

(2015) 06 MAD CK 0331

In the Madras High Court

Case No : Criminal O.P.(MD) No. 8421 of 2014 and M.P.(MD) No. 1 of 2014

M. Kalyani Mathivanan and Others

APPELLANT

Vs

M. Parthasarathi

RESPONDENT

Date of Decision : 24-06-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 190, 190(a), 200, 202, 202
Negotiable Instruments Act, 1881 (NI) — Section 142
Penal Code, 1860 (IPC) — Section 120(b), 34, 447, 448
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3, 3(1) (vii), 3(1)(vii), 3(1)(viii), 3(1)(x)

Citation : (2015) 4 MLJ(Cri) 13

Hon'ble Judges : M.M. Sundresh, J

Bench : Single Bench

Advocate : K.M. Vijayan, Senior Counsel for T. Sakthikumaran, for the Appellant; D. Selvam for G. Thalaimutharasu, Advocates for the Respondent

Final Decision : Allowed

Judgement

M.M. Sundresh, J—The petitioners are Vice - Chancellor, Syndicate Members of Madurai Kamaraj University and the Principal of University Constituent College, Madurai Kamaraj University. In this petition, the petitioners seek quashment of a private complaint and the summons issued to them at the instance of the respondent, who is working as Assistant in the said University for the offences alleged under Sections 120(b), 447, 448 r/w 34 of I.P.C. And Sections 3(1)(vii), 3(1)(viii), 3(2)(vii), 3(1)(x) of the Scheduled Castes and scheduled Tribes (Prevention of Atrocities) Act in P.R.C. No. 19 of 2014 on the file of Judicial Magistrate No. VI, Madurai, Madurai District.

Background Facts:

2. The respondent was initially appointed on compassionate grounds as Sweeper cum Watchman? Gardener in the year 1995. After few promotions, he is working as Assistant from 2011 onwards. Incidentally he belongs to the Scheduled Caste

Community.

3. The respondent filed a Writ Petition earlier, seeking to fill up the back log vacancies. It is a case of the petitioners that respondent has been making false allegations including pasting false posters and bills. A criminal complaint has been given by the University Syndicate against the respondent on 03.10.2013. The fate of the said complaint is not known.

4. On 04.10.2013, the respondent was transferred to the Constituent College of the University at Aruppukkottai. A University Syndicate Sub-Committee was formed by the University consisting of five members of the Syndicate which in turn reported several acts of misconduct on the part of the respondent. On consideration of the said report, the Syndicate placed the respondent under suspension.

5. The respondent's brother-in-law has been given a shop on rent. Clause 9 of the Lease Agreement empowers the Registrar of the University to take possession on the failure of the lessee to pay the rent. He was duly issued a letter on 20.11.2013 intimating the rent due and payable. As the said amount was not paid, possession of the shop was taken and sealed on 17.01.2014. The Campus Development Officer also issued a letter intimating the respondent to vacate the residential premises in pursuant to the transfer order made. At the request made by the respondent, the Registrar granted extension of time. The petitioner still continues in the said place.

6. The respondent gave a complaint to the Superintendent of Police, Madurai dated 14.10.2013, stating that the petitioner No. 1 has threatened him with dire consequences on his failure to dissolve his Union. He has been insulted only on the ground that he belongs to Scheduled Caste Community. Thus, the complaint proceeds to state that appropriate action will have to be taken against petitioner No. 1 for ill-treating the respondent, affecting him both mentally and physically. It is pertinent to note that in the said complaint, except the first petitioner no other person has been implicated. The alleged commission of offence was on 13.09.2013. However, the complaint was given to the police only on 14.10.2013.

7. The said complaint has not been looked into and no case has been registered. Hence, the respondent filed a private complaint before the Court of Judicial Magistrate No. VI, Madurai on 06.01.2014. In the said complaint the respondent has stated that the petitioner No. 1 has put pressure on him to dissolve the Union and intimidated him on the sole ground that he belonged to a particular caste. Though the alleged occurrence was stated to be in the chamber of the petitioner No. 1, as the door was open the other employees overheard it, resulting in insult and loss of prestige. Further allegation has been made against the other petitioners with respect to the suspension order, the transfer order and trespass into his house and the attempt made to vacate the same.

8. The respondent was examined on oath. Other than the respondent his brother-in-law was also examined. He spoke about the alleged illegal removal of the shop

in which he was a lessee. The respondent's wife was also examined. However, except the respondent, the other two have not stated that they have been present on the day of alleged occurrence.

9. The learned Judicial Magistrate No. VI, Madurai after taking cognizance of the offence, examined the respondent on oath apart from two other witnesses as mentioned above. Thereafter, he issued summons under Section 61 of the Code of Criminal Procedure. Challenging the same, the petitioners have come forward to file this petition.

The scope of Sections 190, 200, 202 and 204 of the Code of Criminal Procedure, 1973:

10. Chapter XIV deals with the conditions requisite for initiation of proceedings. Under Section 190(a), a Magistrate may take cognizance of any offence, upon receiving the complaint of facts which constitute such offence. After taking cognizance, the Magistrate is required to examine the complainant on oath under Section 200 of the Criminal Procedure Code. While dealing with Section 200, the Magistrate is required to examine the complainant on oath, apart from any other witness. As Section 190 deals with taking cognizance of offence, Section 200 deals with the proposed offender mentioned in the complaint. Since a complaint is normally referred to a named offender, the Magistrate has to prima-facie find out whether such a complaint is true as against him. The object is to test as to whether the allegations made out a prima-facie case against a particular person for the purpose of issuing the process. Thus, taking cognizance proceeds taking sworn statements. Therefore, the Magistrate has to see as to whether there exists ground for proceeding against the accused. A sufficient ground would quantify a satisfaction that a prima-facie case is made out against the accused.

11. Section 202 Cr.P.C., deals with postponement of issue of process. After the process under Section 200 is over, the Magistrate is required to pause and ponder over and decide whether the powers under Section 202 Cr.P.C. has to be exercised or not. If he is of the view that there is an iota of doubt lingering in his mind then, he has to postpone the issue of process against the accused either by conducting an enquiry by himself or direct the police officer to do so. No doubt the Court is not required to consider the defence taken or materials or arguments from the accused's side.

12. Under Section 203 Cr.P.C., the Magistrate can dismiss the complaint, if there is no sufficient ground available for proceeding against the accused. Such a power can be exercised after due examination under Section 200 Cr.P.C. and after enquiry or investigation under Section 202 Cr.P.C. Therefore, the Magistrate is required to form an opinion which is a judicial one, while dismissing the complaint, by recording the reasons.

13. Section 204 Cr.P.C. deals with the issue of process. If the Magistrate is of the view that the power under Section 203 Cr.P.C. is not required to be exercised and convinced himself that there is sufficient ground to proceed, then, he shall issue

the summons or warrant as against the case may be. Therefore, the opinion of the Magistrate is required to be formed either by exercising the power under Section 203 Cr.P.C. or while coming to the conclusion that there is sufficient ground to continue the proceedings under Section 204 Cr.P.C.

14. This requirement of the Magistrate has to be followed mandatorily since summoning of the accused in a criminal case is serious matter. Therefore, the Magistrate has to examine the nature of the complaint, scrutinize the evidence carefully and then come to a prima-facie conclusion that an offence is prima-facie committed by the accused.

15. This is the scope and ambit of the provisions with respect to the private complaint and the report.

16. While dealing with the scope and ambit of Section 200 Cr.P.C. a Division Bench of the Kerala High Court in N. Harihara Iyer Vs. State of Kerala, (2000) CriLJ 1251 has held as follows:

"12. It is undisputed that the taking of cognizance of offence under Section 142 of the Act to precede the taking of sworn statement of the complaint and that if the Magistrate straight away on receipt of the complaint records the sworn statement and thereafter he takes cognizance, it would be in contravention of Section 200 of the Code of Criminal Procedure. But, it is equally well settled that when a Magistrate after receiving the complaint applies his mind to take further steps under Chapter XV, then he must be deemed to have taken cognizance of the offence and that it is unnecessary that the Magistrate should pass specific order stating that he has taken cognizance of the offence.

...

19. We, therefore, hold that the enquiry envisaged under Section 200 is for ascertaining the truth or falsehood of the complaint and also for ascertaining whether there is any evidence in support of the complaint so as to justify the issue of process. Therefore, it is incumbent on the Magistrate taking cognizance on a complaint to examine upon oath the complainant and his witnesses present, if any, to satisfy himself as to the veracity of the complainant. The object is to test whether the allegations make out a prima facie case to enable him to issue process. We are, therefore, unable to countenance the argument advanced by Mr. Sahasranaman on the scope and application of Section 200 Cr.P.C. Likewise, the argument advanced by Mr. Sahasranaman with regard to Section 142 of the Negotiable Instruments Act has no basis as it is undisputed that the taking of cognizance of offence under the said Section has to precede the taking of sworn statement of the complainant and that cognizance should precede the recording of the sworn statement."

17. The Hon"ble Apex Court in Smt. Mona Panwar Vs. The Hon"ble High Court of Judicature at Allahabad and Others, (2011) CriLJ 1619 : (2011) 1 Crimes 272 : (2011) 2 JCC 969 : (2011) 2 JT 75 : (2011) 1 RCR(Criminal) 856 : (2011) 2

SCALE 150 : (2011) 3 SCC 496 : (2011) 1 SCC(Cri) 1181 : (2011) 2 SCR 413 : (2012) AIRSCW 870 : (2011) AIRSCW 1185 : (2011) 5 Supreme 613 : (2011) 1 Supreme 663 has dealt with the object of the Section 200 Cr.P.C. which is as follows:

"20. ... One of the objects of examination of the complainant and his witnesses as mentioned in Section 200 of the Code is to ascertain whether there is prima facie case against the person accused of the offence in the complaint and to prevent the issue of process on a complaint which is either false or vexatious or intended only to harass such person. Such examination is provided, therefore, to find out whether there is or not sufficient ground for proceeding further."

18. Therefore, a duty is imposed upon the Magistrate to see to it a prima facie case is made out by applying his judicial mind. While doing so, the Judicial Magistrate concerned will have to peruse carefully the complaint, the sworn statement and the materials available on record, before proceeding under Section 204 Cr.P.C. When a judicial discretion is given, more care and caution is required on the part of a judicial officer. Such an officer is expected to act not as a mere spectator or a post box in a mechanical manner abdicating his role under Section 202 to 204 of the Code.

Provisions of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (33 of 1989):

19. Section 3 deals with the punishments for offences of atrocities. Section 3(1)(vii) deals with elections. Section 3(1)(viii) deals with institution of false or malicious legal proceedings against the member of the Scheduled Caste. The word "false" is used to cover only unlawful falsehood. There must be an element of offence involved. (See Masumsha Hasanasha Musalman Vs. State of Maharashtra, AIR 2000 SC 1876 : (2000) 2 JT 367 : (2000) 2 SCALE 70 : (2000) 3 SCC 557 : (2000) 1 SCR 1155 : (2000) 1 UJ 554 : (2000) AIRSCW 719 : (2000) 1 Supreme 584 , Commissioner of Sales Tax, U.P. Vs. Sanjiv Fabrics, (2010) 258 ELT 465 : (2010) 10 JT 192 : (2010) 9 SCC 630 : (2010) 35 VST 1 and Ravinder Singh Vs. Sukhbir Singh and Others, (2013) 1 AD 549 : AIR 2013 SC 1048 : (2013) CriLJ 1123 : (2013) 1 Crimes 125 : (2013) 1 JT 515 : (2013) 1 RCR(Criminal) 1020 : (2013) 1 SCALE 166 : (2013) 9 SCC 245 : (2013) AIRSCW 634 : (2013) 1 Supreme 257 . Section 3(1)(x) speaks about the intentional insults or intimidation with intent to humiliate a member of a Scheduled Caste or a Scheduled Tribe in any place within public view. Therefore, the place in which the alleged occurrence is said to have happened is immaterial and what is important is the public view.

20. Section 3(2)(vii) is with respect to offence committed by public servant. Under the said Section if any of the offence mentioned in the preceding provision is committed by public servant he shall be punished with imprisonment for a term which shall not be less than one year but it may extend to the punishment provided for that offence.

21. In *Ravinder Singh Vs. Sukhbir Singh and Others*, (2013) 1 AD 549 : AIR 2013 SC 1048 : (2013) CriLJ 1123 : (2013) 1 Crimes 125 : (2013) 1 JT 515 : (2013) 1 RCR(Criminal) 1020 : (2013) 1 SCALE 166 : (2013) 9 SCC 245 : (2013) AIRSCW 634 : (2013) 1 Supreme 257 , the Hon"ble Apex Court while dealing with the same enactments has held that in the absence of any ingredients no offence would be made out. It also dealt with the definition of the word "false". The following passage is apposite:

"9. In *Masumsha Hasanasha Musalman Vs. State of Maharashtra*, AIR 2000 SC 1876 : (2000) 2 JT 367 : (2000) 2 SCALE 70 : (2000) 3 SCC 557 : (2000) 1 SCR 1155 : (2000) 1 UJ 554 : (2000) AIRSCW 719 : (2000) 1 Supreme 584 , this Court has dealt with the application of the provisions of the Act, 1989, and held that merely because the victim/complainant belongs to a Scheduled Caste or Scheduled Tribe, the same cannot be the sole ground for prosecution, for the reason that the offence mentioned under the said Act 1989 should be committed against him on the basis of the fact that such a person belongs to a Scheduled Caste or Scheduled Tribe. In the absence of such ingredient, no offence under Section 3(2)(v) of the Act is made out.

10. Section 3(1)(viii) of the Act 1989 reads as under:

Punishment for offences of atrocities: (1) Whoever, not being a member of Scheduled Caste or a Scheduled Tribe,-

(i) xx xx xx

(viii) institutes false, malicious or vexatious suit or criminal or other legal proceedings against a member of a Scheduled Caste or a Scheduled Tribe;

(ix) xx xx xx

shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years with fine.

11. The dictionary meaning of word "false" means that, which is in essence, incorrect, or purposefully untrue, deceitful etc. Thus, the word "false", is used to cover only unlawful falsehood. It means something that is dishonestly, untrue and deceitful, and implies an intention to perpetrate some treachery or fraud. In jurisprudence, the word "false" is used to characterise a wrongful or criminal act, done intentionally and knowingly, with knowledge, actual or constructive. The word false may also be used in a wide or narrower sense. When used in its wider sense, it means something that is untrue whether or not stated intentionally or knowingly, but when used in its narrower sense, it may cover only such falsehoods, which are intentional. The question whether in a particular enactment, the word false is used in a restricted sense or a wider sense, depends upon the context in which it is used.

12. In *Commissioner of Sales Tax, U.P. Vs. Sanjiv Fabrics*, (2010) 258 ELT 465 : (2010) 10 JT 192 : (2010) 9 SCC 630 : (2010) 35 VST 1 , this Court, after

relying upon certain legal dictionaries, explained that the word false describes an untruth, coupled with wrong intention or an intention to deceive. The Court further held that in case of criminal prosecution, where consequences are serious, findings of fact must be recorded with respect to mens rea in case a falsehood as a condition precedent for imposing any punishment."

22. Hence, considering all apposite pronouncements there has to be prima facie material to satisfy the ingredients of the Act.

Scope of Section 482 of the Criminal Procedure Code:

23. When there is an abuse of process of law Section 482 can be very well invoked. When a complaint is a counter blast to the action taken by the parties and it is aimed at preventing from doing official duties, then the power under Section 482 Cr.P.C. will be exercised necessarily. Issuance of the summons in a criminal case is a serious matter. When there is an apparent misuse of law leading to miscarriage of justice and undue hardship, then certainly the power under Section 482 Cr.P.C. can be pressed into the aid.

24. In *Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others*, AIR 1998 SC 128 : (1998) CriLJ 1 : (1997) 8 JT 705 : (1997) 6 SCALE 610 : (1998) 5 SCC 749 : (1997) 5 SCR 13 Supp , while dealing with the role of a Magistrate in issuing summons, the Hon"ble Apex Court has observed as follows:

"28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

25. Taking note of the above said pronouncement it has been held in *M.N. Ojha and Others Vs. Alok Kumar Srivastav and Another*, AIR 2010 SC 201 : (2009) CLT 1697 : (2009) CriLJ 4642 : (2009) 10 JT 590 : (2009) 11 SCALE 573 : (2009) 9 SCC 682 : (2009) 13 SCR 444 in the following manner:

"30. Interference by the High Court in exercise of its jurisdiction under Section 482 of the Code of Criminal Procedure can only be where a clear case for such interference is made out. Frequent and uncalled for interference even at the

preliminary stage by the High Court may result in causing obstruction in progress of the inquiry in a criminal case which may not be in the public interest. But at the same time the High Court cannot refuse to exercise its jurisdiction if the interest of justice so required where the allegations made in the F.I.R. or complaint are so absurd and inherently improbable on the basis of which no fair minded and informed observer can ever reach a just and proper conclusion as to the existence of sufficient grounds for proceeding. In such cases refusal to exercise the jurisdiction may equally result in injustice more particularly in cases where the complainant sets the criminal law in motion with a view to exert pressure and harass the persons arrayed as accused in the complaint."

26. When a criminal proceeding is instituted with mala fide and ulterior motive, then this Court is certainly entitled to invoke Section 482 of the Code as held in *State of Haryana and others Vs. Ch. Bhajan Lal and others*, AIR 1992 SC 604 : (1992) CriLJ 527 : (1990) 4 JT 650 : (1990) 2 SCALE 1066 : (1992) 1 SCC 335 Supp : (1990) 3 SCR 259 Supp and *Thermax Ltd. and Others Vs. K.M. Johny and Others*, (2012) CriLJ 438 : (2011) 4 Crimes 179 : (2011) 4 RCR(Criminal) 409 : (2011) 13 SCC 412 : (2011) 11 SCC 412 : (2011) 11 SCC 128 : (2011) 6 UJ 3695 .

27. With the above said propositions and in the light of the facts recorded, let us deal with the case on hand.

The submissions of the petitioners:

28. Mr. K.M. Vijayan, learned Senior Counsel for the petitioners submitted that the entire complaint is an abuse of process of law. It has been given to prevent the petitioners from acting in accordance with law. There are material discrepancies in the complaint given to the police and the private complaint. Such an improved version would go to show the falsity in the complaint. There is an unexplained delay in giving the complaint to the police and thereafter the private complaint. Even on a perusal of the complaint, the offences alleged have not been made out. To buttress his submissions, the learned Senior Counsel relied on several judgments.

Submissions of the respondent:

29. Mr. D. Selvam, learned counsel for the respondent submitted that it is not a case in which the extraordinary jurisdiction under Section 482 is required to be exercised. What has been issued to the petitioners is only summons. The Magistrate has applied his mind and based upon a prima facie case issued summons. In the absence of any perversity, no interference is required.

Discussion:

30. The position and status of the petitioners are not in dispute the first petitioner was the Vice Chancellor at the relevant point of time and the last petitioner, the Principal of the University Constituent College. The other petitioners are Syndicate Members. Action has been taken against the

respondent for his alleged misconduct by transferring him and giving a complaint to the police, followed by orders of suspension and transfer. It is not as if the procedure has not been followed. The proceedings have been initiated by the petitioners who are competent to do so under the statute. The respondent gave the complaint after the earlier complaint given by the University. In the complaint given by the University it has been stated that the petitioner has been threatening to give a complaint under the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act. The respondent was asked to vacate the house after the order of transfer. It was in pursuant to the order passed. It appears till now he has not been vacated. Similarly, the brother-in-law of the petitioner was a lessee of the University. Action has been taken preceded by notices for payment of rent.

31. This Court has called for the records from the learned Judicial Magistrate. A perusal of the complaint given to the Superintendent of Police would show that the allegations made therein is only to the effect that the petitioner No. 1 has insulted the respondent. However, a perusal of the copy of the complaint filed before the Magistrate would show that certain new facts have been added. Though in the earlier complaint given to the police the allegations are only made against the first petitioner, in the private complaint given, all the others have been implicated. It has been given with respect to the action taken against him and his residential premises. Curiously the alleged action taken against the brother-in-law was not mentioned in the complaint though he has deposed so before the Court. Except the petitioner, there is no named eye-witness stated in the alleged occurrence as against the first petitioner herein. Even here there is an improved version. In the complaint given to the police, it has been stated that he was insulted before the others. Whereas in the complaint given before the Court, it has been stated that the alleged occurrence has happened within the chambers of the petitioner No. 1. It was further stated as the door was opened, sound was heard by the other employees.

32. There is absolutely no explanation for the belated complaint given either to the police or to the learned Magistrate. The complaints have been given apparently after the action taken by the University.

33. Coming to the procedure adopted by the learned Magistrate, this Court is of the view that the records available have not been perused and appreciated properly. The learned Magistrate has not followed the underlying principles enshrined under Chapter XV of the Code. Neither the procedure contemplated under Section 202 Cr.P.C. has been followed nor Section 203 and 204 have been complied with by forming a judicial opinion. Rather the Magistrate has acted in a mechanical manner in issuing the summons which as observed by the Hon'ble Supreme Court in *Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others*, AIR 1998 SC 128 : (1998) CriLJ 1 : (1997) 8 JT 705 : (1997) 6 SCALE 610 : (1998) 5 SCC 749 : (1997) 5 SCR 13 Supp is a serious matter.

34. Insofar as the application of provisions of Scheduled Caste and Scheduled

Tribes (Prevention of Atrocities) Act, 1989 (33 of 1989) is concerned, it is abundantly clear that even as per the complaint Sections 3(1) (vii) and 3(1)(viii) are not made out. There is neither election nor any vexatious suit or criminal or legal proceedings instituted. There is no reference in the complaint about the complaint given by the University against the respondent. Even otherwise the same cannot be termed as a criminal procedure instituted. Similarly coming to Section 3(1)(x) of the Act, the allegation made is too vague and self contradictory with the one made in the earlier complaint. No particulars have been given about the public. The complaint given is bereft of any material particulars. Therefore, this Court is of the view that the provisions of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (33 of 1989) are not made out against the petitioners.

35. Coming to the other penal provisions under the Indian Penal Code, action was taken against the respondent and his brother-in-law only in accordance with law, after following due procedure. When the eviction of the shop was carried out as per law and the respondent was sought to be evicted in accordance with the Rules and Regulations, Sections 447 and 448 of the Indian Penal Code would not get attracted.

36. Therefore, this Court is of the view, looking from any angle, absolutely no case has been made out for the issuance of process under Section 204 of the Criminal Procedure Code. In view of the same, this Court has no hesitation in quashing the proceedings by allowing this Criminal Original Petition.

37. Accordingly, the proceedings in P.R.C. No. 19 of 2014 on the file of the learned Judicial Magistrate No. VI, Madurai are set aside and the Criminal Original Petition stands allowed. Consequently, connected M.P.(MD) No. 1 of 2014 stands closed.