
(2012) 11 MAD CK 0282

In the Madras High Court

Case No : Criminal O.P. No's. 17379 of 2002 and Criminal M.P. No's. 6954 of 2002 and MP No. 1 of 2007

M. Perumal

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 15-11-2012

Acts Referred:

Arms Act, 1959 — Section 25(1)(a)
Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 155(2), 156(1), 482
Penal Code, 1860 (IPC) — Section 147, 148, 307, 323, 324

Citation : (2013) 1 LW(Cri) 34

Hon'ble Judges : G.M. Akbar Ali, J

Bench : Single Bench

Final Decision : Allowed

Judgement

G.M. Akbar Ali, J.—The present petitions filed under Sec. 482 Cr.P.C., seeking for a direction to call for the records in P.R.C. No. 43/99 on the file of the learned Judicial Magistrate, Harur, connected to Cr. No. 970 of 1992 registered by the Inspector of Police, Harur, Dharmapuri Police Station for alleged offences punishable under Secs. 147, 148, 332, 307, 323, 324, 325 and 506(ii) IPC r/w sec. 25(1)(a) of Indian Arms Act consequent to an incident regarding alleged atrocities committed on the Scheduled Tribes of Vachathi Village at the hands of District Forest, Police and Revenue Officials around 11.00 a.m. on 20.6.1992. As the factual backdrop and the legal proceedings which stemmed there from being common in so far as the present Criminal Original Petitions are concerned, they are disposed of by this common judgment.

2. For better appreciation of the case and course, it would be of much benefit at the first instance to recapitulate in brief, the back ground of the incident, which is known as Vachathi case.

3. The Reserve Forest in Chittaleri Hills of Harur Range, is rich in sandalwood.

The Vachathi village has a total population of 655 Malayali Scheduled Tribe people, who reside therein by putting 200 houses including 120 group houses constructed under a Government Scheme.

4. The Thombukkal Reserve Forest and Pallipattu Reserve Forest are situated adjacent to this village. There were reports of large scale theft by unlawful cutting of sandalwood trees from this area. A squad of 45 Forest Officials headed by one T.V. Singaravelu, the then Assistant Conservator of Forests, Harur, accompanied by Thiru Selvaraj and Jayachandran, Foresters, Ganesan, Ranger and other Officials including watchers and menials who were deputed for patrolling Thombukkal Reserve Forest reached the spot on 19.6.1992.

5. According to the forest officials, on 20.6.1992 they conducted a raid and caught red-handed seven villagers in possession of sandalwood while they were in the process of burying the sandalwood in the riverbed. In the course of such operation, on being surrounded by the officials, one of the villagers by firing with a country made gun in the air and others by making sounds and blowing whistles signalled villagers of Vachathi for rescue.

6. According to the complaint, the petitioner in CrI.O.P No. 17379 of 2002, who is said to be the Head man (Oor Gounder), came to the spot with large number of villagers including women and threatened the forest officials. The forester Selvaraj and three other officials were assaulted by the named persons and all the officials were taken to the centre of village surrounded by the villagers and they were humiliated and assaulted by both men and women. Since the said Selvaraju was seriously injured he was allowed to be taken to Hospital and the complainant accompanied the injured

7. Meanwhile, on coming to know about the attack on the officials at the hands of villagers, about 300 Forest, Police and Revenue officials marched towards the village and the famous or infamous but very unfortunate incidents took place at Vachathi.

8. At the end of the incident, based on the complaint given by the said Singaravelu, the then Assistant Conservator of Forests of Harur with Harur Police Station, the case in Cr. No. 970/92 was registered against 105 persons of Vachathi village and more than 100 villagers were brought to the police station.

9. Ultimately, all the men and women were remanded to judicial custody. Meanwhile the atrocities of Vachathi on surfacing later, there were stiff demands for a judicial probe. However, this court passed suitable orders in WP No. 1494 of 1992 for an investigation by Central Bureau of Investigation (CBI). After investigation, CBI filed a charge sheet against 269 Forest, Police and Revenue officials in the year 1996. They were found guilty by the trial court in the year 2011 and the appeal is pending before this court.

10. Meanwhile, in the case registered against the villagers in Cr. No. 970/92, after conclusion of the investigation, in the year 1999, charge sheet came to be

filed before the Learned Judicial Magistrate, Harur in the year 1999, who took the case on file in PRC No. 43 of 1999 and the same is pending till date

11. Pending committal, A.I has filed a petition in CrI. O.P. No. 17379 of 2002 and the rest of the accused have filed a petition in CrI. O.P. No. 15458 of 2007 seeking this Court to quash the proceedings against them by invoking its extraordinary powers under Sec. 482 Cr.P.C.

12. Mr. K. Elango, the learned counsel for the petitioners in both the petitions, at the first instance submitted that, it being a well known fact that the entire case is a false one foisted against the Tribal community of a village only to divert the attention of the public from the ruthless atrocities and unprecedented havoc committed and caused against the poor villagers belonging to the Scheduled Tribes at the hands of the police/forest officials and to project, with all their schemes, as if the poor illiterate defence less people are the aggressors. This Court, by discerning the extraordinary foul play enacted by the errant authorities responsible for the incident, may quash the entire proceedings as illegal and untenable in law by holding that no cognizable case is existing to take the matter on file by the learned Magistrate.

13. Proceeding further, the learned counsel submits that as against the diabolic atrocities committed on the people of Vachathi, the Court of law having categorically found that the perpetrators are the Forest, Police and Revenue officials and thus justice having been done in that way against the offenders, the alleged prelude to the Vachathi atrocity would be nothing but a process of continued harassment against the innocents. It is very unfortunate that from 1996 till today, the petitioners are made to suffer like anything and further, the case itself is yet to be committed. Learned counsel added that pendency of the criminal case without any progress for the last 12 years itself conflicts with the constitutional right guaranteeing speedy trial, and therefore, the onset of proceedings have to be quashed in the threshold.

14. Per contra, Ms. M.F. Shabana, the learned Government Advocate submitted that the charge sheet has been filed in the year 1999 and only due to non-cooperation by the petitioners, the case could not be committed to the Sessions Court so as to conduct trial proceeding. The learned Government Advocate strongly argued that the proceedings cannot be quashed at the pre-committal stage as according to her, if at all the petitioners are aggrieved, they can file discharge applications after committal of the case before the appropriate court. By stating that the jurisdiction under Sec. 482 Cr.P.C. is very limited for this court to exercise its power at this stage in cases like this, she sought for dismissal of the petitions.

15. We have carefully considered the submissions made on either side and perused the materials available on record.

16. It is well settled that the High Court, while exercising the jurisdiction under Sec.482 Cr.P.C. is not ordinarily expected to conduct a roving enquiry or sift the

evidence to find out whether there are enough evidence to convict a person or not. It is equally well settled that the High Court may exercise its power to prevent abuse of process of court or otherwise to secure the ends of justice; of course, such power should also be exercised sparingly.

17. In the celebrated case of State of Haryana and others Vs. Ch. Bhajan Lal and others, the Apex Court has clearly laid down the guidelines for exercising the inherent powers under Sec.482 of the Code by observing thus:

102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers u/s 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of arty court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying, the FIR do not disclose a cognizable offence, justifying an investigation by police officers u/s 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated u/s 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for

wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

18. It is needless to mention that this case law has been followed in a catena of judgments rendered by this court.

19. Guided by the above principle the facts and circumstances of the present case pending in PRC No. 43 of 1999 has to be approached, for, the facts and circumstances of each and every case has to be taken into consideration while exercising the powers under Sec.482 Cr.P.C. This Court is well aware of the fulcrum of the matter viz., the atrocities committed in the Vachathi village in 1992, a shameful and abhorrent act by the uniformed forces and the persons in authority who committed diabolic atrocities against defenceless people. Since the matter is sub-judice, this court refrains from making any more comment or drawing any conclusion on the conviction given by the trial court regarding Vachathi incident, a modern day tragedy bringing to reminiscence the stone and dark ages.

20. However, it is to be noted that, even a bare reading of the papers would go to show that it is a counter-blast action to wreak vengeance for the action which resulted against the officials. Because, while the facts projected reveal that one Singaravelu, Assistant Conservator of Forests of Hosur had given a complaint dated 20.6.1992 stating that when he was on a raid to prevent theft of sandalwood, he had apprehended certain persons, who were concealing the sandalwood in the riverbed. At that time, hundreds of people headed by the petitioner in Crl.O.P. No. 17379 of 2002 surrounded the officials and assaulted them and that one Selvaraj, Forester was critically injured, which resulted in the registration of the case in Cr. No. 970 of 1992 on the file of the Inspector of Police, Harur, Dharmapuri Police Station for alleged offences punishable under Secs. 147, 148, 332, 307, 323, 324, 325 and 506(ii) IPC r/w sec.25(1)(a) of Indian Arms Act. It is seen that in the case registered against 105 persons out of whom more than 75 persons are women, interestingly the First Information Report reflects the names of the following accused, who are the petitioners herein:

1. Marappan
2. Govindan
3. Palani
4. Chinnadurai
5. Vedi
6. Chinnakutti
7. Duraisamy
8. Perumal (Oor Goundar)

9. Karuvattan @ Perumal

10. Alagesan

11. Perumal

12. Balakrishnan

13. Mookkan

14. Kuppan

21. In the statement of many witnesses including that of the complainant, the names of the male members of the village alone are mentioned. In none of the statements, names of the women folk were mentioned. Very conveniently, in the further statement of main witnesses, they have schemingly implicated all the accused by stating "Marappan and Others". Except the vague statement that the women of the village had surrounded the officials and assaulted them, there is no legal evidence against the women accused. On this point alone the proceedings against these persons are to be quashed.

22. However, this Court has also not lost sight of the fact that some of the officials of the Forest Department were assaulted while discharging their duties. The learned counsel for the petitioners submitted that in the first information report, only 7 persons' names were mentioned as if they assaulted the forest officials. The learned counsel pointed out that later 14 persons were added along with 300 others. The learned counsel for the petitioners pointed out that the entire incident is an atrocity committed against the villagers of Vachathi.

23. The learned counsel pointed out that under the guise of preventing theft of sandalwood, forest officials, police officials and revenue officials had invaded into the village and they have taken as many as 300 persons both men and women, young and old to the police station and only thereafter, a case has been registered against these petitioners. The learned counsel pointed out that the case itself is a false one and has been registered only to screen the atrocities committed on the villagers of Vachathi. The learned counsel further pointed out that ultimately, some of the perpetrators were convicted, but these poor people have been dragged into by filing a false case and there is no legal or substantial evidence against these people.

24. The learned counsel relied on a decision reported in Harmanpreet Singh Ahluwalia and Others Vs. State of Punjab and Others, wherein the Apex Court has observed that "in exceptional cases, the inherent jurisdiction of the High Court under Sec.482 Cr.P.C can be invoked".

25. The occurrence is said to have taken place on 20.6.1992. Charge sheet has been filed in the year 1999 which was taken on file in P.R.C. No. 43 of 1999. Almost, two decades have passed from the date of occurrence.

26. The petitioners are also the victims of atrocity at the hands of the forest

officials. It is pertinent to point out that more than 300 persons were taken to the police station and kept under illegal custody and only thereafter, the present case has been registered.

27. It is well settled that where a criminal proceeding is manifestly attended with malafide and where the proceedings are maliciously instituted with an ulterior motive, the court can always invoke the inherent powers under Sec.482 Cr.P.C.

28. In the present case, obviously, more than 75 women were included without any basis and even in the complaint, 7 persons names were shown for the alleged overt act, but 14 persons were named in the first information report. For the last two decades, 104 persons were dragged to the Court on a complaint which was obviously obtained and registered only after this commission of the atrocity in the Vachathi village. Though the charge sheet has been filed, I have no hesitation to hold that the entire proceedings is attended with malafide and no purpose would be served if the proceedings are allowed to be continued and that too, after twenty years of the alleged incident.

29. Under such circumstances, I am of the considered view that the entire proceedings in P.R.C. No. 43/99 on the file of the learned Judicial Magistrate, Harur is liable to be quashed and accordingly it is quashed. In the result, both the criminal original petitions are allowed. Consequently connected Mps are allowed.