

(2002) 06 MAD CK 0165

In the Madras High Court

Case No : Criminal Original Petition No. 6693 of 2000

K. Premkumar

APPELLANT

Vs

The Revenue Divisional Officer, Madurai and Nellakaman

RESPONDENT

Date of Decision : 06-06-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 148, 166, 201, 307, 320

Citation : (2002) 2 ALT(Cri) 391

Hon'ble Judges : M. Karpagavinayagam, J

Bench : Single Bench

Advocate : N. Kannadasan, for the Appellant; V. Jayaprakashnarayanan, Government Advocate and K. Jegannathan, for the Respondent

Final Decision : Dismissed

Judgement

M. Karpagavinayagam, J.—K.Premkumar, the petitioner is the first accused in S.C.No.169 of 1983 on the file of the III Additional Assistant Sessions Judge, Madurai, taken on file for the offences under Sections 392, 323,325, 367, 355, 320 and 307 I.P.C. on the complaint filed by the Revenue Divisional Officer, Usilampatti.

2. Contending that there is a long delay in the disposal of the above case, the petitioner has filed this petition u/s 482 Cr.P.C. to quash the said proceedings.

3. The contention of the petitioner is as follows:

"While he was working as Sub-Inspector of Police at Vadipatti Police Station in the year 1982, on the complaint of one Vairava Singh, the landlord, he conducted enquiry and interrogated one Nallakaman, the tenant and advised him to vacate and hand over the possession of the premises to the said Vairava Singh as per his undertaking given earlier. Then, the said Nallakaman and his men were attempting to assault the petitioner and other Constables. Hence, they were arrested in a case registered in Crime No.53/82. Ultimately, the case was charge

sheeted against Nallakaman and others and now the same is pending in S.C.No.126 of 1982 for the offences under Sections 147, 332 and 307 I.P.C. In the meantime, the said Nallakaman gave a complaint to the District Collector that he was attacked by the petitioner and other Constables. In pursuance of the order of the District Collector, the Revenue Divisional Officer conducted enquiry. Ultimately, he filed a complaint against the petitioner and three Constables and the same is pending in S.C.No.169 of 1983 for the offences under Sections 392, 323, 325, 367, 355, 320 and 307 I.P.C. Besides this, the said Nallakaman filed a private complaint which was ultimately committed to the Sessions and numbered in S.C.No.21 of 1984 for the offences under Sections 147, 148, 166, 201, 323, 324, 330, 341, 342, 354, 355, 506(ii) and 307 read with 149 I.P.C. All these cases are pending before the III Additional Assistant Sessions Judge, Madurai.

4. During the pendency of these matters, this Court on several occasions gave a direction to the trial Court for speedy disposal of all the three cases. In the meantime, the petitioner was selected as Deputy Superintendent of Police through direct recruitment and later on, he was promoted as Additional Superintendent of Police in 1998 and further promoted as Superintendent of Police in 1999. Challenging his appointment as Deputy Superintendent of Police, the said Nallakaman filed a writ petition before this Court. This Court ultimately dismissed the same by the order dated 22.7.1994 directing the trial Court to take up all the three criminal cases and dispose of the same on or before 31.3.1995. Despite this direction, these cases are being dragged on at the instance of Nallakaman without allowing the trial to go on and therefore, the proceedings as against the petitioner in S.C.No.169 of 1983 are liable to be quashed.

5. I heard the learned Government Advocate appearing for the first respondent. During the pendency of the above petition, the said Nallakaman was impleaded as second respondent. The counsel for the said Nallakaman was also heard. I have also gone through the counter-affidavits filed by the R.D.O. as well as Nallakaman.

6. On going through the statement given by the petitioner in his petition and the affidavits filed by the R.D.O., the first respondent herein and Nallakaman, the second respondent herein, it is noticed that the petitioner has not approached this Court with clean hands.

7. Only on the ground that there is an inordinate delay in the disposal of the cases against the petitioner at the instance of Nallakaman, this petition has been filed to quash the proceedings. But, the fact remains that the delay is not due to Nallakaman, but due to various reasons for which the petitioner also is responsible.

8. Even though the allegations were levelled against Nallakaman, this Court as well as the Supreme Court directed that all the three cases to be tried together in which Nallakaman was a party. The petitioner while filing this petition did not

choose to implead the said Nallakaman as one of the respondents. Only on the direction of this Court, the said Nallakaman was impleaded as the second respondent.

9. On going through the details given by the said Nallakaman through his counsel, it is manifest that the non-bailable warrant is pending against the petitioner from 23.4.2001 onwards and the police did not execute the said warrant for about one year and the same is pending unexecuted, as the police officials did not care to execute the same as the petitioner happens to be the higher police officer, namely Superintendent of Police.

10. The main petition has been filed seeking for quashing by the petitioner on 28.3.2000. The details of the diary extract of the Court proceedings, which have been extracted in the counter-affidavit filed by the R.D.O. would show that the warrant was issued against the petitioner and other accused on 14.2.2000 itself. It is also noticed that he was not present on 31.1.2000 also.

11. To verify about these particulars, this Court summoned the records in all the three cases from the trial Court and found that the same were correct. Thus, it is clear that while the petitioner is absconding which resulted in the issuance of N.B.W., he has approached this Court by filing this petition for quashing by making a false statement that second respondent Nallakaman alone was the cause for the inordinate delay in disposal of the cases, despite the direction given by this Court for speedy disposal.

12. Let us now go into the details of the facts of the case as culled out from the lower Court records in all these three proceedings, as it has got a chequered history.

13. One Vairava Singh, Reserve Assistant Sub Inspector of Police let out his house to one Thiru.Nallakaman, an Ex-serviceman on lease after having received the lease amount of Rs.5,000/-. On expiry of the lease, he asked the said Nallakaman to vacate his house. He said that he could vacate the house only after receiving the lease amount from him.

14. At that point of time, Premkumar, the petitioner herein was working as a Sub-Inspector of Police, Vadipatti Police Station. The said Vairava Singh requested the Sub Inspector of Police to take action against the said Nallakaman for vacating the house. Accordingly, the Sub Inspector of Police, the petitioner herein received a petition on 15.12.1981 from him and summoned Nallakaman and asked him to deliver vacant possession on or before 1.2.1982. He was also compelled to give an undertaking letter. Since the said Nallakaman was threatened and roughly handled by the Sub Inspector of Police and undertaking letter was obtained out of threat and coercion, he obtained anticipatory bail from the Sessions Court.

15. On 1.2.1982, at the instance of the said Vairava Singh, the Sub Inspector of Police, the petitioner summoned the said Nallakaman, Ex-serviceman to the police station and threatened him to vacate the house immediately and asked

him as to why he did not hand over the possession yet. When Nallakaman asked for the return of the lease amount, the Sub Inspector of Police and other three Constables tortured him by beating with lathis and caused serious injuries. Thereafter, the said Nallakaman took out the anticipatory bail order and gave it to him. The petitioner threw the order by saying that he would book another case against him and that he would not obey the Court's order. Thereafter, he sent Constables to bring his wife who was working as Teacher in a school.

16. Accordingly, at about 8.45 A.M., three Constables went to the school and brought his wife to the police station. When she was asked as to why the possession was not handed over to Vairava Singh, she told that since the lease amount was not given back, the possession was not handed over. The petitioner used filthy language against her saying that she was a prostitute. Then, she stated that she is like his mother and so, he should not use any filthy language. She also apprised him that she is working as a woman Teacher and asked him to give respect. But, the petitioner repeatedly used filthy language and pulled her saree and beat with lathi on her back in the presence of Nallakaman, the husband. When the Sub Inspector attempted to beat her again, Nallakaman warded off. Thereafter, both Nallakaman and his wife were beaten, handcuffed and put in the lock up. Madhavan, the son who came to the police station for the rescue of his father and mother also was beaten brutally.

17. Furthermore, the said Nallakaman with the handcuffs was paraded in the street and police dragged him up to Vadipatti Bus Stand and there also, he was beaten. Then, he was brought back to the station. Due to the attack made by the Sub Inspector of Police and Constables, the three persons, namely father, mother and son sustained very serious injuries including grievous hurt. Then, the petitioner registered a case against the said Nallakaman and others themselves in Crime No.53/82 for the offences under Sections 147, 148, 332 and 307 I.P.C., as if they attempted to attack the police.

18. On agitation by public and on the memorandum submitted by Nallakaman and local villagers, the Government of Tamil Nadu ordered the District Collector, Madurai to conduct enquiry regarding the matter. Accordingly, the R.D.O. was directed by the Collector to conduct enquiry. After examination of 83 witnesses, he sent a detailed report to the Collector stating that Nallakaman and his family members were tortured by the Sub Inspector of Police and others in the police station.

19. Thereafter, in pursuance of the order of the Collector, the R.D.O. filed a complaint in the year 1983 against the Sub Inspector of Police, the petitioner, one Head Constable and two Constables. The same had been committed to the Sessions. Now, it is pending in S.C.No.169 of 1983.

20. In the meantime, on the complaint of the Sub Inspector of Police, the petitioner, the case which was registered in Crime No.53/82 was investigated and charge sheet was filed against Nallakaman and other persons and taken on file in

S.C.No.126 of 1982 for the offences under Sections 147, 332 and 307 I.P.C.

21. Meanwhile, in regard to the police torture, Nallakaman himself filed a private complaint before the Magistrate Court. After enquiry u/s 202 Cr.P.C., the matter was committed to Sessions. Now, the said case also is pending in S.C.No.21 of 1984. All these matters are pending before III Additional Assistant Sessions Judge, Madurai.

22. In the private complaint in S.C.No.21 of 1984, 20 charges were framed against the petitioner as A1 and 11 others for the offences under Sections 147, 148, 341, 342, 323, 324 354, 355, 506(ii), 109, 166, 201(2) and 307 I.P.C. by the order dated 7.12.1984.

23. In S.C.No.126 of 1982, which was registered against Nallakaman and 4 others, the charges were framed for the offences under Sections 147, 332 and 307 I.P.C. on 17.1.1983.

24. In S.C.No.169 of 1983, the proceeding initiated by the R.D.O. against the petitioner, the Sub Inspector of Police and three other Constables, the charges were framed for the offences under Sections 342, 355, 354, 330, 220, 320 and 307 I.P.C. on 24.1.1984.

25. As admitted by the petitioner in his petition, on earlier occasions in Crl.M.P.No.3787 of 1986 dated 24.4.1986, Crl.M.P.No.5238 of 1987 dated 15.6.1987 and Crl.M.P.No.4038 of 1989 dated 1.3.1989, this Court issued directions to the trial Court for speedy disposal of the cases. However, in the meantime, the petitioner chose to file an application for quashing before this Court in Crl.M.P.No.8100 of 1987. In the same year, the said application was allowed by this Court by the order dated 16.11.1987 quashing the proceedings initiated by the R.D.O. in S.C.No.169 of 1983. Against this order, Nallakaman, second respondent herein filed SLP before the Apex Court challenging the said order of quashing passed by this Court. Ultimately, on 7.11.1989, the Supreme Court set aside the order of quashing and directed the trial Court to have the trial of all the three cases, namely S.C.No.126 of 1982, S.C.No.169 of 1983 and S.C.No.21 of 1984.

26. In the meantime, it is stated that the petitioner was appointed as Deputy Superintendent of Police through direct recruitment. Challenging the said appointment on the ground of pendency of the criminal cases against him, in the year 1985, Nallakaman filed a writ petition in W.P.No.11966 of 1985. After hearing the parties concerned, this Court by the order dated 22.7.1994 dismissed the same with a direction to the trial Court to dispose of all the three cases on or before 31.3.1995 and a report shall be sent to this Court.

27. In spite of the direction by this Court on various occasions through various orders, lastly on 22.7.1994, the trial Court has not proceeded with the trial. According to the counter filed by the R.D.O., the accused were not regularly appearing in the Court and N.B.Ws. were issued against the accused as they

used to be absent one after another. It is also stated in the counter that the cases were adjourned to several dates due to the failure of the Government to appoint Special Public Prosecutors in these cases as the Special Public Prosecutors earlier appointed were relieved on administrative reasons.

28. According to the counter filed by Nallakaman, second respondent herein, the main reason for the delay is only due to the non-appearance of the accused one after another. It is specifically stated in his counter that non-bailable warrant has been issued against the petitioner by the trial Court as he has been absconding from 23.4.2001 onwards.

29. These things would make it clear that the petition has been filed by the petitioner again for quashing with incorrect details which is not bona fide, even though the proceeding in S.C.No.169 of 1983 as against the petitioner, which was quashed by this Court on 16.11.1987, was set aside by the Apex Court directing the petitioner to face the trial in the said case by the order dated 7.11.1989.

30. Further, by the order dated 22.7.1994, the writ jurisdiction of this Court issued a specific direction that all those cases must be taken up for trial and must be disposed of the same on or before 31.3.1995. When these orders gave a specific direction to the trial Court for conducting the trial passed by this Court as well as the Supreme Court, it is improper on the part of the petitioner who is now said to be serving as Superintendent of Police of a district to have filed an application for quashing before this Court even though the Supreme Court thought it fit to observe that it is not a case for quashing, and it is a case for trial. Instead of approaching the Writ Court or the Supreme Court complaining about the non-compliance of the orders and for direction to take action on that, the petitioner has again approached this Court for quashing on the ground of delay, stated to have been caused by Nallakaman, the second respondent herein.

31. The diary extract, as noticed above, would show that the delay was not due to the said Nallakaman. On the other hand, the petitioner was one of the main reasons for causing delay. It is stated in the diary extract that N.B.W. issued against the petitioner on 14.9.1995, 10.1.1996, 3.3.1997, 23.4.1997, 23.6.1997, 2.7.1997, 15.7.1997, 5.8.1997, 14.8.1997, 28.8.1997, 16.9.1997, 14.2.2000 and 13.3.2000. At that stage, as stated earlier, the petitioner against whom N.B.W. was issued, chose to file application on 28.3.2001 for quashing the proceedings on the ground of delay.

32. It is further noticed from the diary extract that on 23.4.2001, N.B.W. was again issued against the petitioner (A1) and the same has not been executed till date. This shows that the petitioner has no regard for law and for truth. On the other hand, he wanted to get some orders from this Court behind the back of the said Nallakaman, who was not impleaded as a party initially when the petition was filed, although Nallakaman was a party in the orders issued by the writ jurisdiction of this Court as well as by the Supreme Court. Only on the direction

by this Court, in this petition, the said Nallakaman has been impleaded as second respondent, from whose affidavit, this Court is able to know that Nallakaman was not the reason for the delay. Thus, it is clear that the petitioner has made an incorrect and false statement to mislead this Court.

33. One other aspect is to be noticed in this context. When the appointment of the petitioner as D.S.P. was challenged in writ petition before this Court in W.P.No.11966 of 1985, by the order dated 22.7.1994, this Court while referring the Rule 10(a)(iv) which provides that, where it is necessary to appoint an officer against whom an enquiry into allegations of corruption or misconduct is pending, the appointing authority may appoint him temporarily pending enquiry into the charges against him, would hold that the appointment cannot be said to be illegal as the appointment has been made only temporary as the criminal cases against him are pending in the Court of Session.

34. As such, the finding given by this Court in the above writ petition that the appointment is only temporary which is subject to the result in the criminal proceedings. But, it is stated by the petitioner in paragraph 3 of his petition that the petitioner was promoted as Additional Superintendent of Police in the year 1998 and further promoted as Superintendent of Police in the year 1999.

35. There are no details in the petition as to how he was promoted even though his appointment as Deputy Superintendent of Police was temporary pending disposal of the criminal cases before the Court of Session. Having obtained the promotion as Superintendent of Police even though his appointment was held to be temporary by this Court, the petitioner instead of bringing to the notice of the writ Court that the order passed by this Court has not been complied with and instead of filing an application for seeking a fresh direction, has approached this Court for the reasons best known to him seeking for quashing alleging that the criminal cases pending against him are unnecessarily dragged on at the instance of Nallakaman with a view to harass the petitioner. This prayer for quashing sought for by the petitioner in this petition would amount to disrespect the orders passed by this Court as well as the Supreme Court earlier.

36. Furthermore, as mentioned above, the petitioner did not choose to appear before the Court, which issued non-bailable warrant on several hearings against the petitioner, thereby made the trial Court not to proceed with the trial and took advantage of the same, he has approached this Court with a false plea. This conduct of the police officer, who is now said to be promoted as Superintendent of Police, who is alleged to have attacked an Ex-serviceman and his wife working as a School Teacher and caused grievous injuries at the police station itself, with reference to which the Revenue Divisional Officer himself has filed a complaint u/s 307 I.P.C. against the petitioner, is quite unbecoming. From this, the motive of the petitioner is so clear that he having obtained promotion has decided not to allow the proceedings to go on and to be disposed of.

37. As indicated above, the delay is not due to the complainant, the second

respondent herein. Both the complainant Nallakaman as well as the Revenue Divisional Officer has filed the counter-affidavits stating that the witnesses are ready to be produced before the Court. The accused persons who are the petitioner and other Constables have not appeared before the trial Court regularly. If some accused persons appear on a particular date, other accused do not use to appear. When the other accused appear, those accused appeared earlier do not appear in the other hearing. This sort of dilatory tactics are being adopted not only by the petitioner but also by all the Constables, who are the accused in this case.

38. The fact that N.B.W. issued against the petitioner is pending for more than one year without execution and the failure of the petitioner to surrender before the Court, seeking for withdrawal of the said warrant and the non-appearance of the accused one after another on every hearing would make it clear that the trial is being dragged on for a number of years only at the instance of the accused and not at the instance of the prosecution party. Therefore, the filing of the application seeking for quashing of the proceedings against the dictum of the Supreme Court would not only tantamount to violating the direction of this Court as well as the Supreme Court, but also to abuse the process of the Court to the core. As such, I do not find any merit either in the contention regarding delay or in the prayer for quashing. Furthermore, this Court finds no bona fide on the part of the petitioner to have approached this Court with this petition containing false statements.

39. In such circumstances, this Court is constrained to give a fresh direction to the trial Court to have the trial in all the three cases together and dispose of the cases within six months from the date of receipt of this order.

40. It is stated in the counter filed by the second respondent that the Special Public Prosecutors earlier appointed have been relieved and fresh appointment has to be made. If it is so, the Home Secretary is directed to see that Special Public Prosecutors in these cases are immediately appointed to enable the trial Court to finish the cases within the stipulated time.

41. As mentioned above, the accused persons are from Police Department. The Diary Extract would show that the cases are being adjourned for non-appearance of some of the accused on every hearing. Therefore, the Director General of Police is directed to give suitable direction to the concerned Superintendent of Police to ensure the presence of all the accused, the police personnel in these cases on the relevant dates so that the trial would be over within the time mentioned above. The petitioner and others against whom N.B.Ws. were issued are directed to surrender before the Court concerned along with the petition to recall the N.B.Ws. On their surrender, the trial Court may recall by imposing suitable conditions to ensure their presence before the Court on all the hearing dates.

42. Before parting with this case, it shall be mentioned that there are very

serious allegations against the petitioner, who is stated to have severely beaten the Ex-serviceman and his wife, a Teacher at the police station causing grievous hurt. It is shocking to see from the complaints of Nallakaman and the R.D.O., the petitioner disrobed the saree of the woman Teacher at the police station and attempted to remove her Thali (Mangalya Sutra). It is further stated that she was brutally beaten and the second respondent with the handcuffs was taken outside the police station and was paraded up to the Bus Stand and in the presence of the public, he was continuously beaten. Only on the agitation of the public, the District Collector intervened, as a result of which, an enquiry was conducted by the R.D.O. after examining 83 witnesses.

43. If these allegations are true and proved before the Court of law, it would be shameful to find that a person like the petitioner has been allowed to work in the Police Department. In the light of the very serious allegation, the trial Court should see that the trial is to go on preferably on day-to-day basis and the same is finished of within the time schedule.

44. As a matter of fact, the Supreme Court by the order dated 7.11.1989 would specifically observe that all the three cases to be tried together. This Court also by the order dated 22.7.1994 directed the trial Court to dispose of the matters on or before 31.3.1995. Despite these directions, the trial Court was not allowed to be proceeded with. Therefore, this Court is constrained to give a fresh direction hoping that at least the direction given now would be complied with. Since this Court feels that the petitioner being the Superintendent of Police is the main reason for such delay and he sought for quashing on the basis of false statement, this Court deems it fit to impose some costs on the petitioner. Accordingly, the petitioner is directed to pay Rs.10,000/- (Rupees ten thousand only) as costs to the Gandhi Museum, K.K. Nagar, Madurai within one month from this date. The petitioner after making payment of the same shall get receipt from the said Museum and file the same before this Court.

45. The Public Prosecutor of the High Court is directed to send the copy of this order to the Director General of Police and the Home Secretary conveying the directions issued with regard to cooperation to be extended by them in ensuring the disposal of the cases. However, it is made clear that the trial Court may dispose of those cases uninfluenced by any of the observations made above.

46. With these observations, the petition is dismissed.