

(1981) 12 MAD CK 0023

In the Madras High Court

Case No : Criminal M.P. No's. 4496 and 4498 of 1978

K.S. Narayanan and Others

APPELLANT

Vs

S. Gopinathan

RESPONDENT

Date of Decision : 22-12-1981

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 409

Citation : (1982) CriLJ 1611

Hon'ble Judges : M.N. Moorthy, J

Bench : Single Bench

Advocate : S. Govind Swaminathan, for I. Subramanian and A. Mylsami, for the Appellant; G. Ramaswami, for N. Ganapati, R. Malick and A. Thirumurthi, for the Respondent

Judgement

1. Cr.M.P. 4496 of 1978 - This is a petition filed under S. 482 CrI.P.C. by the accused in C.C. 23771 of 1978 on the file of the II Additional

Metropolitan Magistrate, Egmore, Madras to call for the records in that case and quash the proceedings.

2. According to the private complaint filed by the complainant, who is the respondent in this petition, he is a shareholder in the India Cements Ltd.

and accused 1 to 5, who are petitioner 1 to 5 herein, are the directors of the said public limited company which is having its registered office at

Dhun Buildings, No. 175/1 Mount Road, Madras 2. The sixth accused, who is the sixth petitioner herein, is the brother of the first accused and he

is the General Manager of the factory of the said company at Sankaranagar, Talaiyuthu, Tirunelveli. The seventh accused, who is the seventh

petitioner herein, is the Secretary of the said company. According to the complaint, accused 1 to 7 have entered into a conspiracy at Madras to

defraud the funds of the India Cements Ltd. and misappropriate the same through various methods in order to enrich themselves at the expense of

the shareholders. The misappropriation was between 1-4-1976 and 31-3-1977 and the amount was Rs. 25,00,000/-. A-1 is the managing

director and he is in charge of the day to day administration and supervision of the entire company. Subject to the approval of the Board of

directors. A. 6 as General Manager is in charge of the administration of the factory at Sankaranagar, working under and taking orders from A. 1.

The said Company was incorporated on 21-2-1976 with the object of setting up a cement factory. The company obtained mining lease in 1956 of

more than 1000 acres of land in the reserve forest area. As the quality of lime stone from the reserve forest area was not good, the plant had to be

stopped soon after the mines were commissioned.

3. Agricultural Farms Ltd., according to the complaint, was having lands of choice limestone bearing areas. The main director of this concern was

one of the promoters of the India Cements Ltd., namely, late Mr. S. N. N. Sankaralinga Iyer. He and his son, A-1, were directors for a number of

years. India Cements, Ltd. had to buy quality limestones from Agricultural Farms Ltd., owned by A-1 and his father. In 1951, a contract was

entered into by which Agricultural Farms Ltd., supplied 62 to 65 per cent of India Cements' requirements of limestones up to 30-3-1958. In

1958, a fresh contract was entered into for another 15 years. As India Cements Ltd., has not secured any lands bearing quality limestones, they

depend solely on Agricultural Farms Ltd. A number of complaints were sent to the Company Law Board, New Delhi, against the malpractices in

purchase of limestones by paying higher rates to Agricultural Farms Ltd. to the detriment of India Cements Ltd. Agricultural Farms Ltd. purchased

limestones from suppliers and sold to India Cements Ltd., at an increased rate of Rs. 4 to Rs. 5 per tonne. They also secured a good sum by way

of transport charges from the pitsmouth to the crusher of the India Cements Ltd.'s factory. The lorries engaged by the Company belonged to

Abcoy and Company or Contractors who are only benami of A. 6. Abcoy and Company is a partnership firm; the partners are the wife of A. 6 and

her father. The entire gains from the transport go to A. 6 via Abcoy and Company. Agricultural Farms Ltd. has not declared any dividends from its

inception. They had all their profits made only through one client namely India Cements Ltd. They were able to pay the tax under the Voluntary

Disclosure Scheme for a total income of Rs. 50 lakhs, which was because of the settlement arrived at between the Agricultural Farms Ltd., which

had to pay nearly Rs. 1.5 crores as tax liabilities, and the Income Tax authorities. Rs. 1.5 crores represent the income derived by Agricultural

Farms Ltd., at the expense of India Cements Ltd. Accused 1 and 6 are responsible for this loan of Rs. 1.5 crores incurred to India Cements Ltd.,

on the purchase of limestones alone. This figure is mentioned by the Income Tax department, but the loot must be more than that and the

statements of accused 1 and 6 before the officers of the Company Law Board would prove this. The Department of Company Law Affairs,

Government of India in its letter dated 20-11-1976 asked India Cements Ltd. to discontinue forthwith the transport arrangements entered into with

Agricultural Farms Ltd. but A-1 managed to get a letter dated 2-7-1977 from the Company Law Board wherein they had withdrawn their earlier

order dated 20-11-1976, and they approved the continuation of the arrangement for transport by Agricultural Farms Ltd. Accused 1 and 6 paid

exorbitant rates for the purchase of limestone from Agricultural Farms Ltd. They are purchasing gypsum from Ramanathan Farms Ltd. which

belonged to another brother of A. 1. They paid hire charges heavily for the compressors, earth moving equipment bulldozers and transport vehicles

of Abcoy and Co. which is also a benami concern of A. 1 and A. 6. The Company Law Board examined accused 1 to 6 in November 1975 on

receipt of complaints. Thereafter they had to divulge the truth to accused 2 to 5 who entered into a conspiracy with accused 1 and 6 to share the

looting of India Cements Ltd. The proceedings before the Company Law Board were not placed before the Board of Directors and on 2-8-1976

accused 1 and 6 were summoned by the Joint Secretary of the Board. A-1 wrote a letter to each of the Directors about the nature of the

discussions with the Joint Secretary, Mr. N. Srinivasan, the Joint Managing Director of the India Cements Ltd. wrote a letter on 4-8-1976 to A. 1

regretting the conduct of A. 1 in not placing the copies of the statements made by A. 1 and A. 6 to the officers of the Company Law Board. The

Company Law Board on 2-8-1976 sent letters to all the Directors asking whether the periodical renewal of the contract with Agricultural Farms

Ltd. and Sri Ramanathan Farms Pvt. Ltd. for supply of limestones and gypsum were considered by the Board and whether the terms offered were

fair and reasonable. Accused 2 to 5 sent replies stating that everything was placed before the Board and there was no attempt directly or indirectly

to allow the close relations of A. 6 to derive benefits. They supported A. 1 and A. 6 because they have entered into a conspiracy as early as in

November 1975 with A. 1 and A. 6, when they were taken into confidence by A. 1 and A. 6, and shown the sworn statements given by A. 1 and

A. 6 before the officers of the Company Law Board. The misappropriation of funds of India Cements Ltd. is going on for a number of years.

The period of conspiracy as far as this complaint is concerned is between 1-4-1976 and 31-3-1977. Agricultural Farms Ltd. buys limestones from

its sub-suppliers and sells it to India Cements Ltd. at a profit of Rs. 5 per ton. They supply 2000 tons per day, thereby making a profit of Rs.

10,000 per day. This will account for nearly Rs. 36 lakhs per annum and leaving a margin for Sales Tax etc. the net profit is not less than Rs. 25

lakhs for the period between 1-4-1976 and 31-3-1977. This amount belongs to India Cements Ltd. and it has been misappropriated by the

accused in view of the fact that Agricultural Farms Ltd. is a creation of accused 1 and 6. Hence accused 1 to 7 are liable for offence under S.

120B read with S. 409 I.P.C. and S. 409 I.P.C. It is on these terms, the private complaint was filed by the complainant to issue summons to the

accused and prosecute them for offences of criminal conspiracy and misappropriation.

Crl.M.P. 4498 of 1978 - This is a petition filed by accused 1 to 7, the petitioners in Crl.M.P. 4496 of 1978, and accused 8 and 9 in CC No.

23772 of 1978 on the file of the Second Additional Metropolitan Magistrate Madras to call for the records in that case and quash the

proceedings.

4. The Complainant and accused 1 to 7 (Respondent and petitioners 1 to 7) are the same as in Cr.M.P. 4496 of 1978. The allegations against

accused 1 to 9, who are petitioners herein, are also the same as in Crl.M.P. 4496 of 1978 with the following additions :-

On 6-10-1977, a Board meeting was held to review the proceedings of the Annual General Meeting held on 30-9-1977. In this meeting A. 8 and

A. 9 were present and they participated in the discussions on the statements made by A. 1 and A. 6 before the officers of the Company Law

Board. Accused 8 and 9 were informed about the systematic method by which funds of India Cements Ltd. were being misappropriated by A. 1

to A. 7 with the active help and planning by A. 1 and A. 6. On 13-2-1978 there was a meeting of the Board of Directors. Subsequently an

inspection was made in the mines, quarries and other places. Accused 8 and 9 became co-conspirators and supported Accused 1 to 6. On 2-5-

1978, the Joint Managing Director had submitted a confidential note of even date detailing all malpractices, irregularities, misappropriation of funds

and other acts of commission and omission for necessary action being taken.

An explanation was called for from A. 1 in the Board meeting held on 23-5-1978. On 4-7-1978 A. 1 submitted an explanation. Accused 8 and 9

and other accused have wantonly delayed the placing of the said papers before the Board and no action has so far been taken in this regard. As

Chairman and Director of the Company, A. 8 and A. 9 are bound to safeguard the company's funds and its properties. They know fully about the

malpractices and misappropriation of funds and they have been failed or neglected to take any action. Till date neither the purchaser of limestone

nor the actions resulting in malpractices and misappropriation have been prevented by A. 8 and A. 9. The misappropriation of funds of the India

Cements Ltd. has been going on for a number of years. As far as this complaint is concerned, the period of offence relates from 1-8-1977 to 31-

7-1978. Hence accused 1 to 9 are liable for offence under S. 120B read with Section 409 I.P.C. and S. 409 I.P.C.

5. In the petitions for quashing the proceedings in the criminal cases, the accused state that the complainant respondent became a shareholder of

the company in September 1977, having acquired 15 equity shares of a face value of Rs. 5 each. The complainant is an employee of E.W. Stevens

and Co. (Pvt.) Ltd. N. Srinivasan, the Joint Managing director of India Cements Ltd. is the Chairman of the said E.W. Steven and Co. (Pvt.) Ltd.

The present complaints have been engineered by N. Srinivasan with oblique motives. The company has charges against the said N. Srinivasan and

steps are taken by the Board to bring the matter to the notice of the shareholders. Civil proceedings are pending in various courts between him and

the directors of the company and the company as well. His main object is to prevent the smooth working of the company. He is making reckless and false allegations against the directors of the company. No part of the alleged conspiracy can be said to have taken place within the jurisdiction of the court of Chief Metropolitan Magistrate, Egmore, Madras. The allegation that the alleged conspiracy was hatched at Madras is a clear afterthought for the purpose of requisite jurisdiction. The complaint at any rate does not disclose any offence having been committed at Madras or elsewhere. The purchase of limestone of better quality from Agricultural Farms Ltd. has been necessary for supplementing and upgrading the limestone quarried from the company's own lands. All the transactions entered into are on strict business and commercial terms for the past 25 years, to the benefit of the company and its shareholders. The decisions, of the Board of Directors was taken unanimously and with a full sense of responsibility and it has not been dissented from by the General Body of shareholders at any stage. Agricultural Farms Ltd. was established in 1946 by A1's father. A1 became a Director in 1950 and resigned in 1954. He was a member of Agricultural Farms Ltd. till 1954, after which date he ceased to hold any shares or have any personal connection with Agricultural Farms Ltd. The transactions of the company with Agricultural Farms Ltd. were examined in detail by the Company Law Board and no irregularities were found. The contracts till 31-3-1977 and the one from 1-4-1977, have all been entered into after the consideration and with the full and unanimous approval of the Board, including the Directors not charged in the complaint. The purity of the limestone obtained from Agricultural Farms Ltd. is admittedly higher than that obtained from the India Cements Ltd.'s. lands. The subject matter of the complaints concern the administration of the affairs of the company, a matter solely and exclusively within the province of the Board of directors and the general body of the company. It is not open to an individual shareholder to dispute the decisions of the Board on flimsy grounds and institute criminal proceedings. The petitioners have not in any manner paid exorbitant rates either to Agricultural Farms Ltd. or to Sri Ramanathan Farms (Pvt.) Ltd. The Company has not lost anything by these transactions and in fact they have only benefited from them. The company has no transaction with Abcoy and Co. The petitioners state that there is nothing in the complaint to

indicate, any offence was committed during the period mentioned in the complaints and hence pray for quashing the proceedings pending against them.

6. As the contentions raised by the counsel for the petitioners and the counsel for the respondent are the same in both the petitions, I propose to pass a common order.

7. It is necessary to see whether the allegations made against the petitioners do constitute an offence as alleged. Under S. 482 CrI.P.C. the inherent powers of the High Court can be invoked and exercised when the facts alleged in the complaint, if they are accepted to be correct at their face value, do not make out an offence against the accused. A complaint should contain allegations which prima facie disclose the commission of an offence with the necessary facts for taking action. The alleged facts must disclose the commission of an offence. The main charge against the petitioners in the instant cases is one of criminal conspiracy. The offence of criminal conspiracy requires the agreement to commit an offence. It consists of a very agreement between two or more persons to commit the criminal offence, irrespective of the further consideration whether or not the offence was actually committed. The very fact of conspiracy constitutes the offence.

8. The learned counsel appearing for the petitioner Mr. S. Govind Swaminathan, invited my attention to a number of decisions in support of his contention that the complaints against the accused even if taken at their face value do not make out an offence. He relied on a decision reported in Dr. Sharda Prasad Sinha Vs. State of Bihar, wherein their Lordships of the Supreme Court held -

Where the allegations set out in the complaint or the charge-sheet do not constitute any offence, it is competent to the High Court exercising its inherent jurisdiction under S. 482 CrI.P.C. 1973 to quash the order passed by the Magistrate taking cognisance of the offence.

9. He next relied on the decision in The Delhi Development Authority, New Delhi Vs. Lila D. Bhagat and Others, for the proposition -

In an appropriate case, it may be rather, is, permissible to protect a person from illegal and vexatious prosecution by grant of an appropriate writ or in exercise of the inherent or revisional powers of the High Court.

His main ground for quashing the proceedings pending against his clients is that the complainant became a shareholder only in September 1977 and he is not competent to know of what was happening in India Cements Ltd. before that date. Nowhere in the complaint does he mention there is any semblance of an agreement among the accused for doing or omitting to do a thing let alone overt acts committed in pursuance of such agreement. Even though there are number of directors, there is no plausible explanation as to why only a few of them have been chosen to be arrayed as accused. Whatever has been done by the Board of Directors has been done as a body and there is no reason to pitch upon the accused as the persons conspiring to do illegal acts without the others being aware of it. Whatever has been done regarding the transactions with the Agricultural Farms Ltd. has been placed before the Board of Directors and the same has been approved by them and there was no doubt with regard to the genuineness of the transactions entered into. All the decisions have been approved by the Board of Directors unanimously. However do the complaints mention about misappropriation of funds except by a sweeping statement to the effect that it has been going on for more than 25 years. The learned counsel strongly relied on the decision reported in R.P. Kapur Vs. The State of Punjab, wherein their Lordships of the Supreme Court held that the inherent jurisdiction of the High Court can be exercised to quash proceedings in a proper case either to prevent the abuse of the process of any court or otherwise to secure the ends of justice and that if the allegations in the first information report or the complaint even if they are taken at their face value and accepted in their entirety, do not constitute the offence alleged, then the proceedings are to be quashed as it is manifestly unjust to allow the process of the Criminal Court to be issued against the accused person. To support the same view, he relied on another decision of the Supreme Court in Madhu Limaye Vs. The State of Maharashtra, where it is held that the inherent powers of the High Court would come into play only if there is no other provision in the Code for the redress of the grievance of the aggrieved party and that in case where a situation arises, which is an abuse of the process of the court or for the purpose of securing the ends of justice, interference by the High Court is absolutely necessary.

10. The learned counsel appearing for the complainant-respondent, Mr. G. Ramaswami, contended that the present petitions are premature as all the materials in support of the prosecution are not before the court. It is enough if a complaint makes out a prima facie case and it is not necessary to mention about all the witnesses and the documents which are going to be produced before court at the time of the trial. The complainant having omitted to implead the other Directors as accused, is not a ground for throwing out the case against the present petitioners. Whatever may be the motive alleged for filing these complaints it is immaterial and the court is concerned whether there is a case to proceed against the accused or not and it is not for it to delve into the reasons for the initiation of the proceedings. In support of his contentions, he placed before me the decision in Union of India (UOI) Vs. Lt.Col. G.K. Apte, , wherein their Lordships of the Supreme Court affirming an earlier view held that the High Court cannot embark, to quash the charge under its inherent power upon an enquiry as to whether the evidence in the case is reliable or not to justify framing charges. He next placed before me a decision in Kurukshetra University and Another Vs. State of Haryana and Another, wherein it is held :-

Inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice. That statutory power has to be exercised sparingly, with circumspection and in the rarest of rare cases.

11. No doubt, the High Court ought not to interfere ordinarily by way of quashing the complaint but where there is a lack of specific allegation of an offence or if there are no offences as such made out, even if the entire allegations in the complaint are accepted, it is the obvious duty to save the accused person from the agony of facing an unnecessary trial. It would be a sheer waste of public time and money to permit the proceedings to continue against the accused when there is no material on record on which any court could reasonably convict him. In the present complaints direct evidence of involvement of any of the accused is lacking. Under such circumstances, no doubt, a resort to a charge of conspiracy comes very handy.

12. The learned counsel for the respondent's argument that it is for the complainant to pick and choose the Directors and array them as accused,

without any material to distinguish their part from that of the other Directors, is not acceptable. All the dealings of India Cements Ltd., with the Agricultural Farms Ltd., have received the approval of one and all of the Directors. Merely levelling a charge of conspiracy, without mentioning how, where, when and which of the conspirators hatched the conspiracy and for what purpose, or circumstances warranting an inference of existence of a conspiracy, is not enough to bring persons like A-8, retired Reserve Bank of India Governor, and A-9, retired I.C.S. officer to face the trial in a criminal court. It should not be forgotten that the Company Law Board after examining in detail the affairs of India Cements Ltd. in relation to the Agricultural Farms Ltd. found no irregularities committed and the Company Law Board even allowed the continuance of contracts entered into between those companies. I am of the view the allegations in the complaints refer to the administration of the affairs of the company which is within the purview of the Board of Directors and the General Body of the company. Nothing has been suggested to show that any transaction was done in secrecy. Whatever is applicable to the Directors who have been made as accused equally applies to those who escaped being accused. The contention of the learned counsel for the respondent that it is the complainant's liberty to pick and choose persons from the Board of Directors as accused is unacceptable for I am not prepared to hold what is sauce for the goose is not sauce for the gander. His contention that he has got materials to place before the court later on is neither here nor there. A complaint should make out a prima facie case against the accused persons. One cannot have the construction of a fine superstructure without a foundation.

13. The learned counsel for the respondent finally submitted that, at least as far as accused 1 and 6 are concerned, it is not a case to be quashed as both are brothers and A. 1 had seen to it that A 6 stood to benefit through Agricultural Farms Ltd. a considerable sum of money at the expense of the shareholders of India Cements Ltd. It should be noted whatever transactions entered into between these two business firms had been for commercial considerations for the past 25 years. These transactions have been approved by the Board of Directors and the decisions have been taken unanimously and subsequently approved by the General Body of shareholders. It could very well be argued that limestones for India

Cements Ltd. could as well be brought from some other concern, than from the concern of A. 6. If A. 6 makes some money legitimately instead of some one else, even assuming for a moment that A-1 helped him under no circumstances could it be said on that score alone that it constitutes an offence. If A. 6 was legitimately chosen to have this billing there is absolutely nothing wrong as all the transactions are open, genuine and approved by the other Board members and the General Body. Even assuming that A 1 was responsible in seeing his brother A. 6 got the limestone contract from India Cements Ltd. instead of a third person getting the same, it is not a matter to be taken serious note of as the price paid for the limestone supplied by Agricultural Farms Ltd. got the stamp of approval from all quarters of India Cements Ltd. This does not create an offence of misappropriation.

14. The case was fully argued on both sides and after giving my best consideration, I am of the opinion that this is a fit case where I ought to interfere u/s 482 Cr.P.C. It is not easy to measure the injury likely to be inflicted on persons of the status of the petitioners by the vexatious and protracted criminal trial. It may be ultimately the accused will be acquitted. But that is not a sufficient ground for not rescuing them from what I consider to be a groundless and vexatious prosecution. Since prevention is better than cure, I quash the proceedings pending against the petitioners in C.C. Nos. 23771 and 23772 of 1978 on the file of the II Additional Metropolitan Magistrate, Egmore, Madras. In the the result, Cr. MP 4496 and 4498 of 1978 are allowed.

15. Petitions allowed.