

(2003) 07 MAD CK 0147

In the Madras High Court

Case No : Criminal Original Petition No. 21724 of 2003 and Criminal M.P. No. 6234 of 2003

M. Kalanithi Maran

APPELLANT

Vs

State, by The Inspector of Police, CBCID

RESPONDENT

Date of Decision : 28-07-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482

Citation : (2004) CriLJ 1288 : (2004) 1 LW(Cri) 288 : (2004) 3 RCR(Criminal) 793

Hon'ble Judges : V. Kanagaraj, J

Bench : Single Bench

Advocate : K. Asokan, for Gita Asokan, for the Appellant; I. Subramaniam, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

V. Kanagaraj, J.—The above criminal original petition has been filed u/s 482 of the Code of Criminal Procedure praying to call for the

records and quash the written order of the respondent issued u/s 91 Cr.P.C., dated 4.7.2003.

2. Petitioner, who is the Managing Director of the Sun TV Limited, is the accused in the above case registered by the respondent for the offences

punishable under Sections 120-B r/w. 417 and 153 IPC. The charge against him is that when Mr. M. Karunanidhi, the former Chief Minister of

the Government of Tamil Nadu, was arrested in the wee hours of 30.6.2001, from the morning of 30.6.2001, the SUN TV was continuously

telecasting news as if Mr. Karunanidhi was attacked and manhandled by the Police at the instance of the State Government and there was a

deliberate human rights violation in his arrest and that the SUN TV edited the

entire recorded events, inserted dubbing voices and misrepresented

the entire facts with the deliberate intention of creating hatred in the mind of the public towards the State Police and the Government of Tamil Nadu

headed by the Chief Minister Selvi J. Jayalalitha; that though the misconduct on the part of two Union Ministers was also recorded by the SUN

TV it did not telecast the attack on the police officials by them and the extreme patience shown by the police officials who arrested the former

Chief Minister and because of such distorted news telecasted by the SUN TV, violence took place in many parts of the State in which hundreds of

transport buses suffered damage and the fear psychosis was also created in the mind of the general public.

3. During the course of investigation, the Inspector of Police, Crime Branch CID, Metro Wing, Chennai has sent an order purported to be u/s 91

Cr.P.C. thereby directing the petitioner to produce the following documents on or before 14.7.2003 before the said Officer at 10.00 am.:

1. The Video Cassettes (Master Copy) taken on 29.6.2001 by the SUN TV crew members at the time of effecting the arrest of Thiru M.

Karunanidhi at his residence by CBCID.

2. Furnish the names, designation and address of the crew members of SUN TV, who were all involved in taking the videograph and telecasting

the above event.

4. In these circumstances, the petitioner has come forward to file the above criminal original petition seeking the relief sought for on ground that in

issuing the impugned order, the respondent has exceeded his jurisdiction in directing the petitioner to cause production of the documents mentioned

in the said order; that a reading of Section 91 Cr.P.C. would clearly reveal that the words used therein are "the person" and not an "accused

person" and therefore the respondent cannot invoke his powers u/s 91 Cr.P.C. against an accused person; that the Honorable Supreme Court has

held that the "person" referred to in Section 91 Cr.P.C. does not include "an accused person" and therefore he cannot be compelled to produce

documents or information pursuant to a written order by a police Officer u/s 91 Cr.P.C.

5. During arguments, the learned senior counsel appearing on behalf of the petitioner, besides adhering to the facts pleaded in the above Criminal

O.P., would also cite four judgments in consummation of the meaning of the terms "the person" as employed in Section 91 Cr.P.C. which does not

include "an accused person". The first judgment cited is one reported in STATE OF GUJARAT v. SHYAMLAL MOHANLAL CHOKSI 1965

M.L.J. 417 wherein the Larger Bench of the Hon"ble Apex Court by majority held that ""section 94 of the Criminal Procedure Code (old Code

and presently Section 91) on its true construction does not apply to an accused person. Consequently, in exercise of powers u/s 94(1) Cr.P.C., a

Court has no authority to summon a person accused of an offence before it to produce a document or a thing in his possession.... It would be still

more odd for a Police Officer to issue a written order to an accused person in his custody to ""attend and produce"" a document"". Further, if section

94 Cr.P.C. is construed to include accused person, it is likely to lead to grave hardship for the accused and make investigation unfair to him.

6. The second judgment cited by the learned Senior counsel is one reported in RAMASWAMI IYER v. S. SUBRAMANIAM 1990 L.W. 484

wherein a learned single Judge of this Court, following the above judgment of the Supreme Court cited supra, has held that ""once it is clear that the

law of the land is that section 91 of the Criminal Procedure Code on its true construction does not apply to an accused person under trial, this

petition will have to be necessarily allowed.

7. In the third judgment cited, reported in SURYA NARAYANAN & ANOTHER v. M.V. VIJAYAN (1995) M.L.J. 240 also, a learned Single

Judge of this Court has discredited the Court mechanically ordering production of documents in the custody of the Personal Manager and

Supervisor of hotel regarding the offence committed in their official custody.

8. The last judgment cited in support of the case of the petitioner is one reported in K. SENTHAMARAI & OTHERS v. STATE, BY

INSPECTOR OF POLICE, CB.CID, KAMARAJAR DISTRICT & OTHERS 1998(1) CRIMES 319 wherein also following the Apex Court

judgment, extracted supra, a learned Single Judge of this Court has held that section 91 Cr.P.C. does not apply to an accused person in the case

of the Magistrate issuing summon to the accused to produce documents which are not only incriminated, but also likely to be incriminated.

9. On such arguments, learned counsel for the petitioner would pray to quash

the written order of the respondent dated 4.7.2003.

10. On the contrary, the learned Public Prosecutor, High Court, Madras appearing on behalf of the respondent, citing Article 23 of the

Constitution of India wherein prohibition is created regarding traffic in human beings and all forms of host labour but authorises the State to impose

compulsory service for the public purpose and would pose a question that is there any prohibition created against summoning any accused to cause

production of document or other thing which is necessary or desirable for the purpose of an Officer investigating, enquiring or conducting the trial

or other proceedings under the Code of Criminal Procedure?

11. At this juncture, learned Public Prosecutor would cite the judgment reported in State of Gujarat Vs. Shyamlal Mohanlal, wherein it is held:-

If an accused produces a document in his possession that would not offend Article 20 clause (3) unless the document contains statements based

on the personal knowledge of the accused, because he does not become a witness by the mere fact that he has produced it.

But, there is no denying of the fact on the part of the learned Public Prosecutor that the Apex Court's judgment cited by the learned senior counsel

for the petitioner reported in 1965 M.L.J. 417 has arisen only from this case on appeal wherein the Honorable Apex Court has confirmed the

proposition held by the Gujarat High Court in the above judgment.

12. Learned Public Prosecutor would also cite yet another judgment reported in Nandini Satpathy Vs. P.L. Dani and Another, wherein the Full

Bench of the Hon"ble Apex Court has held:

Under S. 161 Cr.P.C. "any person" includes the accused thus enabling the police to examine the accused during investigation, but the prohibitive

sweep of Art. 20(3) of the Constitution goes to the stage of police investigation not commencing in Court only. In fact, the provisions of Art. 20(3)

and S. 161(2) substantially cover the same area so far as police investigations are concerned. The ban on self-accusation and the right to silence,

while an investigation or a trial is under way, goes beyond that case and protects the accused in regard to other offences pending or imminent,

which may deter him from voluntary disclosure of criminatory matter.

Compelled testimony" is evidence procured not merely by physical threats or violence but by psychic torture, atmospheric pressure,

environmental coercion, tiring interrogative prolixity, overbearing and intimidatory methods and the like. A police officer is clearly a person in

authority and insistence on answering is a form of pressure especially in the atmosphere of the police station unless certain safeguards erasing

duress are adhered to.

Legal penalty for refusing to answer or answer truthfully may by itself not amount to duress. It cannot be regarded as compulsion under Art.

20(3). But, frequent threats of prosecution if there is failure to answer may take on the complexion of undue pressure violating Art. 20(3). The

manner of mentioning it to the victim of interrogation may introduce an element of tension and tone of command perilously hovering near

compulsion.

13. The learned Public Prosecutor would also submit that the case above first cited by the learned senior counsel for the petitioner has been

decided by a larger Bench of Five Judges, but the same has also been considered by still a Larger Bench of seven Judges in a different manner and

therefore, the judgments cited on the part of the learned senior counsel appearing for the petitioner reported in (1965) MLJ 417 is not a conclusive

one. On such arguments, the learned Public Prosecutor would pray to dismiss the above Criminal Original Petition.

14. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for both, the short

legal question that arises for determination is pertaining to the notice issued by the respondent u/s 91 of Cr.P.C. seeking to cause production of the

items mentioned in para No. 3 supra.

15. The contention of the petitioner is, that "the person" mentioned in Section 91 of Cr.P.C. is not an "accused person" but some one else and

since the petitioner being the accused in the case registered by the respondent for specific offences alleged to have been committed and therefore,

the respondent cannot invoke his powers u/s 91 of Cr.P.C. against the petitioner who is the accused in this case.

16. Even though on the part of the learned Public Prosecutor, he would cite from the case reported in Nandini Satpathy Vs. P.L. Dani and

Another, wherein the Full Bench of the Hon''ble Apex Court has held that u/s 161 of Cr.P.C. "any person" includes the accused person also thus

enabling the police to examine the accused during investigation, still, the case cited on the part of the learned senior counsel appearing on behalf of

the petitioner reported in (1965) MLJ 417 (STATE OF GUJARAT V. SHYAMLAL MOHANLAL CHOKSI) is direct to the point dealing with

Section 91 Cr.P.C. with which the subject matter is concerned, wherein it has been held by the Hon"ble Apex Court in no uncertain terms, while

answering the point, that the term "the person" employed in Section 91 Cr.P.C. does not include the "accused person" true to its construction and

therefore, adhering to the said judgment of the Hon"ble Apex Court, this Court has to only answer that the respondent has no authority or reason

to summon the petitioner who is an accused in the case in which summons have been sent to cause production of those materials mentioned supra

and hence the following order:

In result,

(i) the above Criminal Original Petition succeeds and the same is allowed.

(ii) The notice sent by the respondent to the petitioner u/s 91 of Cr.P.C. dated 4.7.2003 requiring the petitioner to cause production of the

documents/articles and particulars as detailed therein is quashed.

Consequently, Crl.M.P. No. 6234 of 2003 is closed.