient material on the basis of which the case would end in a conviction; the court is concerned primarily with the allegations taken as a whole whether they will constitute an offence and, if so, is it an abuse of the process of court leading to injustice.

27.10. It is neither necessary nor is the court called upon to hold a full-fledged enquiry or to appreciate evidence collected by the investigating agencies to find out whether it is a case of acquittal or conviction.

27.11. Where allegations give rise to a civil claim and also amount to an offence, merely because a civil claim is maintainable, does not mean that a criminal complaint cannot be maintained.

27.12. In exercise of its jurisdiction u/s 228 and/or u/s 482, the court cannot take into consideration external materials given by an accused for reaching the conclusion that no offence was disclosed or that there was possibility of his acquittal. The court has to consider the record and documents annexed therewith by the prosecution.

27.13. Quashing of a charge is an exception to the rule of continuous prosecution. Where the offence is even broadly satisfied, the court should be more inclined to permit continuation of prosecution rather than its quashing at that initial stage. The court is not expected to marshal the records with a view to decide admissibility and reliability of the documents or records but is an opinion

formed prima facie.

27.14. Where the charge-sheet, report u/s 173(2) of the Code, suffers from fundamental legal defects, the court may be well within its jurisdiction to frame a charge.

27.15. Coupled with any or all of the above, where the court finds that it would amount to abuse of process of the Code or that the interest of justice favours, otherwise it may quash the charge. The power is to be exercised ex debito justitiae, i.e., to do real and substantial justice for administration of which alone, the courts exist.

27.16. These are the principles which individually and preferably cumulatively (one or more) be taken into consideration as precepts to exercise of extraordinary and wide plenitude and jurisdiction u/s 482 of the Code by the High Court. Where the factual foundation for an offence has been laid down, the courts should be reluctant and should not hasten to quash the proceedings even on the premise that one or two ingredients have not been stated or do not appear to be satisfied if there is substantial compliance with the requirements of the offence.

16. In paragraph 27.12, of the decision cited supra, the contention of the revision petitioner that she has filed the assessment order and it has not been taken into consideration by the lower court has been set at naught by the hon"ble Supreme Court. Therefore, I do not find any reason to interfere with the reasoned order of the court below. Unfortunately, the revision has been kept pending for such a long time.

17. The learned Special Public Prosecutor (Taxes) also states that some accused are still absconding, charges have been framed and other accused are facing trial. Hence, the learned Additional Chief Metropolitan Magistrate, E.O.I, Egmore, Chennai, is directed to expedite the trial and dispose of the case as expeditiously as possible as the case is pending from the year 1985. In the result, the revision is dismissed. The order passed by the learned Additional Chief Metropolitan Magistrate, E.O.I, Egmore, Chennai, in M.P. No. 1914 of 2007 in E.O.C.C. No. 179 of 1985 dated August 7, 2007 is confirmed.