

(2006) 03 MAD CK 0294

In the Madras High Court

Case No : Habeas Corpus Petition No's. 249 to 252 of 2006 and HCMP No's. 19 to 26 of 2006

M. Saravanan, Asir @ Asir Gunasingh, Vijayan @ Vijayakumar and Dr. L. Prakash APPELLANT

Vs

The State of Tamilnadu RESPONDENT

Date of Decision : 16-03-2006

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 482, 561A
Immoral Traffic (Prevention) Act, 1956 — Section 5, 6
Indecent Representation of Women (Prohibition) Act, 1986 — Section 4, 6
Information Technology Act, 2000 — Section 67
Penal Code, 1860 (IPC) — Section 109, 120B

Citation : (2006) 03 MAD CK 0294

Hon'ble Judges : P. Sathasivam, J; J.A.K. Sampathkumar, J

Bench : Division Bench

Advocate : R. Karuppan, for the Appellant; S. Jayakumar, Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

P. Sathasivam, J.—Dr. L. Prakash, M. Saravanan, Vijayan @ Vijayakumar and Asir @ Asir Gunasingh, who are A-1 to A-4 respectively in Sessions Case No. 9 of 2004 on the file of V Fast Track Court (FTC), Chennai, invoking the jurisdiction under Article 226 of the Constitution of India, have filed the above Habeas Corpus Petitions for quashing of S.C. No. 9 of 2004 pending on the file of the said Court and to set them at liberty since, according to them, the State has foisted false cases against them.

2. Mr. R. Karuppan, learned counsel appearing for the petitioners, mainly contended that all the petitioners have been languishing in jail for the past five years. According to him, the petitioners are innocents and since Dr. L. Prakash (A-1) did not accede to the demand of V. Rajendran, Assistant Commissioner of

Police, Vadapalani, Chennai, for a bribe of Rs. 5,00,000/-, the cases have been foisted against him and others, who were working under him. He further contended that the respondents curiously filed a Final Report on 20.3.2002 within 90 days, because of which, the petitioners were not granted bail. He also contended that the Additional Final Report filed on 18.02.2003 has been substituted and the respondents have played fraud on the Court.

3. Even at the admission stage, we heard Mr. S. Jayakumar, learned Public Prosecutor appearing for the respondents.

4. In the light of the order to be passed here-under, we are of the view that there is no need to refer all the factual details as stated in the affidavit filed in support of the above Petitions.

5. Fact remains, the petitioners herein, viz., A-1 to A-4 in S.C. No. 9 of 2004 on the file of V FTC, Chennai, are charged with various offences punishable u/s 120-B IPC., Sections 5 & 6 of Immoral Traffic (Prevention) Act 1956 read with Section 109 IPC., Sections 4 and 6 of the Indecent Representation of Women (Prohibition) Act, 1986 and Section 67 of Information Technology Act 2000 read with Section 109 IPC, etc. According to the State, the complainant one Ganesan was used by Dr.Prakash (A.1/petitioner in HCP.252 of 2006) for having intercourse with several young ladies. The said illegal activities were videographed and photographed by the petitioner (Dr. Prakash) and by screening those videographs and photographs through Internet, he amassed several crores and thereby spoiled the life of many young ladies. It is further seen that the petitioners were not successful in getting an order in their Bail Applications and that all the petitions filed by them were dismissed.

6. Regarding the allegation relating to filing of second Final Report, its maintainability, substitution of another one, etc., it is for the court concerned to consider the said aspect. We are also of the opinion that the petitioners can very well raise those objections before the trial court at the appropriate stage. We are not expressing our view at this stage since it is relevant to note that after dismissal of their Bail Applications, several directions have been issued for early conclusion of the trial. As a matter of fact, in CrI.O.P. No. 25095 of 2003, directions have been issued then and there and finally on 24.02.2006, after recording the Report filed by the State/Inspector of Police that out of the total witnesses 82; 43 witnesses have been examined, 21 witnesses were dispensed with; 11 witnesses are yet to be examined and 8 witnesses are to be cross-examined, time for completion of the trial has been extended by two months. A perusal of various orders passed in the said Petition makes it clear that the trial in S.C. No. 9 of 2004 on the file V FTC, Chennai, is being monitored and directions are being issued then and there by the learned single Judge for early completion of the trial.

7. At the time of hearing of the above Petitions, learned Public Prosecutor has brought to our notice that, as on date, on the side of the Prosecution, 6 more

witnesses are to be examined and he assured that the case could be disposed of even before the extended period, viz., 24.04.2006. He also disputed the allegation made by the learned counsel for the petitioners with reference to manipulation of the charge sheet.

8. Learned counsel for the petitioners heavily relied on the observations made by the Honourable Apex Court in the decision reported in R.P. Kapur Vs. The State of Punjab, . In the said case, the Supreme Court considered the inherent power of High Courts u/s 561-A of the Criminal Procedure Code, which is corresponding to Section 482 of the present Code. In the said decision, the Supreme Court has held that 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 constitute the offence alleged, in such cases, no question of appreciating the 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 the same decision, the Hon''ble Supreme Court has also held that while exercising 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; and 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.

9. The same principle is applicable while invoking the jurisdiction u/s 482 Cr.P.C.. That is the reason, when Mr. Karuppan vehemently contended that absolutely there is no case made out from the contents of the F.I.R. against all the accused, we refrain to make any enquiry in the light of the fact that the trial has come to a concluding stage and also of the fact that the proceedings are closely monitored by this Court, ie., by the learned single Judge, then and there.

10. It is to be made clear that in a case of this nature, it is not permissible to prescribe any outer-limit for conclusion of the criminal proceedings. Learned Public Prosecutor has produced the Photographs and particulars relating to the persons involved, witnesses so far examined and to be examined on the side of the prosecution. Hence, it cannot be compared with other ordinary cases where only few witnesses are examined on the side of the prosecution.

11. In view of the information that the prosecution is to examine only 6 witnesses and of the fact that the trial is being closely monitored by the learned single Judge, we are satisfied that the petitioners have not made out a prima facie case for quashing S.C. No. 9 of 2004 pending on the file of V Fast Track Court, Chennai. Accordingly, the Habeas Corpus Petitions are dismissed. Consequently, connected Miscellaneous Petitions are also dismissed.