
(1981) 10 MAD CK 0017

In the Madras High Court

Case No : Criminal Miscellaneous Petition No. 2503 of 1980

S. Moses Nadar

APPELLANT

Vs

State by Sub-Inspector of Police, Panangudi

RESPONDENT

Date of Decision : 15-10-1981

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 173(5), 482
Penal Code, 1860 (IPC) — Section 411, 412, 413, 414, 415

Citation : (1982) CriLJ 555

Hon'ble Judges : M.N. Moorthy, J

Bench : Single Bench

Advocate : V. Gopinathan, for the Appellant; M. Karpagavinayagam, Govt. Counsel, for the Respondent

Judgement

1. This is a petition filed under S. 482, Cri.P.C. to quash the proceedings in C.C. No. 2168 of 1978 on the file of the J.S.C.M. Nanguneri.

2. The petitioner was a pawn broker carrying on business at No. 58 Railway Station Road, Nazarath, Tiruchendur. A charge-sheet u/s 414, I.P.C.

was filed against him in C.C. No. 2168 of 1978 on the file of the J. S.C.M. Nanguneri on the allegation that in the last week of August 1977, on

the pledge of stolen two small rings and one "nali" (another ring) in all weighing about 8-1/2 grams of gold valued at Rs. 500/- one Velu the

petitioner paid him. Rs. 165/-. In obedience to the summons, the petitioner appeared before the Magistrate pleaded not guilty to the offence u/s

414 I.P.C. and received documents u/s 173(5) Cr.P.C. In the charge-sheet, the respondent cited one Seethapiratti, the alleged owner of the rings

in question, now (one ?) Chellasami Nadar and one A. P. Murugan, the two mahazar witnesses for the alleged recovery of the rings from the

petitioner and the Investigating Officer as witnesses. The statements of the first two witnesses were furnished to the petitioner.

3. On the documents furnished to the petitioner learned counsel argued that S. 414 I.P.C. requires that there should be evidence to show that the

petitioner had assisted the said alleged thief Velu in the disposal of the property or is concealing the said property. The learned counsel contended

that the section does not even cover a case where a person receives and even disposed the alleged stolen property and that the section is not

intended to punish those whose acts constitute a distinct offence punishable as such u/s 411 to 415 I.P.C. The learned counsel further contended

that the statements furnished to the petitioners do not reveal any acts of assistance in concealing or disposal, that there is nothing on record to show

that the petitioner knew had reason to believe that the alleged property was stolen property and that there is no material on record to establish that

the petitioner had assisted in concealing or disposing of the said jewels. The learned counsel argued that the proceedings against the petitioner

pending before the Court below have to be quashed.

4. In support of his contention, the learned counsel relied on the decision in State of Bihar Vs. Ramesh Singh, wherein it is held -

Strong suspicion against the accused, if it remains in the region of suspicion cannot take the place of proof of his guilt at the conclusion of trial. But

at the initial stage, if there is a strong suspicion which leads the court to think that there is ground for presuming that the accused has committed an

offence then it is not open to the court to say that there is no sufficient ground for proceeding against the accused. It is only for the purpose of

deciding prima facie whether the court should proceed with the trial or not. The evidence which the prosecutor proposes to adduce to prove the

guilt of the accused even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, cannot show that

the accused committed the offence, then there will be no sufficient ground for proceeding with the trial.

5. The next decision relied on by the learned counsel for the petitioner is reported in R.P. Kapur Vs. The State of Punjab, wherein their Lordships

of the Supreme Court held -

Where the allegations in the first information report or the complaint even if they

are taken at their face value and accepted in entirety do not constitute the offence alleged it would be legitimate for the High Court to hold that it would be manifestly unjust to allow the process of the criminal court to be issued against the accused person.

Their Lordships further held that where the allegations made against the accused person are not supported by legal evidence or the evidence adduced is manifestly or clearly inconsistent with the accusations made, the proceedings are to be quashed.

6. The learned Public Prosecutor appearing for the State urged that merely because the charge-sheet is laid u/s 414 I.P.C., it cannot be said that the Magistrate is precluded from framing appropriate charges on the accusations made against the petitioner. He further contends that in all probability the prosecution would examine Velu who had been charged and convicting for committing theft of the jewels which were pledged with the petitioner, or a certified copy of the judgment convicting him placed before the trial Magistrate. Under these circumstances, it is contended that this is not a case where the proceedings are to be quashed at this stage.

7. I agree with the contention of the learned Public Prosecutor that the prosecution need not confine itself to the offence mentioned in the charge-sheet or to the documents filed u/s 173 CrI.P.C. It is open to the prosecution to examine witnesses or produce documents which are not at present made available in Section 173 CrI.P.C. documents. In the result, I find there is no ground to quash the proceedings pending before the J.S.C.M.

Nanguneri. This petition is accordingly dismissed. The learned Magistrate is directed to dispose of C.C. No. 2168 of 1978 as expeditiously as possible. Though I have not deeply gone into the points raised before me, still whatever observations I have made in this order should not deter the Magistrate from exercising his own independent judicial discretion in disposing of the case.

8. Petition dismissed.