(2008) 09 KL CK 0019

In the High Court Of Kerala

Case No : Criminal M.C. No. 3338 of 2005

Nidhish Kumar	APPELLANT
Vs	
State	RESPONDENT

Date of Decision : 05-09-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 239, 482
Kerala Abkari Act, 1077 — Section 8(1)(2)

Citation : (2008) 09 KL CK 0019

Hon'ble Judges : V.K. Mohanan, J

Bench : Single Bench

Advocate : B. Raman Pillai, for the Appellant; Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Mohanan, J.—Challenging Annexure G Charge sheet, in so far as it relates to the petitioner, and all further proceedings initiated against the petitioner who is the 3rd accused in CP No.157/2005 of the court of the Judicial First Class Magistrate-I, Kottarakkara, the petitioner has filed this petition u/s 482 Cr.P.C. C.P. No.157/2005 is the committal proceedings instituted in the Judicial First Class Magistrate Court, Kottarakkara, on the basis of the final report filed by the Sub Inspector of Police, Ezhukone police station on completing the investigation in crime No. 318 of 2003 of Ezhukone Police Station. The allegation against the accused therein is that they have committed offence punishable u/s 8(1)(2) of the Abkari Act. Against the above Charge and all proceedings, this Crl.M.C. is filed.

2. The prosecution case is that on 6-10-2003 at about 8.30 p.m.the Circle Inspector of Police, Kottarakara received information that a Toyota Qualis car bearing registration No.KL-07/AF 7537 met with an accident and is lying overturned at a place called Kallumpuram from the Kollam - Chenkotta National Highway No.208 and that spirit is kept in it and, accordingly, the Circle Inspector

of Police, Kottarakara and party reached the spot by about 8.45 p.m. and on inspection of the said vehicle resulted in the recovery and seizure of 10 cannas each filled with about 35 litres of spirit, from the said vehicle. The detailed inspection of the vehicle led to the seizure of tax token issued from the Sub R.T.O. office, Perumbavoor, attested copies of the registration certificate, the duplicate of the permit, insurance certificate etc., with respect to the vehicle along with a pocket diary and a cell phone. All those articles were seized under a mahazar. The documents seized revealed the name of the R.C. owner of the vehicle as one Jayakumar. According to the documents and the allegation, the pocket diary and the mobile phone are belonging to the 2nd accused. As the vehicle was not in drivable condition, the same was brought to the station with the help of another vehicle and the Circle Inspector of police suo motu registered crime No.318 of 2003 at about 11 p.m. Annexure A is the seizure mahazar and Annexure B is the FIR. According to the police, at the time of the accident, apart from the driver, there were two other occupants in the vehicle and all of them ran away from the spot after the accident. Subsequently, investigation was conducted by the Sub Inspector of Police, Ezhukone and on completing the investigation, he had filed the final report, a copy of the charge sheet is produced along with this Crl.M.C. as Annexure G. On receiving Annexure G final report, the court has taken cognizance and instituted committal proceedings as C.P. No.157/2005 as the case is triable by a Sessions Court. It is the above Annexure G Final report and the committal proceedings to the extent it is against the petitioner is sought to be quashed in these proceedings.

3. I have heard Sri B. Raman Pillai, the learned Counsel appearing for the petitioner and also the learned Public Prosecutor.

4. The learned Counsel for the petitioner submitted that except the bald allegation in the charge that the petitioner is involved in the procuring and transporting spirit which is seized under mahazar, there is absolutely no materials or evidence, either oral or documentary, to support and substantiate the allegation. It is also submitted that apart from making allegation that there is a sale letter in favour of the petitioner with respect to the vehicle, there is no document or any other material to substantiate the allegation. In effect, according to the counsel, absolutely, there is no evidence or materials to connect the petitioner with the charge that the petitioner was in possession, ownership or in control of the vehicle, either at the time of seizure or at any time prior to that. Therefore, According to the counsel, the petitioner is in no way connected with the alleged crime. It is further submitted that the petitioner/ accused was falsely implicated for the first time in the above case only on 23-3-2005 and hence, according to the petitioner, there is long lapse of one year and 6 months. It is also alleged that the petitioner was implicated because of the undue influence exerted by the C.I. of Police, Adoor who was in inimical terms with the petitioner on the S.I. of police, Ezhukone who investigated the case and laid Annexure G Charge. It is also the case of the counsel for the petitioner that he was never arrested or questioned by the police and he was implicated as an accused only at

the time of filing the charge sheet. Thus, according to the counsel for the petitioner, even if the entire prosecution documents and the statements of witnesses, produced along with Annexure G charge are accepted as such, without any challenge, the said materials do not make out any offence or a prima facie case against the petitioner/3rd accused.

5. On the other hand, the learned Public Prosecutor submitted that the evidence collected through investigation explicitly connect the petitioner with the alleged offence. According to the learned Public Prosecutor, actually, the petitioner is the person behind the screen who conducted the operation of procuring illicit spirit and transportation. According to the Public Prosecutor, even though none of the accused was arrested from the spot, documents seized from the spot unmistakably implicated the 2nd accused who was subsequently arrested and the investigation conducted after his arrest revealed information about all of the accused as well as the petitioner herein. The Public Prosecutor submitted that the petitioner miserably failed to point out any serious defect or illegality with respect to the investigation conducted by the police and the sufficiency of the materials and evidence are to be testified not in a proceedings u/s 482 Cr.P.C., but during the trial only. The learned Public Prosecutor submitted that the alleged delay of one year and 6 months is not at all material and affected the petitioner/3rd accused and even if there is any delay, that is to be appreciated only after getting explanation from the investigating agency.According to the earned Public Prosecutor, the so called delay is not at all material in the particular facts and circumstances involved in the case. The Public Prosecutor pointed out that the alleged crime came to the notice of the investigating agency only when the vehicle which was used for transporting illicit spirit involved in an accident and the accused were fled from the place of occurrence and nobody could be arrested then and there. Only on the basis of the documents seized from the vehicle from the spot, the details of the 2nd accused came to the notice of the C.I. of Police and it was based upon the said details, 2nd accused was arrested and other accused were implicated in pursuance of the investigation conducted after the arrest of the 2nd accused. Anyhow, all these matters are to be brought to notice of the trial court during trial and then only a correct finding can be arrived at after explanation from the Investigating Officer. Therefore, according to the learned Public Prosecutor, it is immature to come into a finding on those aspects in a proceedings u/s 482 Cr.P.C. The Public Prosecutor further submitted that after the committal of the case and when the matter takes for trial, the petitioner will get proper opportunity, firstly at the time of framing charge and secondly during the proceedings after the framing of charge and, therefore, whatever objections or pleadings he may have, the same can be raised before the court below.

6. I have carefully considered the rival contentions advanced during the hearing of the matter and also perused various documents produced along with this petition. According to the petitioner''s counsel, absolutely, there is no material to connect the petitioner with the alleged crime. It is pointed out that either in the

FIR or in the mahazar, the petitioner''s name is not mentioned. So, According to the counsel, none of the documents numbered as item Nos 1 to 3 is helpful for the prosecution to make out a case against the petitioner. Based upon Annexure D report, the counsel submitted that even though the same was submitted after recording confession statements of Accused No.1, two persons were implicated as Accused Nos.2 and 3 and at that time also, there was no reference about the petitioner. According to the counsel, Annexure D also rules out the involvement of the petitioner, since the petitioner is not from Ambalathumkala, but hails from Koodal, Angadikkal, Pathanamthitta. Annexure C is another report filed by C.W.8 with respect to the full address of Accused No.1 wherein also no mention is made about the petitioner/A3. Relying on Annexure-E report submitted by CW.8 which was furnished after the arrest of the Ist accused, it is submitted that the Investigating Agency could not trace out the person hailing from Ambalathumkala as stated in Annexures C and E. Referring to Annexure F report, it is argued that except it contains the name and address of the petitioner along with the name and address of accused Nos. 1 and 2, there is no incriminating material and evidence to connect the petitioner with the said offence. It is also pointed out that there is an overwriting with respect to the date of Annexure F and the same was presented and received in the Court only on 23.3.2005, the date on which the final report was filed and therefore Annexure F is an antedated and concocted document. From the endorsement and the seal of the court, it appears that the same was received in the court on 23.3.2005. But for that reason, it cannot be held that it is a concocted and antedated document. Only on verification of the above document with the investigating agency, the correctness can be ascertained. In support of the contentions, the counsel invited my attention to the decision of the Apex Court in K. Ramakrishna and Others Vs. State of Bihar and Another, .

7. Going by the materials produced along with this petition, I am of the opinion that there is no justification for this Court to interfere with Annexure G Charge as most of the documents and its contents have to be testified during the trial and the same have to be appreciated only at that stage and, that too, only after giving effective opportunity to the prosecution to give explanation wherever necessary. If this Court enter into a finding on merits, the same is likely to affect adversely either the prosecution or the defence.

8. The learned Counsel very much relied on the decision of the Apex Court in K. Ramakrishna and Others Vs. State of Bihar and Another, and submitted that as in the above case, in the present case also, the admitted facts and documents relied on by the prosecution without sifting of evidence, no case is made out and therefore, the proceedings instituted against the petitioner is required to be dropped or quashed. That is a case where the appellant therein approached the trial Magistrate u/s 239 of Cr.P.C. for discharge which was rejected and again failed when it is challenged u/s 482 Cr.P.C. But in the present case, that stage is not reached and there was no opportunity for the trial court to consider the plea for discharge since the case is yet to be committed and charge is to be framed.

9. As this Court is not inclined to interfere with Annexure G charge based upon the contention raised in this petition, the learned Counsel for the petitioner sought permission for taking all these contentions before the trial court at the time of framing charge and further prayed that the trial court may be directed to consider the same on merit. Even without any observation, of course, the trial court is bound to hear the defence at the time of framing of charge and if such contentions are raised, the court will definitely consider the same on merits. Therefore, the petitioner is free to take all these contentions before the trial court during the framing of charge. Hence, it is only proper to relegate the petitioner herein to approach the trial court and to raise all these contentions at the time of framing the charge.

10. The learned Counsel for the petitioner submitted that as the petitioner was not arrested and implicated till the filing of the final report, he could not even try for regular or anticipatory bail. Therefore, according to the counsel, if the petitioner appears before the court below, he is likely to remand and he will not be released on bail. The above apprehension, according to me is unwarranted and baseless. As the Investigating Agency has already completed the investigation and filed a proper charge against the accused including the petitioner, I think, the custody of the petitioner is no longer required and the court will consider the above aspect when it deals with the bail application which will be moved by the petitioner on his appearance before the committal court. Therefore, the petitioner is directed to appear before the court below and seek regular bail and the court is directed to consider the same on the date of presentation itself bearing in mind the above observation. Hence, the petitioner is directed to surrender before the court below within three weeks from today.

In the result, the above Crl.M.C. is devoid of any merit and the same is dismissed but subject to the above observation and direction.