
(1977) 09 KL CK 0016
In the High Court Of Kerala

Lakshmana Kunjhan

APPELLANT

Vs

C.R. Sulochana and Another

RESPONDENT

Date of Decision : 23-09-1977

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 163, 197, 482
Penal Code, 1860 (IPC) — Section 109, 161, 163, 201, 330

Citation : (1978) CriLJ 522

Hon'ble Judges : P. Janaki Amma, J

Bench : Single Bench

Judgement

P. Janaki Amma, J.—The petitioner is the accused in P. E. 5 of 1977 on the file of the Judicial Magistrate of the Second Class, Kozhikode. The proceedings against him were initiated on a private complaint. The gist of the complaint is as follows: The complainant is a resident of Purak-kadi amsom in South Wynad. At 2 P. lion 28-8-1975, two constables of the Ba-theri Police Station came to her residence and took her to the police station. There were two officers of the Crime Branch. She was kept in the lock-up. At 11-30 P. M. she was removed to the Batheri Rest House. Two officers of the Crime Branch questioned her about the whereabouts of Damodaran Master and Madhu Master, the study classes conducted by them and also their different activities- She was herself ignorant about those things. On her failure to give proper replies, one of the officers of the Criminal Branch beat "her on her face and different parts of the body. She was later on removed to the lock-up of the Batheri Police Station. At 9 P. M. on the next day, she herself and others in the lock-up were taken in a police van and on enquiry, she was told that they were being taken for being murdered. The police van stopped near the Nadak-kavu Police Station. Those who were taken along with (her got down at the Nadakkavu Police Station while she herself was taken to the Vanitha Police Station. She was interrogated by the same officers of the Crime Branoh at the Vanitha Police Station also and an elderly officer asked her to remove her saree-She did not. There was another young officer who insisted for the removal of her saree. She obeyed. She was again asked about the whereabouts of Madhu

Master and was removed to another room where there was an elderly man under the influence of liquor. He hit her head against the wall. She was made to sit on the floor and to stretch her legs. The young officer stood on her knees and asked another man to hit her on the sole of "her feet. While the beating was going on, she was again interrogated. After continued torture, she was allowed to wear her saree- She was warned that she would be burnt to death the next day unless she told them the truth. The next day, during night two Vanitha constables came to her and told her that she was wanted by their officer. Though she was not in a position to walk, she was dragged to the place where the accused was sitting. She was thereafter taken in the van to Chakkarathukulam Crime Branch-II Office and put in a room. There were Muhammadali, Bhaskaran, Aravindan and others who were in the van while she was brought to the Batheri Police Station. The accused who was there asked her to remove the saree. She removed the saree. Then he wanted the skirt to be removed. She complied. Thereafter the accused "wanted her to remove the underwear. She refused. The accused then caught hold of her hair-lock and hit her head against the wall. When she persisted in her refusal to remove the underwear, the accused tried to remove it, but he could not. Sihe was then asked to stand near the wall facing the wall, The accused beat her with a stick beneath the knee. She fell down. Another person made her sit leaning on the wall- As she sat, a man stood on her knees and the accused started beating on the sole of her feet. During the process of beating, she was shown a number of photographs and was asked to identify them. After beating, the accused asked the policemen present that she should not be let off and she should be beaten until she spoke out everything. Beating followed and she became unconscious. When she regained consciousness, she was in the Vanitha Police Station. The Vanitha constables told her that the person who beat her was Lakshmana, the Superintendent of Police, Kozhikode, the accused in the case. Thereafter, she was removed to the Control Room where her photographs were taken. Finally, after a few days, she was removed to the Central Jail at Cannanore. She was a detinue there for li years under "MISA"- She was having marks of injury as a result of the torture at the hands of the accused and other police officers. She could not pursue her routine work for 2 or three months. She was under treatment by the medical officer attached to the Cannanore prison. A scar which was the result of the injuries sustained by her is visible even now. The complainant is not in a position to attend to any work. It was as per the directions of the accused that she was removed to the police station and subjected to bodily pain. The complaint was delayed because she could not walk after her release. According to the complainant, the accused committed offences punishable Under Sections 331, 344, 354 and 365 read with Section 109, IPC

2. After the sworn statement of the complainant was taken, two witnesses Muhammad Ali and Girish were examined. The case was registered as P. E. 5 of 1977. The accused after his appearance filed a petition seeking dismissal of the complaint on the ground that no sanction had been obtained u/s 197 of the Criminal P. C. While the above petition was pending before the trial court, the

accused hereinafter referred to as "the petitioner" filed the present petition under S- 482 of the Criminal P. C, to quash the proceedings in P. E. 5 of 1977 on the ground that no sanction u/s 197 of the Cr.PC had been obtained. Complaint, according to the petitioner, was filed with the intention of vexing and harassing him. There was inordinate delay in filing the complaint which will show that the complaint is ill-motivated. The complaint is directed only against the petitioner and the complainant has not taken any steps against the other persons, who according to her, had also tortured her. It is also mentioned that there is material discrepancy between the case of the complainant in the complaint and that spoken to by her in her sworn statement. The complaint itself shows that the case in connection with which she was interrogated was being investigated by the Crime Branch and the petitioner had nothing to do with it. The proceeding against the petitioner is an abuse of the process of court. There are, thus, according to the petitioner, sufficient reasons for quashing the complaint.

3. Section 482 of the Cr.PC 1973 corresponds to Section 561-A of the Code of 1898. It is now settled law that the inherent power of the High Court can be invoked to quash criminal proceedings in appropriate cases; but ordinarily such proceedings will not be interfered with at the interlocutory stage. The Supreme Court, in R.P. Kapur Vs. The State of Punjab, has referred to some of the categories of cases where the inherent jurisdiction of the High Court can be exercised in quashing proceedings pending in subordinate courts and has summarised the law as follows: (at p. 869 of AIR)

There may be cases where it may be possible for the High Court to take the view that the institution or continuance of criminal proceedings against an accused person may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice. If the criminal proceeding in question is in respect of an offence alleged to have been committed by an accused person and it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding the High Court would be justified in quashing the proceeding on that ground. Absence of the requisite sanction may, for instance, furnish cases under this category. Cases may also arise where 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; in such cases no question of appreciating evidence arises; it is a matter merely of looking at the complaint or the First Information Report to decide whether the offence alleged, is disclosed or not. In such cases, it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the Criminal Court to be issued against the accused person. A third category of cases in which the inherent jurisdiction of the High Court can be successfully invoked may also arise. In cases falling under this category the allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is

important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction u/s 561-A the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not- That is the function of the trial Magistrate, and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence the accusation made against the accused would not be sustained. Broadly stated that is the nature and scope of the inherent jurisdiction of the High Court u/s 561-A in the matter of quashing criminal proceedings, and that is the effect of the juridical decisions on the point.

4. In the instant case, one of the grounds on which the proceedings are sought to be quashed is that the petitioner being a public servant removable from office only by Government and the facts alleged against him were, even according to the complainant, committed in the course of the investigation of a case of dacoity, the complaint could have been entertained by the Court only after obtaining sanction of the concerned Government u/s 197 of the Cr.PC

5. There is no dispute that the petitioner is a public servant falling under the category mentioned in Section 197, Criminal P. C. The complaint itself states that the complainant was taken to the police station for the purpose of interrogation on the assumption that she was possessed of information in respect of some absconding accused who committed robbery in a house at Mananthoddy. But the respondent would contend that the torture which She was subjected to does not fall under offences committed while the petitioner was acting or purporting to act in the discharge of his official duty and, therefore, no sanction is necessary for prosecuting him.

6. There are umpteen cases decided by the highest Courts of the land dealing with the scope and application of Section 197, Cr.PC Although it is not possible to lay down tests of universal application to find out in which all cases sanction is required, the discussions in some of the rulings are of considerable assistance in deciding whether sanction is necessary in particular cases.

7. I shall only refer to those decisions which have a bearing on the facts and circumstances of the present case. AIR 1939 43 (Federal Court) contains the following observation : (at p. 56 of AIR)

While I do not wish to ignore the significance of the time factor, it does not seem to me right to make it the test. To take an illustration suggested in the course of the argument, if a medical officer while on duty in the hospital, is alleged to have committed rape on one of the patients or to have stolen a jewel from the patient's person, it is difficult to believe that it was the intention of the Legislature that he could not be prosecuted for such offences except with the previous sanction of the Local Government.

8. The particular aspect is elucidated further by the Privy Council in AIR 1948 128 (Privy Council) in the passage extracted below: (at p. 133 of AIR)

A public servant can only be said to act or to purport to act in the discharge of his official duty, if his act is such as to lie within the scope of his official duty. Thus a Judge neither acts nor purports to act as a Judge in receiving a bribe, though the judgment which he delivers may be such an act; nor does a Government medical officer act or purport to act as a public servant in picking the pocket of a patient whom he is examining, though the examination itself may be such an act.

9. The Supreme Court interpreted the scope of Section 197(1) of the Cr.PC in *Amrik Singh Vs. The State of Pepsu*, :

If the acts complained of are so integrally connected with the duties attaching to the office as to be inseparable from them, then sanction u/s 197(1) would be necessary; but if there was no necessary connection between them and the performance of those duties, the official status furnishing only the occasion or opportunity for the acts, then no sanction would be required.

10. In *K. Satwant Singh Vs. The State of Punjab*, , the Supreme Court referred to the above decision and explained the position further (at p. 271 of AIR):

It appears to us to be clear that some offences cannot by their very nature be regarded as having been committed by public servants while acting or purporting to act in the discharge of their official duty. For instance, acceptance of a bribe, an offence punishable u/s 161 of the I. P. C, is one of them and the offence of cheating or abetment thereof is another. We have no hesitation in saying that where a public servant commits the offence of cheating or abets another so to cheat, the offence committed by him is not one while he is acting or purporting to act in the discharge of his official duty, as such offences have no necessary connection between them and the performance of the duties of a public servant, the official status furnishing only the occasion or opportunity for the commission of the offences.

11. In *The State of Andhra Pradesh Vs. N. Venugopal and Others*, , the respondents police officials were alleged to have wrongfully confined one Arige Ramanna, caused injuries on him for the purpose of extorting from him information which might lead to the detection of an offence which was under investigation and on finding his condition bad, threw him to a place where he was ultimately found dead. The respondents were tried for offences Under Sections 348, 331, 343 and 201" read with Section 109 of the IPC In an appeal against acquittal, the Supreme Court referred to Sections 161 and 163 of the Cr.PC and observed that Section 163 emphasises the fact that Section 161 of the Criminal P. C. does not authorise the police officers to beat or confine a person with a view to induce him to make a statement. The Supreme Court proceeded further (at p. 38 of AIR):

The act of beating or the act of confining was, it is true alleged to be done at a time when Venugopal was engaged in investigation. But it is not possible to see what reasonable connection these acts had with the process of investigation. Nor can one see how the act of sending away the injured person had any relation to the process of investigation.

The High Court fell into the error of thinking that whatever a police officer does to a person suspected of a crime at a time when the officer is engaged in investigating that crime should be held to be done in the discharge of his official duties to investigate and as such under the provisions of the law that imposed this duty on him. This view is wholly unwarranted in law.

In our opinion, it cannot possibly be said that the acts complained of in the present case were done or intended to be done under any provision of the Police Act or the Cr.PC or any other law conferring powers on the police.....

12. In *State of Maharashtra Vs. Narharrao*, a case arising under the Bombay Police Act, the Supreme Court laid down the test to determine whether a particular act was done under colour of office (at p. 1785 of AIR):

To be able to say that an act was done under the colour of an office one must discover a reasonable connection between the act alleged and the duty or authority imposed on the accused by the Bombay Police Act or other statutory enactment-Unless there is a reasonable connection between the act complained of and the powers and duties of the office, it is difficult to say that the act was done by the accused officer under the colour of his office.

13. The above case was followed in *State of Maharashtra v. Atma Ram* AIR 1966 SC 1786 : (1966) 2 SCWR 6 : 1966 Cri LJ 1498. The respondents in that case, two Head-constables and a police constable were charge-sheeted for offences Under Sections 330, 342, 343 and 348, IPC The case against them was that in the course of the investigation of a case of an alleged murder, four persons were assaulted by the accused, they were kept under wrongful confinement and one of them was stripped naked and kept hanging from a Salai tree. As a result of the ill-treatment, two of them made false confessional statements- The accused took the plea that the acts were done under colour or in excess of their duty. The Supreme Court overruled the contention and held (at p. 1787 of AIR):

The provisions of Sections 161 and 163 of the Cr.PC emphasize the fact that a police officer is prohibited from beating or confining persons with a view to induce them to make statements. In view of the statutory prohibition it cannot, possibly be said that the acts complained of, in this case, are acts done by the respondents under the colour of their duty or authority. In our opinion, there is no connection in this case, between the acts complained of and the office of the respondents and the duties and obligations imposed on them by law- On the other hand, the alleged acts fall completely outside the scope of the duties of the respondents...

14. The decisions in Amrik Singh Vs. The State of Pepsu, and other cases have been followed in Prabhakar V. Sinari Vs. Shanker Anant Verlekar, ; Bhagwan Prasad Srivastava Vs. N.P. Mishra, ; Namdeo Kashinath Aher Vs. H.G. Vartak and Another, and Raghavan v. Bhaskaran Nair, 1970 Ker LT 420-

15. Coming to the facts of the case de-ailed above, the case of the complainant is that she was taken to the police station on 28th Aug., 1975 as directed by the petitioner who was then the Superintendent of Police, sihe was kept under confinement and taken to different police tations and subjected to torture by persons who have not been identified. This went on till the night of the 30th Aug. It was during the night of 30th Aug. that he was taken to the Crime Branch II Office at Chakarathukulam at the instance oi the petitioner and the petitioner asked her to strip off her clothes. When she failed to remove her underwear, he tried to denude her, but did not succeed. The petitioner caught hold of the tuft of her hair and hit her head against the wall. She was shown the photographs of some persons and asked to give information about them- On her failure to give proper replies, she was subjected to torture both by the petitioner and as per his directions by others. She fell unconscious. It was on her regaining consciousness that she was told about the identity of the petitioner. She was kept under confinement and subjected to torture thereafter also. From 28-9-1975 for one and a half years she was a detenue in the Can-nanore Central Jail under the Maintenance of Internal Security Act,

16. The averments in the complaint, so far as they relate to the petitioner, do not show prima facie that the acts of torture attributed to him have any direct relation to the discharge of his official duty. Following the ratio of the decisions of the Supreme Court cited above, no sanction u/s 197, Cr.PC need be obtained by the complainant for launching the prosecution. The proceeding in the court below is not liable to be quashed on the ground of absence of sanction.

17. On behalf of the petitioner, it is argued, relying on the decisions of the Supreme Court in Additional District Magistrate, Jabalpur Vs. Shivakant Shukla, and Union of India (UOI) and Others Vs. Bhanudas Krishna Gawde and Others, , that the petitioner having admitted that she was a detenue under the MISA is precluded from challenging in a Court of law her detention and whatever transpired during the period of such detention in view of the Proclamation of Emergency. The remedy was to approach the Advisory Board constituted under the Act. Assuming that the Proclamation of Emergency placed a bar on the complainant from challenging in a Court of law all kinds of executive acts directed against her during her detention under the MISA, her case is that she became a detenue only from 28-9-1975. At any rate, when she was taken into custody and when her detention under the MISA commenced are matters of evidence and it is too early to call upon this Court to invoke the jurisdiction u/s 482 of the Cr.PC to quash proceedings on the above ground- It the averments in the complaint alone are to be taken into account, there is no legal bar against the institution or continuance of the proceedings in respect oi the offences

alleged. If in the course of the proceedings the petitioner succeeds in showing that there is any legal bar, it is open to him to raise the objection and seek appropriate relief.

18. From the details of the complaint already mentioned, it is evident that the proceedings pending before the Magistrate are not also liable to be quashed on the ground that the complaint does not disclose any offence.

19. It is true that basing on the dicta in R. P. Kapur's case, (1960 Cri LJ 1239 (SC)) the proceedings can be quashed on the ground that there is no legal evidence or that the evidence adduced clearly and manifestly fails to prove the charge. The petitioner would point out that while the complaint mentions a number of persons who have inflicted bodily torture on the complainant, the petitioner alone is proceeded against- This, according to the petitioner, shows lack of bona fides on the part of the complainant and that her purpose is only to harass the petitioner. It is further argued that on her own admission, the complainant has only hearsay information as to the identity of the person who did the various acts attributed to the petitioner. She has given conflicting versions in the complaint and the sworn statement regarding the date of the commission of the offence. The above facts and the inordinate delay in presenting the complaint indicate that the move of the petitioner is an abuse of the process of Court and as such, according to the petitioner, the proceedings are liable to be quashed.

20. It may be a fact that there are discrepancies in the details as mentioned in the complaint and sworn statement. But they are not of such a nature as would stand the test laid down in R. P. Kapur's case (1960 Cri LJ 1239 (SC)). It may be true also that the complainant's conduct in singling out the petitioner and proceeding against him long after her release from detention may show lack of bona fides. Her evidence regarding identification and the presence of the accused in the Crime Branch Office may be open to question. But this Court is not expected to express any view on these aspects as they are matters which relate to the realm of appreciation of evidence to be taken into account to decide the credibility of the case put forward. While exercising the jurisdiction u/s 482, Cr.PC this Court is not expected to embark on an enquiry whether the evidence is reliable or not. That is the function of the Court which is in charge of the enquiry or trial- It is upto the petitioner to place the different aspects of the case before the concerned Court and get appropriate reliefs.

This petition, is dismissed.