

(2015) 06 MAD CK 0162

In the Madras High Court

Case No : Criminal Revision Case No. 390 of 2015

Prasanna

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 09-06-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 227, 228, 294(b)

Motor Vehicles Act, 1988 — Section 183

Penal Code, 1860 (IPC) — Section 294(b), 332, 353

Citation : (2015) 2 LW(Cri) 94 : (2015) 3 MLJ(Cri) 169

Hon'ble Judges : B. Rajendran, J

Bench : Single Bench

Advocate : K.S. Dinakaran, Senior Advocate for N.S. Sivakumar, for the Appellant; M.R. Thangavelu, Government Advocate, Advocates for the Respondent

Judgement

B. Rajendran, J.—The petitioner has come forward with this Criminal Revision case questioning the correctness of the order dated 05.03.2014 of the learned Chief Judicial Magistrate, Puducherry dismissing his petition for discharge from the criminal prosecution.

2. The case of the prosecution is that at about 10.30 p.m. on 30.04.2014 when Mr. Alavandar, SGPC 1917 attached to the respondent police station along with PC F15 Ramadass were performing night beat near the Asian Guest House in Subbiah Salai, Puducherry, one Senthil approached them and informed SGPC 1917 Alavandar that a car from beach road is approaching speedily and requested him to stop the vehicle to cause an enquiry. Accordingly, SGPC 1917 Alavandar stopped the vehicle driven by the petitioner and enquired him. It is stated that SGPC 1917 Alavandar questioned the petitioner as to why the car is being driven speedily. Aggrieved by the same, the petitioner alleged to have prevented the said SGPC 1917 Alavandar from discharging his official duties by scolding SGPC 1917 Alavandar for having questioned him. The petitioner also alleged to have scolded Senthil in a filthy language. It is also alleged that the

petitioner punched SGPC 1917 Alavandar in his chest and ran away. However, he fell down when he was hit by a stone. Immediately, the petitioner was apprehended by SGPC 1917 Alavandar along with Senthil and taken him to the respondent police station at about 00.15 hours on 01.05.2014. On reaching the police station, a special report was prepared by SGPC 1917 and it was submitted it to the Head Constable 1334. On the basis of such special report, the case in Crime No. 74 of 2014 came to be registered against the petitioner for the offences punishable under Sections 294(b), 353, 332 IPC.

3. After enquiry, a final report was filed by the investigation officer and it was taken on file as C.C. No. 38 of 2014 on the file of the Court of Chief Judicial Magistrate, Puducherry. Pending the calendar case, the petitioner has filed Crl. M.P. No. 1874 of 2014 in C.C. No. 38 of 2014 for discharge. The learned Chief Judicial Magistrate, by order dated 05.02.2014 dismissed the petition for discharge by holding that the petitioner has to face the trial to examine whether the offences alleged against him are made out or not. It is against this order dismissing the petition for discharge, the petitioner has filed the present Criminal Revision Case has been filed by the petitioner.

4. According to the learned Senior counsel for the petitioner, the statement of Sendhil would indicate that he has not stated from where he spotted the car said to have been driven by the petitioner speedily or how he reached the place where the police constables were performing the night patrol duty. It is also not known as to why the respondent did not frame any charge against the petitioner for the alleged rash and negligent driving of the car. Even though the offence under Section 294(b) of IPC is included in the first information report, nothing is mentioned as to what were the words uttered by the petitioner which would attract the offence under Section 294(b). The trial court also, came to the conclusion that the words alleged to have been uttered by the petitioner has not been indicated either in the special report or first information report, however, the trial court erroneously held that it has to be considered and examined only at the time of trial in the criminal case.

5. The learned senior counsel for the petitioner would further contend that even though it is alleged that the petitioner, after assaulting the Police Constable ran and fell down, he was not taken to the Medical Officer to show the nature and extent of injuries suffered by him. Rather, SGPC 1917 Alavandar, who did not receive any injury, appeared before the Medical Officer and obtained a certificate. Even in the medical certificate, it was stated that SGPC 1917 Alavandar did not suffer any bodily injury but the medical officer had issued the certificate for being used during the judicial proceedings. Further, in the statement of the Doctor, he has clearly stated that there was no injury suffered by SGPC 1917 Alavandar and he has not complained about any pain. It is also not known whether SGPC 1917 Alavandar was actually on duty at the date and time of occurrence. Even if he was on duty, it is not known whether as a Police Constable, he is authorised to perform the duties of a traffic constable to book the petitioner for having driven

the vehicle in an alleged rash and negligent manner. It is also not explained what interest did the said Senthil has got to inform SGPC 1917 Alavandar about the alleged manner in which the petitioner had driven the vehicle.

6. The learned senior counsel for the petitioner would further contend that the respondent police station is situate within half a kilometer from the alleged occurrence spot, however, the first information report came to be registered at 00.15 hours when the occurrence alleged to have taken place at about 10.30 p.m. Thus, there is an inordinate delay in registering the first information report and it is fatal to the case of the prosecution. The learned senior counsel for the petitioner further pointed out that the investigation officer, in his deposition as LW 6, has deposed that he recorded the statement of the Medical Officer at 01.10 am on 01.09.2014 when admittedly the occurrence took place on 30.04.2014 and the petitioner was brought to the police station on 01.05.2014 at 01.10 am. Further, neither in the special report, first information report or in any other piece of evidence, the registration number of the car alleged to have been driven by the petitioner was mentioned. It is also not known whether the car was impounded or taken into custody soon after the occurrence. It is also not known whether the petitioner ran from the alleged occurrence spot by leaving the car or the car was subjected to any examination by the Motor Vehicle Inspector.

7. The learned senior counsel for the petitioner would contend that when there is no prima facie case made out against the petitioner, he need not be subjected to the ordeal of a criminal trial. Even if the petitioner is subjected to trial, there is no material evidence available against him to hold him guilty of the offences complained. There are material contradiction and inconsistencies in the case projected by the petitioner and therefore, the petitioner is entitled for discharge from the criminal case. Accordingly, the learned senior counsel for the petitioner prayed for allowing this Criminal Revision Case.

8. On the contrary, the learned Government Advocate (Crl. side) would contend that soon after the occurrence, the first information report came to be registered within two hours and there is no loss of time. The first information report came to be registered on the basis of the special report given by the SGPC 1917 Alavandar in which it is categorically stated that one Senthil complained to him about the rash and negligent manner with which the petitioner had driven his car. Therefore, to prevent any untoward incident, the SGPC 1917 Alavandar, who was on patrol duty, stopped the car driven by the petitioner. When the petitioner was questioned by SGPC 1917 Alavandar about the manner in which he had driven the car, the petitioner scolded and abused SGPC 1917 Alavandar besides that he punched him in his chest and ran away from the scene of occurrence. However, as the petitioner fell down, he was apprehended and brought to the police station. The trial court, taking consideration the narration of factual events and the materials made available before it to prove the guilt of the petitioner, concluded that the petitioner has to face the trial and only after conclusion of the trial, the guilt or otherwise of the petitioner could be proved. The trial court also

finds that prima facie, there are materials made available by the prosecution to establish the guilt of the petitioner. Such conclusion arrived at by the trial court need not be interfered with by this Honourable Court.

9. The learned Government Advocate would further contend that as far as the date of enquiry, it was erroneously stated that the Medical Officer was recorded by the investigation officer on 01.09.2014 and it is a typographical mistake. The fact remains that the medical officer was examined on 01.05.2014 and it will not in any manner vitiate the case of the prosecution.

10. I heard the learned senior counsel appearing for the petitioner as well as the learned Government Advocate (Crl. side) appearing for the respondent. By consent of counsel for both sides, the main Criminal Revision Case itself is taken up for final disposal.

11. It is the case of the petitioner that there are many material inconsistencies and contradiction in the case projected by the prosecution and therefore he is entitled for discharge from the criminal prosecution. It is also the case of the petitioner that when there is no prima facie material evidence made available against him, either in the first information report or in the special report, he need not be subjected to the ordeal of criminal trial.

12. The prosecution came to be launched against the petitioner when one Senthil complained to SGPC 1917 Alavandar that a car is being driven in a rash and negligent manner and it has to be stopped. It is the case of the prosecution that on such oral complaint, the vehicle alleged to have been driven by the petitioner was stopped and enquired by SGPC 1917 Alavandar. As rightly pointed out by the learned Senior counsel for the petitioner, it is not known as to how the said Senthil reached the spot where the police constables are performing patrol duty or from where the said Senthil had spotted the car which is being driven by the petitioner in a rash and negligent manner. A perusal of the materials placed before this Court would indicate that nowhere the prosecution has indicated the registration number of the car, neither in the first information report nor in the special report nor in the statement of Senthil. The said Senthil is one of the general public who complained about the rash and negligent driving of the car and he is not a police man. On the basis of such complaint, the vehicle was intercepted and stopped by SGPC 1917 Alavandar and the other police constable on duty. Even under Section 183 of the Motor Vehicles Act, if a vehicle is found to have been driven in a rash and negligent manner, only fine has to be imposed, however, in the present case, neither the provisions of Motor Vehicles Act was pressed into service nor any fine was imposed on the petitioner. It is also not known where exactly the car was intercepted by the police and the place where the said Senthil gave the information.

13. As regards the offence under Section 294(b), neither in the special report nor in the first information report, it is not mentioned as to what are the abusive words uttered by the petitioner. In the absence of the same, the offence under

Section 294(b) of IPC cannot be pressed against the petitioner. In fact, the trial court also pointed out the absence of the words uttered by the petitioner in the special report and in the first information report, however, it concluded that it can only be examined only during trial. In any event, for attracting the offence under Section 294(b), it is mandatory that the obscene words uttered by the accused has to be indicated and in the absence of the same, the offence under Section 294(b) cannot be made out. Therefore, it is not open to the trial court to hold that whether the offence under Section 294(b) of IPC against the petitioner is made out or not can be tested at the time of trial.

14. It is seen from the special report given by SGPC 1917 Alavandar that during a wordy altercation, the petitioner/accused scolded him and also punched him in his chest. Curiously, in the statement recorded under Section 161 of Cr.P.C. it was merely stated that the accused punched him. It is not specifically mentioned that the accused punched the SGPC 1917 Alavandar in his chest. This material evidence runs contrary to the one given in the special report. Further, even though it was stated that the petitioner ran away from the scene of occurrence after assaulting SGPC 1917 Alavandar and fell down, he was not subjected to any medical examination especially when it is stated that the petitioner is a patient suffering from psychiatric illness. It is also not mentioned in the special report or the first information report as to whether the car was impounded by the police, whether it was seized or abandoned.

15. In the counter affidavit filed before the trial court to the application seeking discharge, it was stated that the petitioner was taken to Government Hospital, Puducherry for treatment where, after examination, the Doctor has issued a wound certificate for him. Similarly, the SGPC 1917 Alavandar also appeared before the Medical Officer and obtained a certificate, but it was not produced before the trial court enclosed along with the charge sheet. In this certificate, it is admittedly stated that SGPC 1917 Alavandar did not suffer any bodily injury, but such certificate is issued only for the purpose of judicial proceedings. This is unheard of and it is not known as to what is sought to be achieved by obtaining such a certificate by SGPC 1917 Alavandar for judicial purpose.

16. It is seen from the records and as rightly pointed out by the learned senior counsel for the petitioner, the statement given by LWs to 5 appears to have been re-produced and repeated. Such statement given by the prosecution witness does not inspire the confidence of this Court.

17. It is settled position of law that for consideration of an application for discharge, upon consideration of the materials made available on record, if it is shown that there is no sufficient ground for proceeding against the accused, then the accused is entitled for discharge. However, it is not for the Court to analyse all the materials, including pros and cons, reliability or acceptability of the material evidence for the purpose of discharge. When the prosecution is unable to prove, through statement and/or records, about the guilt of the accused, then the Court can conclude that there is no prima facie case made out against the

accused to subject him to criminal prosecution.

18. In the decision of the Honourable Supreme Court reported in Union of India (UOI) Vs. Prafulla Kumar Samal and Another, AIR 1979 SC 366 : (1979) CriLJ 154 : (1979) 3 SCC 4 : (1979) SCC(Cri) 609 : (1979) 2 SCR 229 , as well as in the decision rendered in Dilavar Balu Kurane vs. State of Maharashtra (2002) 3 SCC 135 it was categorically held that the Judge, while framing the charge under Section 227 is having power to fix and weigh the evidence for the limited purpose of finding out whether a prima facie case is made out against the accused or not. It was further held that whether while considering the question of framing the charge. If it is found that the evidence adduced by the prosecution gave rise to suspicion, then the Court is fully justified to discharge the accused in exercise of its power under Section 227 or 228 of Cr.P.C.

19. In the present case, from the evidence made available on record, it is seen that there are lot of inconsistencies and contradictions in the case projected by the prosecution. First of all, for making a prima facie case under Section 294(b), the prosecution has not even indicated the alleged words uttered by the petitioner. Further, the fact that SGPC 1917 Alavandar had obtained a certificate from the medical officer, even though he did not suffer any injury, to the effect that such certificate is issued only for judicial purpose, only give rise to suspicion in the case projected by the prosecution. Therefore, this Court is of the view that the petitioner need not be subjected to the ordeal of trial especially when the prosecution has not made available prima facie material evidence to prove his guilt. In such circumstances, this Court can come to the irresistible conclusion that the petitioner is entitled for discharge and the order passed by the trial court has to be set aside. Accordingly, the order passed by the trial court is set aside. The Criminal Revision Case is allowed. Consequently the discharge petition is allowed. Connected miscellaneous petition is closed.