
(2014) 11 MAD CK 0053

In the Madras High Court

Case No : Criminal O.P.(MD) No. 19143 of 2014

P.R. Sathivamoorthy

APPELLANT

Vs

The Commissioner of Police

RESPONDENT

Date of Decision : 11-11-2014

Acts Referred:

Citation : (2015) 1 MadWNCri 155

Hon'ble Judges : S. Vaidyanathan, J.

Bench : Single Bench

Advocate : A. Thiruvadikumar, Advocate, for the Petitioner; P. Balasubramanian, Government Advocate (Crl. Side), for the Respondent Nos. 1 & 2; B. Prasanna, Advocate, for the Intervener

Final Decision : Disposed Off

Judgement

S. Vaidyanathan, J.—The Petitioner has come forward to file the present Criminal Original Petition, seeking a direction to the Second Respondent herein to register First Information Report, on the basis of his Complaint, dated 1.10.2014, lodged by post.

2. Mr. A. Thiruvadikumar, learned Counsel appearing for the Petitioner, submitted that the matter relates to usurping the property of the Petitioner and the Petitioner has also given a Complaint, on 1.10.2014, which is pending on the file of the "Second Respondent herein.

3. Mr. B. Prasanna, learned Counsel appearing for the Intervener, submitted that he has to file a Petition to intervene in the matter, as it is a counter blast by the Petitioner herein.

4. The Hon'ble Apex Court, in the decision, reported in Anju Chaudhary v. State of U.P., 2013 (1) CTC 714 (SC) : 2013 CrLJ. 776, in Paragraph Nos. 30 to 33, held as follows:

"30. The Rule of audi alteram partem is subject to exceptions. Such exceptions

may be provided by law or by such necessary implications where no other interpretation is possible. Thus Rule of Natural Justice has an Application, both under the Civil and Criminal jurisprudence. The laws like detention and others, specifically provide for post-detention hearing and it is a settled principle of law that application of this Doctrine can be excluded by exercise of legislative powers which shall withstand judicial scrutiny. The purpose of the Criminal Procedure Code and the Indian Penal Code is to effectively execute administration of the Criminal justice system and protect society from perpetrators of crime. It has a twin purpose; firstly to adequately punish the offender in accordance with law and secondly to ensure prevention of crime. On examination, the Scheme of the Criminal Procedure Code does not provide for any right of hearing at the time of registration of the First Information Report. As already noticed, the registration forthwith of a cognisable offence is the statutory duty of a Police Officer in charge of the Police Station. The very purpose of fair and just investigation shall stand frustrated if pre-registration hearing is required to be granted to a suspect. It is not that the liberty of an individual is being taken away or is being adversely affected, except by the due process of law. Where the Officer In-charge of a Police Station is informed of a heinous or cognisable offence, it will completely destroy the purpose of proper and fair investigation if the suspect is required to be granted a hearing at that stage and is not subjected to custody in accordance with law. There would be the pre-dominant possibility of a suspect escaping the process of law. The entire scheme of the Code unambiguously supports the theory of exclusion of audi alteram partem pre-registration of an FIR. Upon registration of an FIR, a person is entitled to take recourse to the various provisions of Bail and Anticipatory Bail to claim his liberty in accordance with law. It cannot be said to be a violation of the Principles of Natural Justice for two different reasons. Firstly, the Code does not provide for any such right at that stage. Secondly, the absence of such a provision clearly demonstrates the legislative intent to the contrary and thus, necessarily implies exclusion of hearing at that stage. This Court in the case of *Union of India v. W.N. Chadha*, 1993 Suppl (4) SCC 260, clearly spelled out this principle in Paragraph 98 of the Judgment that reads as under:

"98. If prior Notice and an opportunity of hearing are to be given to an Accused in every Criminal case before taking any action against him, such a procedure would frustrate the proceedings, obstruct the taking of prompt action as law demands, defeat the ends of justice and make the provisions of law relating to the Investigation lifeless, absurd and self defeating. Further, the Scheme of the relevant Statutory provisions relating to the procedure of Investigation does not attract such a course in the absence of any statutory obligation to the contrary "

31. In the case of *Samaj Parivartan Samuday v. State of Karnataka*, 2012 (7) SCC 407, a Three-Judge Bench of this Court while dealing with the light of hearing to a person termed as "suspect" or "likely offender" in the Report of the CEC observed that there was no right of hearing. Though the suspects were already interveners in the Writ Petition, they were heard Staling the law in regard

to the right of hearing, the Court held as under:

"50. There is no provision in Cr.P.C. where an Investigating Agency must provide a hearing to the affected party before registering an FIR or even before currying on investigation prior to registration of case against the suspect CBI, as already noticed, may even conduct pre-registration inquiry for which notice is not contemplated under the provisions of the Code, the Police Manual or even as per the precedents laid down by this Court. It is only in those cases where the Court directs initiation of Investigation by a specialised agency or transfer Investigation to such agency from another agency that the Court may, in its discretion, grant hearing to the suspect or affected parties. However, that also is not an absolute rule of law and is primarily a matter in the judicial discretion of the Court. This question is of no relevance to the present case as we have already heard the interveners."

32. While examining the above-stated principles in conjunction with the Scheme of the Code, particularly Sections 154 & 156(3) of the Code, it is clear that the law does not contemplate grant of any personal hearing to a suspect, who attains the status of an Accused only when a case is registered for committing a particular offence or the Report under Section 173 of the Code is filed terming the suspect an Accused that his rights are affected in terms of the Code. Absence of specific provision requiring grant of hearing to a suspect and the fact that the very purpose and object of fair Investigation is bound to be adversely affected if hearing is insisted upon at that stage, clearly supports the view that hearing is not any right of any suspect at that stage.

5. In view of the above. I am of the considered view, the intervener has no locus standi, as the present Criminal Original Petition has been filed by the Petitioner for registering the Complaint and merely because this Court passes an Order does not mean that the Police will register the case, unless the parameters mentioned in *Lalita Kumari v. Government of U.P. and others*, 2013 (3) MWN (Or.) 321 (SC) : 2013 (4) MLJ (CrI) 579 SC, are available to the parties concerned. Therefore, it is for the Respondents-Police to look into the allegations made in the Complaint and to act, as per law.

6. The Criminal Original Petition is closed, with the above observations.