
(1995) 04 MAD CK 0032

In the Madras High Court

Case No : Criminal O.P. No. 2775 of 1988 and Criminal M.P. No. 2776 of 1988

S. Jothilingam and Others

APPELLANT

Vs

The State and Others

RESPONDENT

Date of Decision : 21-04-1995

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Madras Police Standing Orders — Order 588A

Citation : (1995) 2 CTC 295 : (1995) 2 LW(Cri) 438

Hon'ble Judges : Shivappa, J

Bench : Single Bench

Advocate : V. Shanmugham, for the Appellant; Shanmughavelayutham, Additional Public Prosecutor on behalf of the Respondents 1 and 2 and K. Ramaswamy, for K.V. Sridharan and R. Elango Ramachandran for the 3rd Respondent, for the Respondent

Final Decision : Dismissed

Judgement

Shivappa, J.—Petitioners are seeking for quashing the proceedings in Crime No. 762 of 1987 on the file of the Judicial I Class Magistrate,

Erode. The case of the petitioners is that the 9th petitioner is the Manager of "Daily Thanthi", a Tamil daily newspaper having wide circulation in

Tamil Nadu. "Dinamalar" is another Tamil daily newspaper also published from five centres at various places in Tamil Nadu. In the Sunday

Supplement issue of "Dinamalar" dated 11.10.1987, an article had been published under the heading- "Tamils." Do not sleep. It was an article

criticising the weekly magazine "Rani" the said article aimed at ridiculing the Founder of "Dina Thanthi" the late Thiru Si.Pa. Athithanar, contained

certain imputations on the founder, which were perse scurrillous. The said weekly magazine, viz. "Rani" is in the habit of calling its Founder as "the

Father of the Tamils"" , ""Do the respectable five crores of Tamils have one father? Does it not sound obscene?"" The imputations so made against the

Founder thus imply that one cannot be a father of five crores of Tamil people, therefore, no respectable Tamilians out of five crores can accept

this. Since ""Daily Thanthi"" had no centre at Erode, the 9th petitioner along with 13 other staff members on 15.10.1987 proceeded to Erode from

Coimbatore so as to present a similar memorandum of protest seeking apology from ""Dinamalar"" at Erode. At that time, the Editor of ""Dinamalar

Mr. Sathyamoorthy shouted at his workers to attack the petitioner's workers. The employees of ""Dinamalar"" and other rowdy elements present

there attacked and started beating indiscriminately with lethal weapons. In that incident some of the Daily Thanthi"" workers were seriously injured

some were admitted into the hospital and others had to take first aid treatment and besides, vehicles were also damaged. A policeman was also

injured. Immediately they gave a complaint. To the Shock and Surprise, at the instance of ""Dinamalar"" a First Information Report containing false

and baseless charges were got registered against the petitioners in Crime No. 762 of 1987 Under Sections 147, 148, 448, 452, 353, 323, 324,

307, and 332 IPC. when the 9th petitioner was in the lock-up, he was forced to sign in some papers and the same have been made use in

preparing a counter First Information Report, bearing Crime No. 763 of 1987, registered for offences Under Sections 147, 323, 427 IPC. The

9th petitioner gave a private complaint Under Sections 147, 223, 14, 325, 341, 342, 427, 506(1) 109 and 120(1) IPC against the ""Dinamalar

employees and the same was numbered as CrI.M.P. No. 2437 of 1987. The said private complaint was forwarded by the Magistrate to the police

for investigation u/s 156(3) CrI.P.C. In that complaint twenty witnesses were cited. The learned Magistrate directed the Crime Branch C.I.D. to

enquire into and investigate the said CrI.M.P. No. 2437 of 1987 along with Crime No. 763 of 1987. But the police filed the Charge Sheet in Crime

No. 762 of 1987 and referred the private complaint in Cri.M.P.No. 2437 of 1987 and also the Crime No. 763 of 1987.

2. The grievance of the petitioners is both the cases arise out of the same incident and the police have not followed the mandatory procedure

prescribed under the Madras police Standing orders viz. 588-A. it is also submitted that the police have not examined the witnesses mentioned in

the private complaint and they have not complied with the procedure contemplated in the Police Standing orders. In these circumstances,

petitioners submit that the impugned charge-sheet filed by the respondents in Crime No. 762 of 1987 is liable to be quashed since it is contrary to

the provisions of the mandatory procedure prescribed under the Madras police standing orders.

3. The point for consideration is whether for non-examination of certain persons cited by the petitioners and non-Compliance of the procedure

contemplated under the Madras Police Standing Orders, the Charge -Sheet filed in Crime No. 762 of 1987 is liable to be quashed?

4. In *State of Andhra Pradesh v. Venugopal* 1963 MWN Cri. 213, the Court was confronted with a similar situation and the Supreme Court has

held that Madras Police Standing Orders is nothing more than administrative Instructions by the Government of Madras and has not the force of

law. There can be no doubt that quite apart from the fact that the Government may and often should issue instructions to its officers, including

police officers, such instructions have not however the authority of law. It has further held that the requirements of his Order was merely directory

and not mandatory. Non-Compliance with the provisions of this order, viz. PSO 588-A does not make the investigation of the case illegal. This

Court in *Ranganathan and Ors. v. State. Rep. by SI. of Police, J.1, Saidapet Police Station* (1985) LW Cri. 86 has held that "the police standing

Orders cannot be said to be a statute but only a set of rules framed for the guidance of the investigating Officers and therefore, a violation of a

standing order in the matter of investigation will not constitute an illegality. In other words, a defect or an irregularity in investigation, however

serious, has no direct bearing on the competence or the procedure relating to the cognizance for the trial and ultimately this Court held that a

violation of the police Standing Orders is not by itself a ground for quashing the criminal proceedings and dismissed the petition.

In *Rishbud v. State of Delhi* 1955 MWN Cri.52 the Supreme Court has held that cognizance is in fact taken, on a police report vitiated by the

breach of a mandatory provision relating to investigation, there can be no doubt that the result of the trial which follows it cannot be set aside unless

the illegality in the investigation can be shown to have brought about a miscarriage of justice. That an illegality committed in the course of

investigation does not effect the competence and the jurisdiction of the Court for trial is well settled as appears from the cases in Prabhu v.

Emperor 1944 MWN 502 and Lumbhardar Zutshi v. The King 1950 MWN 217. in Venkataraya Chetty v. The King 1950 MWN Cr.41 it has

been held that fault in procedure might have important consequences, but it could not deprive the Magistrate of his jurisdiction to try the accused.

in Karthikeyan Aand Ors. v. State by S.I of Police and Ors. 1992 L.W. Cri. 74, considering all the earlier cases on the point, this Court has held

that failure to follow the procedure contemplated under PSO 588-A Cannot give rise to a right to get the proceedings quashed u/s 482, Crl.P.C.

Since PSO 588-A is only directory and not mandatory and the non-compliance of the procedure prescribed under PSO 588-A does not

constitute an illegality, the contention that the proceedings has to be quashed is liable to be rejected.

5. The power u/s 482 Crl.P.C. should be used very sparingly. The test is taking the allegations and the complaint as they are, without adding or

subtracting anything, if no offence is made out then only, the court is justified in quashing the proceedings in exercise of its powers u/s 482 Crl.P.C.

and it is not proper to evaluate the evidence or look into the documents meticulously that too when the police have filed a charge-sheet and the

petitioners have an opportunity to raise all their contentions to show that there is no prima facie case, at the appropriate stage. Though learned

counsel for the petitioners contended prejudice or has in investigation in crime No. 763 of 1987 on the complaint of the petitioners, that is no

ground to quash the charge-sheet No. 2 of 1988 in Crime No. 762 of 1987 on the file of the I class Magistrate, Erode. If there is any such

prejudice or bias, the petitioner may work out their remedy in accordance with law. But on that score, the trial cannot be halted or avoided.

6. For the reasons stated above, the petition is liable to be dismissed. Accordingly the petition is dismissed. Consequently, Crl.M.P. No. 2776 of

1988 is also dismissed.