
(2000) 07 MAD CK 0082

In the Madras High Court

Case No : Criminal O.P. No's. 11000 and 11001 of 2000 and Criminal M.P. No's. 3306 and 3307 of 2000

N. Sasikala

APPELLANT

Vs

State by the Additional Superintendent of Police, CB CID,
Chennai

RESPONDENT

Date of Decision : 10-07-2000

Acts Referred:

Constitution of India, 1950 — Article 14, 21
Criminal Procedure Code, 1973 (CrPC) — Section 173
Prevention of Corruption Act, 1988 — Section 19(3)

Citation : (2001) 1 LW(Cri) 364

Hon'ble Judges : B. Akbar Basha Khadiri, J

Bench : Single Bench

Advocate : B.A. Bohde, for M/s. N. Jothi and S. Sentilnathan, for the Appellant;
R. Shanmugasundaram, Public Prosecutor, for the Respondent

Judgement

B. Akbar Basha Khadiri, J.—Both the instant Criminal Original Petitions are to call for records in CrI.M.P. No. 914 of 2000 in C.C. No. 4

of 1997 and in CrI.M.P. No. 915 of 2000 in C.C. No. 13 of 1997 on the file of the III Special Judge, Chennai.

2. Both the petitions have arisen in this way:

The State Government was running certain industrial units known as TANSI Units. There were four units run by the Government at Madras,

namely, Tansi Foundry, Tansi Enamelled Wire, Tansi Dye Castings and Tansi Forgings. The units were found to be running in loss and therefore, it

was decided to sell the sites, buildings and machineries by public action. The holding of auction was duly published in newspapers and auction was

held. The following table would give the details of the units, name of the

purchasers and value offered:

Sl. No. Name of the Value Case No.

the Unit Purchaser Offered

sold

1. Tansi M/s. Jaya Rs. 1,350/- C.C. No.

Foundry Publications sq.metre 4/1997

2. Tansi WiresM/s. Sasi Rs. 2,070/- C.C. No.

Enterprises per sq.metre13/1997

3. Tansi Dye M/s. R.R. Rs. 1,525/- C.C. No.

Castings Industries per sq.metre14/1997

4. Tansi M/s. Rs. 2,100/- No case

Forgings Kartheeban per sq. metre

Tourist Bus

Service

Mrs. O.P. Sosamma, Secretary to the Government preferred a complaint to the Respondent alleging that the guideline value was at Rs. 3,282/-

per sq. metre, whereas the properties of Tansi Foundry, Tansi Enamelled Wires and Tansi Dye Castings had been sold at the rock bottom price

with the connivance of the officials, of TANSi, regarding which the Respondent registered a case in Crime No. 17 of 1996, investigated the matter

regarding the purchase of properties of the Tansi Foundry, Tansi Enamelled Wires and Tansi Dye Castings and filed separate chargesheets before

the trial Court. The learned trial Court took the matters on file in C.C. Nos. 4 of 1997, 13 of 1997 and 14 of 1997 respectively.

3. So far as Tansi Forgings is concerned, the purchaser was one Kartheeban Tourist Bus Service, but, no case was registered against him.

According to the Petitioner, the owner of the fourth purchaser is a member of the working committee of the D.M.K., the present ruling party, that

non-institution of the criminal proceedings against the fourth purchaser is not based on any intelligible differentia, that all the purchasers are to be

treated in the same manner, that a duty is cast upon the prosecution to bring the connected accused also to trial, it is the case of the Petitioner that

if the purchase regarding Tansi Forgings is not an offence, then the other three

purchases may not also constitute an offence. Therefore, the

Petitioner filed Crl.M.P. Nos. 914 and 915 of 1997 in C.C. Nos. 4 of 1997 and 13 of 1997 before the learned Special Judge to adjourn the trial

in these two cases till the prosecution decides to commence and conclude the trial against M/s. Kartheeban Tourist Bus Service or to drop the

prosecution against the Petitioner.

4. The learned Special Judge held that in the complaint preferred by Smt. Sosamma, Secretary to the Government, the purchase in favour of M/s.

Kartheeban Tourist Bus Service is not included and further, the Court has no authority to direct each and every case to be registered. Each

purchase is an independent purchase which has been independently investigated and therefore, the other purchaser cannot be treated on par, with

the Petitioner to claim equality under Article 14 of the Constitution of India and accordingly, dismissed the petitions. Aggrieved by the orders

passed by the learned III Special Judge, the Petitioner has come forward with the instant Crl.O.Ps to quash the orders passed by the learned III

Special Judge.

5. Heard both the sides, it is evident that four Tansi units have been sold by public auction. Tansi Foundry was purchased by M/s. Jeya

Publications, a partnership firm in which the instant Petitioner is a partner M/s. Jaya Publications has purchased the land at the rate of Rs. 1,350/-

per sq.metre. Tansi Enamelled Wires was purchased by M/s. Sasi Enterprises of which the instant Petitioner seems to be the owner, M/s. Sasi

Enterprises purchased the land at the rate of Rs. 2,070/- per sq.metre. Tansi Dye Castings was purchased by one M/s. R.R. Industries at the rate

of Rs. 1,525/- per sq. ft. Tansi Forgings was purchased by M/s. Kartheeban Tourist Bus Services at the rate of Rs. 2,100/- per sq.metre.

According to the complaint, the guideline value is Rs. 3,282/- per sq.metre in that area.

6. The learned Counsel for the Petitioner argued that when there are four purchasers who have purchased the land below the guideline value, three

of them have been presented and one is left out, which amounts to selective prosecution and such selective prosecution violates the principle of

Article 14 of the Constitution. It is also argued that Article 14 of the Constitution of India includes the acts of the State and therefore the State

cannot prosecute the Petitioner in a hostile and discriminatory manner. According to the learned Counsel for the Petitioner, the State should either

prosecute all the four purchasers or leave them out. It is also argued that Article 21 of the Constitution of India is breached when prosecution is

commenced in violation of Article 14 of the Constitution of India. The learned Counsel for the Petitioner submitted that the trial is still born, if it

starts by violating the fundamental rights. The learned Counsel for the Petitioner submitted that where the accused are similarly situated, the power

to prosecute or not to prosecute should be exercised equally.

7. The learned Counsel for the Petitioner cited the following authorities in *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, the Apex

Court has held that the guarantee of equality is available not only against law, but also in relation to executive's action also, it has also been held by

the Apex Court that the principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness

pervades Article 14 like a brooding omnipresence and the procedure contemplated by Article 21 must answer the test of reasonableness in order

to be in conformity with Article 14.

8. The learned Counsel cited another decision reported in *A.R. Antulay Vs. R.S. Nayak and Another*, wherein the Apex Court held that when

several persons are prosecuted, singling out one of the accused, namely, A.R. Antulay, for speedier disposal is violative of Article 14 and 21 of the

Constitution of India.

9. The learned Counsel also cited the decision reported in *Naresh Shridhar Mirajkar and Others Vs. State of Maharashtra and Another*, wherein it

was pointed out that almost anyone including a Judge cannot breach Article 14 of the Constitution of India, indicating that Article 14 is applicable

not only to legislative and executive actions, but also to the judicial action. In that case, the question arose whether a Judge can prohibit the

publication of the evidence given by a witness in a criminal proceedings. The view arrived at was that in a conflict between the fundamental right

available to a reporter under Article 19 of the Constitution of India and the fundamental right of the witness in seeking protection against publication

of his evidence, when the right of the witness was protected by the Court, it was held that the Court went wrong in holding so, because the

fundamental principle of administration of justice is that it must be open to public and no witness can claim protection from publicity on the ground

that if the evidence is published, it might be adversely affected his business.

10. The learned Counsel for the Petitioner cited the decision reported in *E.S. Reddi Vs. Chief Secretary, Government of A.P. and Another*, . In

that case the matter related to defalcation of huge amount of Rs. 1.5 Crores by certain officers of the Andhra Pradesh State Government, whose

services were placed on deputation with the Andhra Pradesh State Textile Development Corporation and the Andhra Pradesh State Anti-

Corruption Bureau registered a case against them as a preliminary report revealed a prima facie case against them and few of the accused were

suspended and few of the accused were transferred. The selective suspension was questioned stating that such suspension suffered from vice of

arbitrariness and violative of Article 14 of the Constitution of India. In that case, the Supreme Court held that if the Court is prima facie satisfied

that the plea is substantiated by the record produced by the Government, it is competent to advise the Government to take similar adverse action

against the other equally culpable officers also, otherwise, it would revoke the adverse order made against the aggrieved officer.

11. Lastly, the learned Counsel cited an English decision reported in *Bennett v. Horseferry Road Magistrates Court* (1993) 3 All ELR 138. In that

case, a person who committed an offence in United Kingdom escaped to South Africa, but he was arrested in South Africa and put on an aircraft,

bound for England and on arrival in England, he was arrested. The applicant challenged that he was brought within the jurisdiction by improper

collusion between the South African authorities and English Police without following the extradition proceedings and therefore, there had been clear

abuse of process of law, which would vitiate the proceedings. It has been held in that case that the maintenance of rule of law prevailed over the

public interest in the prosecution and punishment of crime where the prosecuting authority had secured the prisoner's presence within the territorial

jurisdiction of the court by forcibly abducting him or having him abducted from within the jurisdiction of some other state in violation of international

law, the laws of the State from which he had been abducted and his rights under the laws of that state and in disregard of available procedures to

secure his lawful extradition to the jurisdiction of the court from the state where he was residing and that it was abuse of process for a person to be

forcibly brought within the jurisdiction in disregard of extradition procedures and therefore the prosecution would amount to abuse of process of

law. Therefore, the arguments of the learned Counsel for the Petitioner is, prosecuting three purchasers, leaving one amounts to abuse of process

of law and therefore, the prosecution against the Petitioner must be closed.

12. Mr. R. Shanmughasundaram, the learned Public Prosecutor for the State submitted that the equality claimed by the Petitioner is misnomer in

the instant case, in that P.W.22 before the trial Court (Tmt. O.P. Sosamma) had not preferred complaint against M/s. Kartheeban Tourist Bus

Service. Further each purchase is a separate purchase of its own and there is no link between one purchase and other. When prima facie case is

made out in the complaint, cases have been registered against three purchasers, and that when the complaint had not stated anything about the

fourth purchaser M/s. Kartheeban Tourist Bus Service, it cannot be said that investigating officer should proceed to register the case.

13. It is pointed out by Mr. B.A. Bohde, Senior Advocate for the Petitioner that the complainant herself had stated that her complaint was

intended to take action against M/s. Kartheepan Tourist Bus Services also and in fact, the investigating officer had also stated in his evidence that

he was to register a case against M/s. Kartheeban Tourist Bus Services also, but since that purchaser, preferred a writ petition in the High Court,

he did not proceed further, but submitted a preliminary report to the Government, indicating prevaricating versions by the investigating officer, who

wants to wrap up the matter. The learned Counsel submitted that the writ petition filed by M/s. Kartheeban Tourist Bus Service in W.P. No. 3864

of 1996 is only regarding payment of stamp duty for execution of the sale deed and not regarding any prosecution.

14. In support of his contention that each purchaser is not equally placed person with the fourth purchaser, the learned Public Prosecutor also

submitted that denial of equality or equal protection of laws can be claimed against executive action or legislative process, but not against the

decision of a competent court. In support of his contention, the learned Public Prosecutor, cited an authority reported in Sahibzada Saiyed

Muhammed Amirabbas Abbasi and Others Vs. The State of Madhya Bharat and Others, . That was a case relating to personal law whether

appointment of a person other than the father as guardian of the minor was contended to be violative of Article 14 wherein the Apex Court held

that there is no violation of Article 14 in such a case because denial of equality before the law or the equal protection of the laws can be claimed

against executive action or legislative process but not against the decision of a competent tribunal.

15. It was also contended by the learned Public Prosecutor, the Magistrate cannot direct the police to submit a chargesheet in a particular case. In

support of his contention, the learned Public Prosecutor cited a decision reported in Abhinandan Jha and Others Vs. Dinesh Mishra, . The question

that arose in that case for consideration was as to whether a Magistrate can direct the police to submit a chargesheet when the police after

investigation into a cognizable offence has submitted final report u/s 173 of the Code of Criminal Procedure. It was observed by Their Lordships

of the Apex Court as under:

The investigation under the Code, takes in several aspects, and stages, ending ultimately with the formation of an opinion by the police as to

whether, on the material covered and collected, a case is made out to place the accused before the Magistrate for trial, and the submission of

either a charge sheet, or a final report is dependent on the nature of the opinion, so formed. The formation of the said opinion by the police, is the

final step in the investigation and that final step is to be taken only by the police and by no other authority.

16. Mariam Bee v. Commr. of Police, Madras 1971 Cri.L.J. 180 is a case where in the disturbances between the students and the workers of

State Transport Department, the husband of the Petitioner was killed and she preferred a complaint before the Chief Presidency Magistrate,

Egmore to investigate the matter, but the police did not file any final report and regarding the same offence, a commission of enquiry was appointed

and the Police Commissioner submitted the result of the commission of enquiry to the Court and stopped with that. No final report was filed.

Therefore, the Petitioner filed CrI.M.P. No. 3051 of 1969 to direct the Commissioner of Police to file chargesheet. In that case, Krishnaswamy

Reddy, J held that her prayer cannot be granted for the reason that this Court has no jurisdiction to compel the police officer to file a chargesheet.

17. The learned Public Prosecutor also referred to the authorities reported in *Amar Chand v. Shanti Bose* AIR 1973 SCC 799 and *Ratilal Bhanji*

v. State of Maharashtra AIR 1979 SC 94. These are cases where the Petitioner sought to quash the proceedings. But, in the instant case, the

Petitioner is not seeking to quash the criminal proceedings, but only seeks for postponement of the trial till the case against the fourth purchaser is

investigated.

18. In *State of Bihar v. J.A.C. Saldanha* 1980 SCC (Cri) 272. Their Lordships of the Apex Court have pointed out that crime detection and crime

punishment have clearly demarcated spheres of activity that investigation by police ends only when Magistrate taken cognizance of offence and

courts should not interfere prior to that stage unless there is gross abuse of power.

19. In reply to the contention raised by the Petitioner that the prosecution against her is because of some political score to settle with and was

motivated by political vendetta, the learned Public Prosecutor submitted the following authorities to stress that political motivation has no place

when a case is properly registered and properly investigated:

(i) In *Sheonandan Paswan v. State of Bihar* 1987 SCC Cri. 82, when such a contention was raised, the Apex Court has held (in paragraph No.

16) as under:

...The political motivation or vendetta of Sheonandan Paswan could not possibly be a valid ground for granting consent for withdrawal of the

prosecution if otherwise on the facts and circumstances of the case it was improper and invalid. It is a well established proposition of law that a

criminal prosecution, if otherwise justifiable and based upon adequate evidence does not become vitiated on account of mala fides or political

vendetta of the first informant or the complainant. It was rightly observed by Krishna Iyer, J. in *State of Punjab v. Gurdial Singh* SCC p. 475 para

9, if the use of power is for the fulfilment of a legitimate object the actuation or catalysation by malice is not regicidal. The same principle must

obviously apply where a person is opposing withdrawal of prosecution against an accused. His political motivation or vendetta cannot justify grant

of consent for withdrawal if otherwise it is not legitimate or justified.

(ii) The same view has been expressed by the Apex Court in *State of Bihar v. P.P. Sharma* 1992 SCC Cri. 92, which is as under:

22. The question of mala fide exercise of power assumes significance only when the criminal prosecution is initiated on extraneous considerations and for an unauthorised purpose.

(iii) In *State of Haryana v. Bhajan Lal* 1992 SCC (Cri. 426) also, the same view has been expressed by the Apex Court.

20. Let us approach the facts of the instant case with the touchstone of the above decisions. Article 14 of the Constitution of India recites as under:

14. The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Article 21 of the Constitution of India recites as under:

21. No person shall be deprived of his life or personal liberty except according to procedure established by law.

21. Equality before the law is available to a citizen not only against the legislative and executive acts, but also against the judicial acts. The question

is what is equality? Equality would arise between similarly placed accused. Similarly placed accused would connote the accused arrayed in the

same case. It cannot be said that accused in similar cases can be reckoned as similarly placed accused for example, if there are more than three or

four accused in C.C. No. 4 of 1997 or C.C. No. 13 of 1997 or C.C. No. 14 of 1997, then if any one of the accused is left out and prosecution

proceeded with against the other accused, it can be said that equality is not maintained between similarly placed accused, which affects the due

process of law, attracting provisions of Articles 14 and 21. But, in the instant case, each case is a separate case, each unit is a separate unit and

each unit has been purchased by a separate purchaser. By no stretch of imagination, it can be said that all the purchasers are equally placed.

22. I have carefully perused the First Information Report. The F.I.R. does not mention anything about the purchase of Tansi Forgings or it does not

speak of a complaint against the purchaser M/s. Kartheeban Tourist Bus Services. In fact, in the complaint only three instances are referred, i.e.,

relating to Tansi Foundry, Tansi Enamelled Wires and Tansi Dye Castings. While drafting the complaint, the complainant has referred to the

observation of the Comptroller of the Audit, who had audited the accounts of TANSI in which he has mentioned about the purchase by M/s.

Kartheeban Tourist Bus Service. Because there is no complaint against the fourth purchaser, probably the investigating officer had not investigated

that case. But, any how, the investigation is within the domain of the investigating machinery and the Court cannot step its foot into the investigation

before a final report is filed into the court. Even if the investigating officer had acted in a mala fide manner, still the Court will not interfere with the

investigation.

23. In the instant case, the complaint is about non-investigation about a case. The Petitioner herein is not a party to the purchase of Tansi Forgings.

She is not a partner or director of M/s. Kartheeban Tourist Bus Service. It appears she has no locus standi to contend that there should be

investigation regarding the fourth accused purchaser also. It cannot be said that she is equally placed person along with M/s. Kartheeban Tourist

Bus Services, because she has nothing to do with M/s. Kartheeban Tourist Bus Services. The sales are also not common sales, but only separate

sales. When that being the case, equality claimed by the Petitioner does not seem to be the one given to her under Article 14 of the Constitution of

India. Equality under Article 14 of the Constitution of India means equality placed persons. Equally placed persons in this connotation would refer

to the equally placed persons in the same case, but not in the similar case. I do not find any merits in the arguments of the learned Counsel for the

Petitioner that the Petitioner is equally placed person along with M/s. Kartheeban Tourist Bus Services and therefore, till the investigation is

completed against M/s. Kartheeban Tourist Bus Services, further proceedings should be stayed in the instant matter.

24. It should also be pointed out that the instant case has been registered under Sections 120(B) r/w. 109, r/w. 420, 420 r/w. 34 I.P.C. 169

I.P.C. 13(2) r/w. 13(1)(d) of the Prevention of Corruption Act, 1988.

25. Section 19(3) of the Prevention of Corruption Act, 1988 recites as under:

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974).

(a) no finding, sentence or order passed by a special Judge shall be reversed or altered by a Court in appeal, confirmation or revision on the

ground of the absence of or any error, omission or irregularity in the sanction required under Sub-section (1), unless in the opinion of the court, a

failure of justice has in fact been occasioned thereby:

(b) no Court shall stay the proceedings under this Act on the ground of any error, omission or irregularity in the sanction granted by the authority,

unless it is satisfied that such error, omission or irregularity has resulted in a failure of justice.

(c) no Court shall stay the proceedings under this Act on any other ground and no court shall exercise the powers of revision in relation to any

interlocutory order passed in any inquiry, trial, appeal or other proceedings.

26. The statutory provisions itself lays down that no Court shall stall the proceedings under the Prevention of Corruption Act on any ground except

failure of justice. Because the other person is not prosecuted, that does not amount that there is failure of justice in this case. Both the Criminal

Original Petitions are to be dismissed.

27. But, before parting with the case, I feel that certain observations have to be made. When it is brought to the notice of the Investigating officer

that the guideline value of the properties is Rs. 3,282/- per sq. metre and the three purchasers, namely, M/s. Jaya Publications, M/s. Sasi

Enterprises and M/s. R.R. Industries have purchased the properties at the rate of Rs. 1,350/-, Rs. 2,070 and Rs. 1,525/- per sq.metre

respectively, regarding which a complaint has been preferred and when the complaint itself furnishes information that M/s. Kartheeban Tourist Bus

Services, the purchaser of fourth unit had purchased the land at the value of Rs. 2,100/- which is also far below the guideline value which fact

discloses an identical cognizable offence, the investigation officer ought to have registered a separate case and investigated the matter. It appears,

the investigating officer had taken preliminary steps to investigate the matter. In all fairness, the investigating officer should have registered a case

and investigated the matter. Exercising my inherent powers in the jurisdiction of supervisory nature, to secure ends of justice. I direct the

investigating officer to register a case against M/s. Kartheeban Tourist Bus Services and investigate the same.

28. In the result, with the above observations, both the Criminal Original Petitions are dismissed. Consequently CrI.M.P. Nos. 3306 and 3307 of

2000 are also dismissed.