

(2006) 04 MAD CK 0010

In the Madras High Court

Case No : Criminal O.P. No. 8772 of 2006 and Criminal M.P. No. 2295 of 2006

K. Anbazhagan

APPELLANT

Vs

The Director, Vigilance and Anticorruption and Others

RESPONDENT

Date of Decision : 26-04-2006

Acts Referred:

Criminal Law Amendment (Amending) Ordinance, 1943 — Section 2(3), 3, 3(2), 4, 4(4)

Criminal Procedure Code, 1973 (CrPC) — Section 313, 482

Prevention of Corruption Act, 1988 — Section 5, 5(6)

Citation : (2006) 04 MAD CK 0010

Hon'ble Judges : M. Jeyapaul, J

Bench : Single Bench

Advocate : Shanmugasundaram for A. Saravanan, for the Appellant; V. Jaya Prakash Narayanan, Government Advocate for Respondent No. 1, N. Jothi, for Respondent Nos. 2 and 3, G. Saravanakumar, for Respondent No. 4, L.P. Shanmugasundaram and K.M. Santhanagopalan, for the Respondent

Judgement

M. Jeyapaul, J.—The petitioner, who is the General Secretary of "Dravida Munnetra Kazhagam Party" and leader of the opposition in the

Tamil Nadu State Legislative Assembly, moves this criminal original petition seeking stay of all further proceedings in CrI.O.P. Nos. 1 and 11 of

1997 on the file of the learned Chief Judge, Small Causes Court, Chennai, pending disposal of C.C. No. 7 of 1997 pending originally on the file of

the learned XI Additional Sessions Judge-cum-Special Judge, Chennai and now pending, on transfer, on the file of the Special Court, Bangalore in

Special C.C. No. 208 of 2004.

2. CrI.O.P. Nos. 1 and 11 of 1997 have been filed by the respondents 6 to 10 and others before the learned Chief Judge, Small Causes Court,

Chennai, seeking to raise the order of attachment of the properties passed by

the said Judge under the Criminal Law (Amendment) Ordinance 1944.

3. The petitioner has contended in the petition seeking stay as follows:-

The petitioner filed transfer petitions before the Hon"ble Supreme Court of India seeking transfer of C.C. No. 7 of 1997 and C.C. No. 2 of 2001

on the file of the learned XI Additional Sessions Judge, Special Court-I, Chennai to a Court of equal and competent jurisdiction in any other State.

The Hon"ble Supreme Court accepted the plea of the petitioner and transferred those cases to a Special Court in Bangalore by its order dated

18.11.2003.

4. The learned Chief Judge, Small Causes Court, Chennai, on perusal of the affidavit and documents filed, was pleased to pass an order of interim

attachment of the properties in the month of February 1997 3 Cri 1944. When the main Calendar Cases launched under the Prevention of

Corruption Act had been transferred to the Special Court at Bangalore, the learned Chief Judge, Small Causes Court, Chennai ceases to have

jurisdiction to adjudicate Crl.O.P. Nos. 1 and 11 of 1997 filed by the respondents seeking raising of interim attachment of the properties.

5. The examination of the prosecution and defence witnesses was completed. As there was strong indication that the process of justice was

subverted and the Public Prosecutor appointed by the present Government in Tamil Nadu was hand in glove with the accused, thereby creating a

reasonable apprehension or likelihood of failure of justice in the minds of public at large, the Hon"ble Supreme Court was pleased to transfer the

aforesaid cases under the Prevention of Corruption Act. A Special Public Prosecutor has been appointed by the State of Karnataka in consultation

with the Chief Justice of Karnataka High Court as per the directions of the Hon"ble Supreme Court.

6. In any event, no officer except the learned Special Public Prosecutor appointed in this case is competent to represent the first respondent-

Director of Vigilance and Anti Corruption, Chennai. The petitioner apprehends that the present proceedings before the learned Chief Judge, Small

Causes Court, Chennai, are taking place without consulting the Special Public Prosecutor and the first respondent is colluding with the accused.

Grave prejudice and irreparable loss will be caused if the proceedings in Crl.O.P.

Nos. 1 and 11 of 1997 are allowed to proceed before the learned Chief Judge, Small Causes Court, Chennai.

7. Therefore, the petitioner prays to stay all further proceedings in Crl.O.P. Nos. 1 and 11 of 1997 on the file of the learned Chief Judge, Small

Causes Court, Chennai, pending disposal of C.C. No. 7 of 1997 originally on the file of the learned XI Additional Judge-cum-Special Judge,

Chennai and now pending, on transfer, on the file of the Special Court, Bangalore in Special C.C. No. 208 of 2004.

8. Except the first respondent the other respondents have contended that by virtue of the provisions u/s 3 of the Criminal Law (Amendment)

Ordinance 1944, the first respondent on registration of the first information report resorted to the said ordinance seeking attachment of the

property before the learned Chief Judge, Small Causes Court, Chennai. Interim order of attachment also was passed u/s 4 of the said ordinance. It

is further submitted that the said ordinance provides a complete machinery to attach the property and deal with the same. The claim petition, if any,

has to be investigated in terms of Section 5 of the said ordinance 1944. When proceedings have been initiated before the competent Court, the

jurisdiction of this Court cannot be invoked. There is no warrant for interference by this Court under the inherent jurisdiction, it is contended.

9. Respondents 6 to 10 have submitted that respondents 2 to 5 never had any right over the properties standing in the name of R.6 to R.10. They

are entitled to invoke Section 5 of the said ordinance to raise the order of attachment passed by the learned Chief Judge, Small Causes Court,

Chennai, it is contended.

10. Learned senior counsel appearing for the counsel on record for the petitioner would submit that though the Small Causes Court is a Civil

Court, it virtually deals with the powers conferred on it under the Criminal Law (Amendment) Ordinance 1944. Further the attachment is made by

the learned Chief Judge, Small Causes Court, Chennai only to facilitate the process of criminal trial in a corruption case. Therefore this Court has

jurisdiction to deal with the present case filed u/s 482 of the Code of Criminal Procedure. He would further contend that the first respondent-

Director of Vigilance and Anti Corruption, has not chosen to intimate the Special Public Prosecutor appointed by the Government of Karnataka as

per the direction of the Hon''ble Supreme Court to conduct the main corruption case pending against R.2 to R.5 about the present petitions filed

before the Court of Small Causes, Chennai by R.6 to R.10 and others seeking raising of attachment. Section 5 of the Prevention of Corruption Act

vests all the powers of the District Judge under the Criminal Law (Amendment) Ordinance 1944 on the Special Judge after the trial has started. At

any rate, the Special Court at Bangalore which has now taken up the matter for disposal, on transfer, is the competent Court to deal with the issues

raised by R.6 to R.10 and others, it is contended by the learned senior counsel appearing for the counsel on record for the petitioner.

11. Learned counsel for the respondents 2 to 10 would submit that the criminal jurisdiction of this Court cannot be invoked as against the

proceedings initiated by the Chief Judge Court of Small Causes. The respondents 6 to 10 and others are entitled to seek for raising the order of

attachment as per the provisions of Criminal Law (Amendment) Ordinance 1944. When the Criminal Law (Amendment) Ordinance 1944

contemplates the procedure for filing petitions for raising the attachment and investigation into the claim made by the claimants, the petitioner cannot

invoke Section 482 of the Code of Criminal Procedure. The prayer as sought for cannot be granted against the spirit of Criminal Law

(Amendment) Ordinance 1944. It is further submitted that the Special Public Prosecutor appointed by the Government of Karnataka to conduct

the corruption case as against R.2 to R.5 has no say in the proceedings pending before the Court of Small Causes, Chennai. It is further submitted

that the petitioner has come out with untenable plea before this Court just to harass respondents 2 to 5.

12. The fact remains that respondents 2 to 5 are facing trial in C.C. No. 7 of 1997 originally on the file of the learned XI Additional Sessions

Judge-cum-Special Judge, Chennai and now pending, on transfer, on the file of the learned Special Court, Bangalore in Special C.C. No. 208 of

2004 for offences under the Prevention of Corruption Act. The said case originally pending before the learned XI Additional Sessions Judge-cum-

Special Judge, Chennai was transferred to the Special Court, Bangalore as per the orders of the Hon''ble Supreme Court in Transfer Petitions

(Criminal) Nos. 77-78 of 2003 dated 18.11.2003. The State of Karnataka also was directed to appoint a senior lawyer having experience in

criminal trials as Public Prosecutor to conduct the said case in consultation with the Chief Justice of High Court of Karnataka. There is no dispute

to the fact that a Special Public Prosecutor has been appointed to conduct the said case as per the aforesaid direction of the Hon''ble Supreme

Court. Even before the case was transferred, it is seen the the case has reached beyond the stage of proceedings u/s 313 of the Code of Criminal

Procedure.

13. At the instance of the first respondent-Director of Vigilance and Anti Corruption, Chennai, the properties have been attached by the learned

Chief Judge, Small Causes Court, Chennai. The State Government has authorised the first respondent herein to make an application u/s 3 of the

Criminal Law (Amendment) Ordinance 1944 to the learned Chief Judge, Small Causes Court, Chennai, to attach the properties in connection with

the C.C. No. 7 of 1997 originally on the file of the learned XI Additional Sessions Judge-cum-Special judge, Chennai. The interim order of

attachment was passed u/s 4 of the said ordinance 1944 by the learned Chief Judge, Small Causes Court, Chennai.

14. Respondents 6 to 10 and others having invoked the provision u/s 4 (4) of the said ordinance 1944 made objections to the ad interim

attachment effected by the learned Chief Judge, Small Causes Court, Chennai. Now the said Judge has embarked upon an investigation of the said

objection to the attachment u/s 5 of the said ordinance 1944.

15. As per Section 2 (3) of the said ordinance 1944, the functions of a District Judge under the ordinance shall in a Presidential Town be exercised

by the learned Chief Judge, Small Causes Court, Chennai. That is how the learned Chief Judge, Small Causes Court, Chennai has derived

jurisdiction under the Criminal Law (Amendment) Ordinance 1944. In the provincial area, the District Judge has been empowered to make ad

interim attachment, to investigate the objection to such attachment and dispose of the attached property upon termination of criminal proceedings.

16. The provisions of Order 27 of the First Schedule to the CPC 1908 shall apply to the proceedings for an order of attachment under the

ordinance 1944 as they apply to suits by the Government as adumbrated u/s 3 (2) of the said ordinance 1944. There is no difficulty in holding that

the learned Chief Judge, Small Causes Court, Chennai in the presidential town

and the District Judges in the provincial area are taking proceedings under the Criminal Law (Amendment) Ordinance 1944 only as per the procedure for attachment contemplated under the Code of Civil Procedure.

17. All the functions under the Criminal Law (Amendment) Ordinance 1944 are found to be civil in nature inasmuch as they draw procedural guidance only from the Code of Civil Procedure.

18. The Andhra Pradesh High Court in State of Hyderabad Vs. K. Venkateswara Rao, has held that the District Judge acting as a Criminal Court in attaching the property under the Criminal Law (Amendment) Ordinance 1944 has the Special power conferred upon him. Therefore, the District Court exercising the powers of attachment under the said ordinance 1944 is only a Criminal Court subordinate to the High Court under the Code of Criminal Procedure.

19. Differing from the aforesaid ratio laid down by the Andhra Pradesh High Court, the Bombay High Court in The State of Maharashtra and

Another Vs. Ishwar Piraji Kalpatri, has observed drawing inspiration from the authoritative pronouncement of the Hon'ble Supreme Court in

S.A.L. Narayan Row and Another Vs. Ishwarlal Bhagwandas and Another, that the proceedings relating to the attachment and disposal of

property under the Criminal Law (Amendment) Ordinance 1944 are only civil proceedings and the aggrieved party as against the proceedings

relating to attachment has to approach only the Civil Appellate jurisdiction of the High Court.

20. Inasmuch as the entire proceedings right from attachment to the disposal of the property after termination of trial are found to be purely civil in

nature and the relevant provisions under Order 27 of the First Schedule to the Code of Civil Procedure, 1908 is found applicable, I hold that the

learned Chief Judge, Small Causes Court, Chennai discharges his function only as a Civil Judge and the order passed by him is appealable on the

Civil Forum in the hierarchy. With due respect, differing from the view taken by the Andhra Pradesh High Court in the aforesaid authority, I fully

concur with the ratio laid down by the Bombay High Court in the aforesaid authority.

21. It is pertinent to note that the petitions filed before this Court does not challenge any order passed by the learned Chief Judge, Small Causes

Court, Chennai, in exercise of his civil jurisdiction. The petition is filed before this Court attacking the very jurisdiction of the said Judge in dealing

with the petitions filed by R.6 to R.10 and others seeking raising the order of attachment. The learned Judge draws his power only under the

Criminal Law (Amendment) Ordinance 1944. The misuse of the process of the Criminal Law (Amendment) Ordinance 1944 will have direct

repercussion on the sensational wealth case pending before the Special Court at Bangalore.

22. As the very authority of the learned Chief Judge, Small Causes Court, Chennai who draws power from the Criminal Law (Amendment)

Ordinance 1944 is challenged, I find that such a challenge can be thrashed out by this Court only on its criminal jurisdiction. This Court on the

criminal side will not definitely have jurisdiction if an order passed by the learned Chief Judge, Small Causes Court, Chennai under the Criminal

Law (Amendment) Ordinance 1944 is impugned before this Court.

23. Any person claiming an interest in the attached property has right to make an objection to the learned Chief Judge, Small Causes Court,

Chennai, u/s 4 (4) of the said ordinance 1944. Having embarked upon an investigation into the objections raised by a party with regard to the ad

interim attachment made u/s 4 of the said ordinance 1944, the learned Chief Judge, Small Causes Court, Chennai, shall pass an order either

making the ad interim attachment absolute or varying it by releasing a portion of the property from attachment or withdrawing the order as

contemplated u/s 5 of the said ordinance 1944.

24. The learned Chief Judge, Small Causes Court, Chennai, has powers to dispose of the attached property upon termination of criminal

proceedings having been posted of such a factum on production of a certified copy of the judgment of the Court concerned.

25. It is very relevant at this juncture to refer to Section 5(6) of the Prevention of Corruption Act 1988 which reads as follows:-

Section 5. Procedure and powers of Special Judge.---

(1) ...

(2) ...

(3) ...

(4) ...

(5) ...

(6) A special Judge, while trying an offence punishable under this Act, shall exercise all the powers and functions exercisable by a District Judge

under the Criminal Law Amendment Ordinance, 1944 (Ordinance 38 of 1944).

26. The Government authorises an officer to go in for attachment of the property u/s 3 of the Criminal Law (Amendment) Ordinance 1944 whether

or not any Court has taken cognizance of the offence, but while trying an offence punishable under the Prevention of Corruption Act, 1988, a

Special Judge is empowered to exercise all the powers conferred on the learned Chief Judge, Small Causes Court, Chennai under the Criminal

Law (Amendment) Ordinance 1944.

27. Though the learned Chief Judge, Small Causes Court, Chennai has been empowered to deal with the objection from a claimant to raise the

order of attachment, the Special Judge appointed for the purpose of trying the offence under the Prevention of Corruption Act, 1988 has been

mandated to exercise all the powers of the learned Chief Judge, Small Causes Court, Chennai under the Criminal Law (Amendment) Ordinance

1944 while he has started trying an offence. The Special Judge starts trying an offence from the date when he questions the accused on framing the

charge.

28. In a case where all the witnesses have been examined and the proceedings u/s 313 of the Code of Criminal Procedure were also over, the

Court finds that the more competent Judge to deal with the issues relating to the order of attachment is only the Special Judge and not the Chief

Judge, Small Causes Court, Chennai.

29. Further it is found that the Hon'ble Supreme Court was pleased to relieve the Public Prosecutor who originally dealt with the wealth case in

question and mandated the Government of Karnataka to appoint a Special Public Prosecutor to appear for the Director of Vigilance and Anti

Corruption, Chennai. It is found that the whole proceedings initiated by R.6 to R.10 and others before the Court of the learned Chief Judge, Small

Causes Court, Chennai, are conducted behind the back of the Special Public Prosecutor who is dealing with the said wealth case before the

Special Court at Bangalore. The first respondent-Director of Vigilance and Anti Corruption, Chennai should have in all fairness apprised the

Special Public Prosecutor appointed in this case to effectively counter the claim of R.6 to R.10 and others. If the proceedings are permitted to be

continued before the learned Chief Judge, Small Causes Court, Chennai behind the back of the Special Public Prosecutor, there will definitely be

subversion of justice. The voluminous materials available with the Special Court alone will speak to the connection of the accused with the

properties attached.

30. This Court has inherent power to give effect to any order passed under the Code of Criminal Procedure or to prevent the abuse of the process

of any Criminal Court or otherwise to secure the ends of justice. The injustice which comes to light should be of a grave and not of a trivial

character. It should be palpable and clear and not doubtful. The inherent power can be invoked to do real and substantial justice.

31. Considering the facts and circumstances under which the wealth case was transferred to the State of Karnataka, the appointment of a Special

Public Prosecutor to deal with the case now pending before the Special Court, Bangalore relieving of the Public Prosecutor who dealt with this

matter earlier, the stage at which the matter stands, the voluminous evidence and records available only with the Special Court and the proceedings

now in progress behind the back of the Special Public Prosecutor appointed in the wealth case, the Court finds that a direction to secure the ends

of justice will have to be given in this matter.

32. Of course, this Court cannot stall the claimants from filing their objections to raise the order of attachment till the disposal of the wealth case

pending before the Special Court at Bangalore. That is not the scheme of the Criminal Law (Amendment) Ordinance 1944. The claimants are

entitled to approach in the above facts and circumstances only the Special Court at Bangalore which deals with Special C.C. No. 208 of 2004 for

seeking the relief of raising the order of attachment.

33. In the result, the learned Chief Judge, Small Causes Court, Chennai is directed, in the interest of justice, not to deal with the CrI.O.P. Nos. 1

and 11 of 1997 pending on his file and the parties are given liberty to approach the Special Court, Bangalore dealing with Special C.C. No. 208 of

2004 seeking the relief of raising the order of attachment and the first respondent shall contest those claims only through the Special Public

Prosecutor appointed to conduct the case in Special C.C. No. 208 of 2004.

34. The Criminal Original Petition is ordered accordingly. Consequently, connected criminal miscellaneous petition is closed.