

(2000) 11 AP CK 0044

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 2964 of 2000

P. Seshagiri Rao and Another

APPELLANT

Vs

K. Pattabhiraman and Another

RESPONDENT

Date of Decision : 02-11-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197

Citation : (2000) 2 ALD(Cri) 744

Hon'ble Judges : Vaman Rao, J

Bench : Single Bench

Advocate : Vedula Venkataramana, for the Appellant; K.G. Surendranath Yadav and Public Prosecutor for R. 2, for the Respondent

Final Decision : Dismissed

Judgement

Vaman Rao, J.—Heard both sides.

2. This petition u/s 482 of CrPC seeks quashing of the proceedings in CC No.1 of 1999 on the file of the Judicial first class Magistrate, Medchal, Ranga Reddy District which was taken cognizance on the complaint of respondent no.1 herein in which the petitioners are sought to be prosecuted for an offence u/s 120B , 166, 219, 220, 341, 342, 458(1) of IPC read with Section 34 of the Indian Penal Code on the ground that cognizance of these offences ought not to have been taken on the ground of want of sanction u/s 197 of CrPC for prosecuting the petitioners who are public servants entitled to protection u/s 197 of CrPC.

3. For appreciating the contentions raised on either side, it is necessary to refer briefly to the allegations in the complaint.

4. The complainant is the Managing Director of Medchal Chemicals and Pharmaceuticals Private Limited (for short "MPCL") which has certain business dealings with M/s. Biological E. Ltd., Hyderabad. On a complaint by M/s. Biological E Ltd., a case in Crime no.140 of 1998 was registered against the complainant and two others for offences under Sections 406 and 420 of IPC. The

complainant along with another Manager of the Company, namely, MPCL filed an application for anticipatory bail in criminal OP No.16455 of 1998 on the file of the Madras High Court. It is stated that accusedno.1 was shown as respondent in that petition. In that petition, the Madras High Court granted anticipatory bail to the complainant and others with a direction that in the event of arrest, they shall be enlarged on bail for a period of 8 weeks on each of them executing a bond for Rs.3,000/- with two sureties for the like sum to the satisfaction of the VIII Metropolitan Magistrate, George Town, Madras. After obtaining a copy of the order and in compliance of the order, the complainant and another executed the bond before the VIII Metropolitan Magistrate, George Town, Madras on 29.9.1998 within the period stipulated in the orders of the Madras High Court. The bonds were executed and they were granted anticipatory bail . It is stated that the copies of the orders of the Madras High Court and the orders of the VIII Metropolitan Magistrate , who accepted the bail bonds, were intimated to Medchal Police Station on 8.10.1998 at about 8.30 p.m. in person to Mr. Ashok Kumar, Station House Officer, Medchal Police Station, the then investigating officer in Cr.No.140 of 1998.

5. It is stated that in spite of this, the second accused accompanied by first accused went to the complainant office at about 10.30 a.m. on 2.11.1998 and arrested the complainant and one Mr. Kulkarni. It is stated that accused no.1 herein was informed when they were being arrested by him in connection with Crime No.140 of 1998 of Medchal Police Station about the orders passed by the Madras High Court and the bonds accepted by the VIII Metropolitan Magistrate. In spite of the direction and the orders of the Madras High Court and intimation of execution of bonds with sureties and the fact that they were released on bail by VIII Metropolitan Magistrate, accused no.2 under the instructions of accusedno.1 arrested him stating that the orders of the Madras High Court were not binding on them. Accused no.2 is further stated to have informed the complainant that at the time of his arrest at their company's office at Secunderabad they did not produce the sureties to the satisfaction of the VIII Metropolitan Magistrate at Madras. In spite of the production of the relevant orders before them, the accused have further stated that the sureties were not to the satisfaction.

6. It is stated that the complainant and one Mr. Kulkarni were taken to Medchal Police station by the accused and kept in lock up between 12 noon and 3 p.m. on 2.11.1998. Their repeated pleas referring to the Madras High Court orders and intimation from the learned VIII Metropolitan Magistrate, Chennai were ignored by the accused who kept on saying that the orders of the Madras High Court were not binding on them and that sureties were not to their satisfaction. It is stated that after some time, accused no.1 went outside and brought to the station one Gotur Vrushabendra, Assistant Production Manager of the complainant's factory . Accused no.2 produced the complainant Mr. Kulkarni and Vrushabendra before the Judicial First Class Magistrate, Medchal in the afternoon on 2.11.1998 and prayed for remand for 14 days.

7. The complainant and others engaged a lawyer and moved a bail application. The Magistrate concerned passed the following order:

"In the circumstances of the case as the prosecution itself clarifies that Anticipatory bail was granted to 1st and 2nd petitioners by High Court of Tamilnadu, the petition allowed in the same lines.

Petitioners 1 to 3 shall be released on bail on their executing a bond for Rs.3,000/- with two sureties for the like sum each with a condition that they shall appear before SHO Medchal PS on every 3rd Saturday of every month and they shall not leave the country until further orders."

8. It is thus stated that accused nos.1 and 2 knowingly disobeying the orders of the Madras High Court and caused injury to the complainant and another. Thus, it is alleged that they were wrongfully restrained by accused and illegally confined in the lockup between 12 noon and 3 p.m. on 2.11.1998. It is under these circumstances, the accused have alleged to have committed various offences under Sections 120B , 166, 219, 220, 341, 342, 458(1) of IPC read with Section 34 of the Indian Penal Code.

9. The contention of the learned counsel for the petitioner is that indisputably a case was registered against the complainant in Crime No.140 of 1998 for the offences under sections 406 and 420 of IPC which are cognizable and non-bailable offences and as such the arrest of the accused must be deemed to be during discharge of their official duties and no Court shall take cognizance of such offences without previous sanction of the competent authority.

10. The learned senior counsel , Sri A.T.M. Rangaramanujam, appearing for the respondent no.1 on the other hand contends that the complainant has gone to the Court with a specific allegation that they were granted anticipatory bail and they have complied with the terms and conditions of the bail order and executed the bonds and that the fact of such orders passed by the Madras High Court and the bonds have been executed and accepted by the VIII Metropolitan Magistrate, Madras were intimated to the accused when they were about to be arrested and as such the very arrest is illegal. It is contended that the arrest by ignoring and violation of the orders of bail granted by the competent authority cannot be described as an act performed as a party of duty.

11. The learned counsel for the respondent relying on the judgment of the Supreme Court in the case of P.P.UNNIKRISHNAN AND ANOTHER V. PUTTIYOTTIL ALIKUTTY AND ANOTHER¹. It has been held by the Supreme Court in the said case that a police officer assaulting a person in the lock up cannot claim that he did the act of assaulting in discharge of his duty. It has been further observed that by keeping a person more than 24 hours in the lock up without authority, such an officer is abusing his duty and hence the benefit u/s 64(3) of the Kerala Police act would not be available.

12. In this case, the acts alleged as constituting an offence attributed to the

accused are that they arrested the complainant in spite of the fact to their knowledge that the accused were granted anticipatory bail by the Madras High Court and that they have complied with the directions of the order by executing the bonds and furnishing sureties to the satisfaction of the VIII Metropolitan Magistrate, Madras.

13. It is contended by the learned counsel for the petitioner that the petitioners bona fide believed that they were not bound by the orders passed by the Madras High Court in respect of accused involved in a case within the Andhra Pradesh . It is secondly submitted that the petitioners-accused were not aware that accused had in fact complied with the terms and conditions of the order and it executed the bonds as required.

14. It is difficult to conceive that the police officers of the level of the Circle Inspector and Sub-Inspector of Police would believe that an anticipatory bail granted by another High Court would not be binding on them. At any rate, even if they entertain any doubt on that score , prudence would require that they would get themselves properly instructed in the matter by consulting either their superior officer or the counsel , who are available to advise them. At any rate, whether they bona fide believed that such orders were not binding on them or not is a matter which has to be assessed in the light of the surrounding circumstances and as to whether the petitioners had knowledge of the compliance of the terms and conditions of the order of anticipatory bail in favour of the complainant and the complainant having executed the bonds in accordance with the terms and conditions of the said order, it is a question of fact which has to be decided during the trial.

15. It is true that a police officer has the power to arrest the accused in Crime and if such an arrest is effected even if irregularly it can be construed as an act purported to be done during the course of performance of the duty which would entitle them to the protection u/s 197 of CrPC.

16. Whether an arrest is not sanctioned by any law and has been effected by a police officer totally lacking power to arrest in the facts and circumstances of a case, such an arrest and detention certainly constitute offences of wrongful restraint and wrongful detention. The question in this case is whether the arrest of the complainant by the accused allegedly in spite of the knowledge that the complainant was granted anticipatory bail by the Madras High Court and that the complainant had complied with the terms and conditions of the said bail order and executed the bonds before the VIII Metropolitan Magistrate, Madras which are accepted can be described as an act purported to have been done during the course of official duties of the accused.

17. Where a police officer has the jurisdiction and authority to arrest an accused and such arrest has been effected in accordance with law, it is perfectly lawful arrest and is undoubtedly covered by the protection u/s 197 of CrPC. Whether facts and circumstances are such that it was not clear at the relevant

time whether the police officer would be said to have had authority to arrest a person but where the officer believed confidently in the then existing circumstances that he had an authority and duty to arrest, and even if such belief is found to be unfounded, such an arrest must be deemed to have been effected in purported performance of the duties by the police officer concerned and in such a case also , the protection u/s 197 of CrPC must be held to be available. In a case where the police officer has authority and duty to arrest in the light of the facts and circumstances, but during the process of actual arrest, there was an accretion of certain illegalities, even then, the arrest must be deemed to be in purported performance of duties by the police officer if the accretion of illegalities is inseparable from the central act of his arrest. But, where the allegation is that a police officer has arrested a person in violation of orders of the Court and if this allegation is true, the arrest becomes patently illegal and it cannot be said to have been effected in purported performance of duties of a police officer.

18. In view of this and considering the facts of this case, it is not a fit case where the proceedings against the petitioners can not be quashed in exercise of powers u/s 482 of CrP.C. The petition is accordingly dismissed.