
(2012) 11 MAD CK 0311

In the Madras High Court

Case No : Criminal O.P. (MD) . No. 9866 of 2011

M. Suruli Raja

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 02-11-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 151, 174

Citation : (2013) MLJ(Cri) 716

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

Bench : Single Bench

Advocate : R. Gandhi for M. Ajmal Khan, for the Appellant; K.V. Rajarajan, Government Advocate (Crl. Side), for the Respondent

Final Decision : Allowed

Judgement

M.M. Sundresh, J.—The petitioner herein has come forward with this Petition to expunge adverse remarks made against the petitioner in paragraph 25 of the judgment, dated 15.3.2011 made in S.C. No. 11 of 2011 on the file of Principal Sessions Judge, Madurai, in order to decide the case. The factual matrix surrounding would require a proper narration:

While the petitioner was working as a Inspector of Police. Avaniyapuram Police Station, Madurai District, a complaint was preferred by one Sangaiah to him stating that his son died. During the spot inspection, the relatives, friends of the deceased, by name, Eswaran complained to the petitioner that he was taken to Keera Thurai Police Station for enquiry and subsequently, he was found dead. Accordingly, they taken prompt action. Recording the submissions made, the petitioner registered a case in Crime No. 820 of 2004 u/s 174 of Cr.P.C. In accordance with the said provision, the petitioner forwarded the complaint to the Revenue Divisional Officer, to conduct the inquest. An Inquest was duly conducted by the Revenue Divisional Officer, in which, a finding has been given that the deceased appears to have died due to police torture. Accordingly, the Revenue Divisional Officer, in and by the proceedings, dated nil-2004 made

recommendation for the detailed enquiry u/s 151 of the Police Stating Order. Such an enquiry was completed on examination of witnesses and it was concluded by way of a recommendation for initiating disciplinary proceedings against the police officers. Further recommendation was also made for prosecution. The District Collector also made an enquiry and gave his finding concurrently with the finding of the Revenue Divisional Officer. Thereafter, the Government of Tamil Nadu had issued a Government Order in G.O. Ms. No. 1094, dated 26.9.1998 recommending initiation of departmental proceedings as well as under the criminal law. A charge sheet was filed before the Chief Judicial Magistrate Court, Madurai and the same was taken on file in P.R.C. No. 1 of 2010. The police officers, who were alleged to have committed the offence, were arrayed as accused Nos. 1 to 7.

In the meanwhile, the father of the victim filed a Writ Petition and this Court allowed the Writ Petition by directing the Government to pay a sum of Rs. 5 lakhs. The said amount was also paid. In the criminal case initiated against the accused persons, the learned Principal Sessions Court, Madurai, was pleased to acquit them in S.C. No. 11 of 2011. However, while acquitting the accused persons, an observation was made that in as much as there was no such alleged occurrence, action should be taken against the petitioner departmentally for being careless and irresponsible in duty. Challenging the said remarks, the petitioner has come forward to file this Petition.

2. The learned counsel for the petitioner would submit that the petitioner has merely registered the case u/s 174 of Cr.P.C. without implicating anyone of the accused and thereafter, as per the Police Standing Order 151(2) has reported the case to the Revenue Divisional Officer. Therefore, the petitioner has merely discharge his duty as a police officer. He further submitted that it is the Revenue Divisional Officer, who gave the finding which was found acceptance by the Government. Moreover, this Court has also pay the compensation to the victim. Accordingly, the learned counsel for the petitioner merely because the criminal Court found that the charges are not proved. The same by itself cannot be aground to initiate proceedings against the petitioner departmentally. A department action is different from an action under the criminal law. In this case, departmental action was also initiated against the officers concerned by the Government. Moreover, admittedly, the petitioner has not been heard before passing such casual remarks which has got serious civil consequences on the petitioner. Therefore, the learned submitted that the remarks made against the petitioner will have to be expunged. In support of the said submissions, reliance has been made on the following judgments of the Hon''ble Apex Court:

- (i) Amar Pal Singh Vs. State of U.P. and Another,
- (ii) Parkash Singh Teji Vs. Northern India Goods Transport Co. Pvt. Ltd. and Another,
- (iii) S. Palani Velayutham and Others Vs. The District Collector, Tirunelveli, Tamil

Nadu and Others,

(iv) The State of West Bengal and Others Vs. Babu Chakraborty, ; and

(v) Testa Setalvad and Another Vs. State of Gujarat and Others,

3. Per contra the learned Government Advocate (Crl. Side) would submit that in as much as the criminal Court made the observation, the petitioner can put forth his case before the authorities.

4. The facts narrated above are not in dispute. The petitioner acted in accordance with the Police Standing Order 151. He made a general enquiry and reported the matter to the Revenue Divisional Officer as required Police Standing Order 151 (2). It is also to be seen that initially the case was registered u/s 174 of Cr.P.C. by not naming any persons as accused. It is the Revenue Divisional Officer, who conducted the enquiry and found the police officers are responsible for the death. Thereafter, the District Collector conducted an enquiry and the report was found in favour with the Government, Therefore, there is absolutely no mistake on the part of the petitioner. But on the contrary, he did his duty as required by law. In this case, it is also to be seen that the Government found that the report was genuine and thereafter, sanctioned proceedings both departmentally and also through criminal law. The said decision of the Government has never been challenged or put into issue. These aspect have not been taken into consideration by the criminal Court while making a casual remark against the petitioner without even hearing him. Such a remark is totally un-called for. It is rather settled position of law that a finding given by a competent authority under a specific enactment or rules or different from the action taken by a jurisdiction criminal Court. Further more, this Court has already awarded compensation to the victim's father which has become final. Therefore, this Court is of the view that there is absolutely no justification for passing such a remark against the petitioner and directing the higher officials to initiate departmental proceedings.

5. Considering the very same issue, it has been held in State of West Bengal v. Babu Chakraborty (supra) by the Hon''ble Apex Court as follows;

32. In our view, officers who are discharging their statutory duties cannot be blamed when the action taken by the State Government and the officials concerned are for implementing the objects behind the Act by resorting the check and to direct the raids etc. The High Court has further penalized the State Government and its officers for such an action. Since the strictures passed against them are wholly unjustified, we have no hesitation in expunging the remarks.

Similarly in Testa Setalvad and Another v. State of Gujarat and Others (supra), the Hon''ble Apex Court has observed as follows:

10. Courts are not expected to play to the gallery or for any applause from anyone or even need to take up cudgels as well against anyone, either to please

their own or anyone's fantasies. Uncalled-for observations on the professional competence or conduct of a counsel, or any person or authority or harsh or disparaging remarks are not to be made, unless absolutely required or warranted for deciding the case.

In *S. Palani Velayutham and Others v. District Collector and Others* (supra), the Hon'ble Apex Court is held as follows:

21. On several occasions, this Court has deprecated certain authoritarian practices which result in hardship and prejudice to litigants and even non-parties. The well-known instances are:

(1) passing adverse remarks against government officers or others who are not parties to the lis, without giving an opportunity to them to show cause or justify their action;

(2) directing the State to recover any losses or damages or costs from a particular officer (who is not a party) by holding him personally liable for some alleged act or omission, without giving him any opportunity to explain his position, conduct or action;

(3) directing prosecution of parties and/or non-parties, in cases which merely warrant levy of costs or admonition.

Likewise in *Parkash Singh Teji v. Northern India Goods Transport Co. Pvt. Ltd. and Another* (supra), after quoting with approval of the earlier decision in the matter of *K "A Judicial Officer* (2011) 3 SCC 54, it has been held as follows:

12. In the matter of: "*K*" *A Judicial Officer* (supra), it was held that any passage from any order or judgment may be expunged or directed to be expunged subject to satisfying the following tests: (i) that the passage complained of is wholly irrelevant and unjustifiable; (ii) that its retention on the records will cause serious harm to the persons to whom it refers; (iii) that its expunction will not affect the reasons for the judgment or order. In para 12, it was further held that though the power to make remarks or observations is there but on being questioned, the exercise of power must withstand judicial scrutiny on the touchstone of following tests: (a) whether the party whose conduct is in question is before the Court or has an opportunity of explaining or defending himself; (b) whether there is evidence on record bearing on that conduct justifying the remarks; and (c) whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct. The overall test is that the criticism or observation must be judicial in nature and should not formally depart from sobriety, moderation and reserve.

13. In the light of the above principles and in view of the explanation as stated by the appellant for commenting the conduct of the plaintiff, we are satisfied that those observations and directions are not warranted. It is settled law that harsh or disparaging remarks are not to be made against persons and authorities whose conduct comes into consideration before Courts of law unless it is really

necessary for the decision of the case as an integral part thereof. The direction of the High Court placing copy of their order on the personal/service record of the appellant and a further direction for placing copy of the order before the inspecting Judge of the officer for perusal that too without giving him an opportunity would, undoubtedly, affect his career. Based on the above direction, there is every possibility of taking adverse decision about the performance of the appellant. We hold that the adverse remarks made against the appellant was neither justified nor called for.

The recent pronouncement of the Hon''ble Apex Court in *Amar Pal Singh v. State of Uttar Pradesh and Another* (supra), after culling out the ratio laid down in all the earlier decisions in the following manner:

27. A Judge is required to maintain decorum and sanctity which are inherent in judicial discipline and restraint. A Judge functioning at any level has dignity in the eyes of public and credibility of the entire system is dependent on the use of dignified language and sustained restraint, moderation and sobriety. It is not to be forgotten that independence of the Judiciary has an insegregable and inseparable link with its credibility. Unwarranted comments on the judicial officer creates a dent in the said credibility and consequently leads to some kind of erosion and affects the conception of rule of law. The sanctity of decision-making process should not be confused with sitting on a pulpit and delivering sermons which defy decorum because it is obligatory on the party of the superior Courts to take recourse to correctional measures. A reformative method can be taken recourse to on the administrative side.

The ratio laid down by the Hon''ble Apex Court in the judgments referred supra is squarely applicable to the case on hand. Therefore, in the light of the discussion made above and applying the ratio laid down by the Hon''ble Apex Court, the remark made by the learned Principal Sessions Judge, Madurai against the petitioner in paragraph 25 of the judgment in S.C. No. 11 of 2011, dated 15.3.2011 are hereby expunged. This petition is allowed accordingly.