(2002) 09 MAD CK 0061

In the Madras High Court

Case No : Writ Petition No. 34562 of 2002

Pradhip Kothari APPELLANT

Vs

The Additional Director General of Police, Economic Office Wing II, The Inspector General of Police, Economic Offence Wing II, Adimirality House, The Inspector of Police, Economic Offence Wing-II, Vellore, The Inspector of Police, Economic Offence Wing-II, Madurai and The Inspector of Police, Economic Offence Wing-II, Tirunelveli RESPONDENT

Date of Decision : 24-09-2002

Acts Referred:

Constitution of India, 1950 — Article 19, 21, 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 154, 155, 156, 157, 162
Penal Code, 1860 (IPC) — Section 120B, 34, 406, 409, 420

Citation : (2002) 09 MAD CK 0061

Hon'ble Judges : P.D. Dinakaran, J

Bench : Single Bench

Advocate : C.A. Diwakar, for K.P. Sanjeevkumar, for the Appellant; Abudu Kumar Rajarathinam, Additional Public Prosecutor, for the Respondent

Judgement

P.D. Dinakaran, J.—The petitioner is the Chairman of a financial institution, viz., M/s.Kothari Orient Finance Limited, a registered public

limited company, incorporated under the provisions of the Indian Companies Act, which deals with the business of financial assistance to industrial

houses for purchase of plant and machinery, on hire purchase and lease basis.

2.1. As the petitioner could not repay the deposits to the investors, he is facing civil suit, viz., O.S.No.4342 of 2001 on the file of the City Civil

Court, Chennai, wherein, a Retired District and Sessions Judge Mr.S.Ramalingam was appointed as an Advocate Commissioner to conduct

investigation into the Books of Accounts and diversification of funds of the petitioner''s Company.

2.2. Company Petitions viz., C.P.Nos.179 and 180 of 2001 are also pending against the petitioner before the Original Side of this Court, for

winding up of the petitioner-company, wherein, by order dated 21.12.2001, Mr.AR.L.Sundaresan, Advocate, was appointed as an Administrator

and M/s.Rangan and Krishnan, Chartered Accountants, were appointed as Auditors to conduct the investigation into the accounts of the said

Company.

2.3. That apart, the petitioner is facing criminal prosecution before the learned II Metropolitan Magistrate, Egmore, in view of an FIR registered

under Crime No.1 of 2000 on the file of the second respondent for the alleged offences punishable under Sections 406, 409, 420, 506(ii) read

with Sections 120B and 34 of the Indian Penal Code.

2.4. When a preliminary investigation was said to have been completed by the second respondent in the said Crime No.1 of 2000, a second and

successive complaints were registered at Vellore, Madurai, Tirunelveli, etc., viz., a second FIR registered in Crime No.41 of 2002 before the

second respondent; a third FIR registered at Vellore in Crime No.2 of 2002 before the third respondent, a fourth FIR registered at Madurai in

Crime No.12 of 2002 before the fourth respondent, and a fifth FIR was registered at Tirunelveli in Crime No.1 of 2002 before the fifth

respondent, for the same offences, viz., cheating, misappropriation, conspiracy and criminal intimidation, all punishable for the alleged and identical

offences under Sections 406, 409, 420, 506(ii) read with Section 120B and 34 of the Indian Penal Code.

2.5. Complaining that the petitioner is shattered and pained due to the alleged constant pressure and continuous harassment, under the guise of

interrogation for fresh investigation with respect to the second FIR and successive FIRs, registered one after another, on the complaint lodged by

the depositors for one and the same alleged offences, which form a part and parcel of the preliminary investigation already completed by the

second respondent, the petitioner seeks a writ of Certiorarified Mandamus to call for the records of the respondents herein culminating in FIRs

under Crime Nos.2 of 2002, 12 of 2002, 1 of 2002, 41 of 2002 on the file of the respondents, quash the same and forbear the respondents or their agents from registering fresh FIRs for the offences covered under FIR Crime No.1 of 2000, on the ground that the act of the respondents in

this regard is arbitrary, illegal, capricious and violates the protection of life and personal liberty conferred under Article 21 of the Constitution of

India, even though the petitioner is ready and willing to repay the amount due to the depositors, in instalments.

3. The registration of criminal cases against the petitioner one after another before respondents 2 to 5, referred to above, for the alleged one and

the same offences punishable under Sections 406, 409, 420, 506(ii)read with Section 120B and 34 of the Indian Penal Code, is not disputed by

Mr.Abudu Kumar Rajarathinam, learned Additional Public Prosecutor, appearing on behalf of the respondents. However, Mr.Abudu Kumar

Rajarathinam, learned Additional Public Prosecutor, seriously contends that the respondents are not at all interested to harass the petitioner, but

they are keen only to recover a sum of Rs.16 crores from the petitioner and to repay the same to the depositors.

4. I have given careful consideration to the submissions of both sides.

5.1. It is well settled in law that the Court should not exercise inherent jurisdiction conferred under Article 226 of the Constitution of India in

criminal matters, as held in State of Bihar and Another Vs. P.P. Sharma, IAS and Another, .

5.2. The Court''s power to quash the allegations made in the complaint or FIR should be exercised sparingly in rarest of rare cases, as it would be

highly improper for this Court to examine the reliability of the allegations made in the complaint or FIR exercising the powers under Article 226 of

the Constitution of India, as held in State of Haryana and others Vs. Ch. Bhajan Lal and others, and Rashmi Kumar (Smt) Vs. Mahesh Kumar

Bhada, .

5.3. The inherent powers conferred on this Court under Article 226 of the Constitution of India should not be allowed to be misused or abused by

those who can afford to approach the competent subordinate criminal Court themselves or the Appellate Courts, invoking the provisions of Code

of Criminal Procedure. Unless grave illegality is committed, the powers conferred on this Court under Article 226 of the Constitution of India

should not be resorted to, particularly, when the criminal complaints are seized before the investigating authorities or the competent subordinate

criminal Courts, which can decide on the grievance of the party aggrieved by such criminal complaints on merits, in such appropriate proceedings.

5.4. Assuming, if any party aggrieved still has any grievance by such action of the respondents or the proceedings of the competent subordinate

criminal Court, the aggrieved party is at liberty to approach the Appellate Court to correct the errors, and therefore, any and every irregularity or

infraction, by itself cannot constitute a ground for interference by this Court, invoking Article 226 of the Constitution of India, unless such

irregularity or infraction causes irreparable prejudice to the aggrieved party and requires to be corrected at the earliest stage; or otherwise, frequent

interference by this Court at the stage of complaint or FIR or at any interlocutory stage, invoking Article 226 of the Constitution of India, would

tend to defeat the ends of justice instead of serving those ends. Any interference by this Court under Article 226 of the Constitution of India at the

stage of registration of FIR and the investigation thereon would rather mean the failure of very system, giving a wrong impression to the general

public that a man with enough means is able to keep the law at bay, and it will be more so in the case of instant complaints lodged by the poor and

innocent depositors, who could not get back their hard earned money deposited with the financial institutions, even after the maturity of the term of

deposits.

5.5. The relief sought for by the petitioner to quash the criminal proceedings at the FIR stage therefore, in my considered opinion, cannot be

entertained, as the power to quash complaint or FIR should be exercised very stringently and with circumspection. This Court, by exercising the

power under Article 226 of the Constitution of India, cannot justify in embarking upon an enquiry as to the reliability or genuineness or otherwise of

the allegations made against the petitioner in the complaint or FIR, inasmuch as the inherent powers of this Court under Article 226 of the

Constitution of India do not confer arbitrary jurisdiction to act according to its whim or caprice, as held by the Apex Court in M.M.T.C. Ltd. and

Another Vs. Medchl Chemicals and Pharma (P) Ltd. and Another, .

6.1. No doubt, the right of the police to investigate into the cognizable offence is a statutory right over which the Court does not possess any supervisory jurisdiction under the Code of Criminal Procedure or under Article 226 of the Constitution of India.

6.2. This plenary power of the police to investigate a cognizable offence is, however, not unlimited, but the same is subject to certain well

recognized limitations, when the accused arrayed in the complaint or FIR complains that his fundamental right conferred under Articles 19 and 21

of the Constitution of India are gravely offended. In such circumstances, the Court is obliged to exercise the power conferred under Articles 226

or 227 of the Constitution of India to strike a just balance between the citizen''s rights conferred under Articles 19 and 21 of the Constitution of

India and the expansive power of the police to investigate into the complaint or FIR.

6.3. In the instant case, admittedly, the second FIR or successive FIRs with respect to the same incident and crime are registered and the

respondents started making fresh investigation thereto. Under similar facts and circumstances, the Apex Court, in T.T. Antony Vs. State of Kerala

and Others, , interpreting the expansive powers of the police to make investigation into the second FIR or successive FIRs in respect of the same

incident and crime, with reference to Sections 154, 155, 156, 157, 162, 169, 170, 173 of Code of Criminal Procedure, discouraged such practice

by the police and held as follows:

.. The scheme of CrPC is that an officer in charge of a police station has to commence investigation as provided in Section 156 or 157 CrPC on

the basis of entry of the first information report, on coming to know of the commission of a cognizable offence. On completion of investigation and

on the basis of the evidence collected, he has to form an opinion u/s 169 or 170 CrPC, as the case may be, and forward his report to the

Magistrate concerned u/s 173(2) CrPC. However, even after filing such a report, if he comes into possession of further information or material, he

need not register a fresh FIR; he is empowered to make further investigation, normally with the leave of the court, and where during further

investigation he collects further evidence, oral or documentary, he is obliged to forward the same with one or more further reports; this is the

import of sub-section (8) of Section 173 CrPC.

6.4. The sweeping powers of investigation by the police does not warrant subjecting the citizen each time to fresh investigation by the police in

respect of the same incident, giving rise to one or more cognizable offences, consequent upon filing of successive FIRs. whether before or after

filing the final report u/s 173(2) of the Code of Criminal Procedure, or otherwise, it would clearly be beyond the purview of Sections 154 and 156

Code of Criminal Procedure, nay, a case of abuse of statutory power of investigation in a given case, as held by the Apex Court in T.T. Antony

Vs. State of Kerala and Others, .

6.5. Where the police have registered second FIR or successive FIRs. for the same incident, and crime and proposes to make fresh investigation

pursuant thereto, the Apex Court in T.T. Antony Vs. State of Kerala and Others, , held as follows:

.. A case of fresh investigation based on the second or successive FIRs, not being a counter-case, filed in connection with the same or connected

cognizable offence alleged to have been committed in the course of the same transaction and in respect of which pursuant to the first FIR either

investigation is under way or final report u/s 173(2) has been forwarded to the Magistrate, may be a fit case for exercise of power u/s 482 CrPC

or under Articles 226/227 of the Constitution.

Thus, where the police transgresses its power to investigate, the High Court, either u/s 482 of the Code of Criminal Procedure or under Articles

226 or 227 of the Constitution of India, in an appropriate case, can interdict the investigation to prevent the abuse of process of the Court or

otherwise to secure the ends of justice.

7.1. The course adopted in the case on hand, viz., the registration of complaints as second FIR or successive FIRs in regard to the same incident

and crime, and making fresh investigation pursuant thereto, in my considered opinion is not permissible under the scheme of the provisions of Code

of Criminal Procedure, in view of the ratio laid down by the Apex Court in T.T. Antony Vs. State of Kerala and Others, .

7.2. That apart, I am obliged to refer the affidavit of undertaking filed by the petitioner on 16.9.2002, agreeing to repay the entire amount payable

to the depositors, viz. Rs.16 crores in four years (48 months) as per the following schedule:

Total amount repayable to the depositors - Rs.16 crores

Repayment in the 1st year (10%) : Rs. 1.6 crores

Repayment in the 2nd year (25%) : Rs. 4.0 crores

Repayment in the 3rd year (30%) : Rs. 4.8 crores

Repayment in the 4th year (35%) : Rs. 5.6 crores

Total : Rs.16.0 crores

7.3. Since the learned Additional Public Prosecutor is not agreeing to the above terms, the petitioner submitted a revised proposal dated

24.9.2002, agreeing to repay Rs.16 crores in three years (36 months), viz.

Total amount repayable to the depositors - Rs.16 crores

Repayment schedule:

For the 1st three months : Rs. 1 crore

For the 2nd three months : Rs. 1 crore

For the 3rd three months : Rs. 1 crore

For the 4th three months : Rs. 1 crore

Rs. 4 crores

Thereafter Rs.1.5 crores

for Every three months

i.e., within 24 months : Rs.12 crores

Rs.16 crores

(i.e. Repayments for 1st instalment starts from the date of the order).

7.4. Mr. Abudu Kumar Rajarathinam, learned Additional Public Prosectuor, again, expressed that 36 months would be too long a period for

settling the dues to the depositors. Hence, the petitioner finally filed an affidavit of undertaking dated 24.9.2002, to repay Rs.16 crores in two

years (24 months), which reads as follows.

Affidavit of Pradip Kothari

I, Pradip Kothari, son of late Mr.D.C. Kothari, Hindu, aged about 54 years, residing at No.28, Kothari Road, Nungambakkam, Chennai 600

034, do hereby solemnly and sincerely affirm and state as follows:

1. I am the petitioner abovenamed and I am well acquainted with the facts and circumstances of the case and I am competent his affidavit.

2. I submit that in modification of my earlier repayment schedule, I am putting forth the following schedule:

For the 1st three months : Rs.1.5 crores

For the 2nd three months : Rs.1.5 crores

For the 3rd three months : Rs.1.5 crores

For the 4th three months : Rs.1.5 crores

Rs.6 crores

Thereafter Rs.2.5 crores

For every three months

i.e., within 12 months : Rs.10 crores

Rs.16 crores

Hence it is prayed that this Hon''ble Court may be pleased to take into consideration the above proposal of repayment and thus render justice.

Solemnly affirmed at Chennai } Sd/-

This the 24th day of September} Before me

2002 and signed his name in } Sd/-

my presence } Advocate,

Chennai.

7.5. Mr. Abudu Kumar Rajarathinam, learned Additional Public Prosecutor, appearing for the respondents, agrees that the above schedule of

repayment is fairly acceptable. However, he expressed his regrets and reservations that the second respondent is not yielding to his advise or that

of the learned Public Prosecutor of the State, accepting the above proposal, as though the hands of the investigating authorities are being tied. But,

I am unable to appreciate the approach of the second respondent in this regard.

8.1. From the above admitted facts, it is clear that the respondents are very keen to harass the petitioner by registering the second and successive

FIRs, one after another, that too at different Districts of the State, viz. Chennai, Vellore, Madurai and Tirunelveli, under the guise of fresh

investigation for each successive FIR. The conduct of the respondents in this regard apparently proves the case of the petitioner that the petitioner

is being shattered and pained due to the alleged constant pressure and continuous harassment by subjecting the petitioner to interrogation for fresh

investigation with reerene to successive FIRs, depriving his right to life and liberty.

8.2. The refusal to accept the undertaking offered by the petitioner to repay Rs.16 crores within 24 months referred to above, by the second

respondent, in spite of the advise of the learned Additional Public Prosecutor and the Public Prosecutor of the State, in my considered opinion, not

only reveals the unwise and illogical approach of the second respondent in the matter, but also exposes his rigid, adamant and arbitrary exercise of

powers to harass the petitioner, under the guise of interrogation and investigation into the alleged crime, offending the right to life of the petitioner

with human dignity and personal liberty, protected under Article 21 of the Constitution of India, which cannot be spared at any cost; nor such

attitude of the second respondent be tolerated by this Court as the same is liable to be condemned, in toto.

8.3. For the aforesaid reasons, I am obliged to accept the affidavit of undertaking dated 24.9.2002, filed by the petitioner, referred to above, and

agreed by the learned Additional Public Prosecutor, and record the same as a part and parcel of this proceedings under the following terms.

(i) The petitioner shall pay the alleged total dues of Rs.16 crores directly to the Administrator of M/s. Kothari Orient Finance Ltd., as per the

following schedule.

1st instalment on or before 31.12.2002: Rs. 1.5 crores

2nd instalment on or before 31.03.2003: Rs. 1.5 crores

3rd instalment on or before 30.06.2003: Rs. 1.5 crores

4th instalment on or before 30.09.2003: Rs. 1.5 crores

5th instalment on or before 31.12.2003: Rs. 1.5 crores

6th instalment on or before 31.03.2004: Rs. 1.5 crores

7th instalment on or before 30.06.2004: Rs. 1.5 crores

8th instalment on or before 30.09.2004: Rs. 1.5 crores

Rs.16.0 crores

(ii) As long as the petitioner is regular in paying the instalments to the Administrator, as per the above schedule, the respondents shall not harass the

petitioner in any manner.

(iii) However, in the event of any default by the petitioner in the payment of instalments, as per the said schedule, respondents are at liberty to take

appropriate steps to secure balance payable by the petitioner to the depositors, in a manner known to law.

(iv) Respondents 2 to 5 are directed to streamline the investigation to ascertain the true and correct facts, collect evidence in support thereof, form

an opinion under Sections 169 and 170 Cr.P.C., as the case may be, and forward the report or reports u/s 173(8) Cr.P.C. to the Magistrate

concerned and the registration of the second FIR and successive FIRs, therefore, shall be treated as materials for further investigation u/s 173(8)

Cr.P.C. and to proceed in accordance with law.

(v) As and when the petitioner pays the instalments, the administrator, in consultation with the Auditors, shall disburse the same to the depositors

proportionately, immediately thereafter.

The writ petition is ordered accordingly. No costs. WPMP Nos.51558 to 51560 of 2002 are closed.

