
(1998) 08 MAD CK 0016

In the Madras High Court

Case No : Criminal O.P. No. 15599/97 and Criminal M.P. No. 5952/97

S. Ramalingam

APPELLANT

Vs

State of Tamil Nadu by Assistant Consenator of Forests,
Forest Protection Squad, Vellore

RESPONDENT

Date of Decision : 10-08-1998

Acts Referred:

Evidence Act, 1872 — Section 30

Prevention of Corruption Act, 1988 — Section 5(3)

Citation : (1999) 1 LW(Cri) 184

Hon'ble Judges : R. Balasubramanian, J

Bench : Single Bench

Advocate : V. Gopinath, for the Appellant; Elango, Government Advocate
(Crl.Side), for the Respondent

Final Decision : Allowed

Judgement

R. Balasubramanian, J.—The petitioner in this application is the second accused in C.C.256/97 on the file of the Special Judicial Magistrate,

Tirupattur. The Respondent is the complainant in that proceedings. Besides the petitioner there is one another accused who is arrayed as the first

accused.

2. I heard Mr.V. Gopinath, learned senior counsel appearing for the petitioner in this quashing petition. According to the learned senior counsel,

there is not even an iota of material against the petitioner placed by the respondent before the lower court in the above referred to C.C. and

therefore taking cognizance of the offence as against the petitioner, has to be necessarily quashed. The learned senior counsel would further

contend that though as many as eight witnesses, have been cited as witnesses in the complaint, yet none of them, as disclosed in the complaint

itself, is going to speak directly against the petitioner before the trial court regarding his involvement in the commission of the offence. The learned

senior counsel further added that the first accused is stated to have given a statement to the official witnesses implicating the present petitioner

herein and though the said statement is admissible, yet in the absence of any other material available on record, the said statement of the first

accused, being in the nature of the statement of the co accused ,cannot be treated as substantive evidence against the petitioner. In other words,

according to the learned senior counsel, if there is any other material on record against the present petitioner herein, only then the statement of the

co-accused can be taken as lending assurance to the other material on record. The submission of the learned senior counsel is that, taking

cognizance of the offence against the petitioner herein is without any legal substantive evidence on record.

3. Contending contra, Mr.N.R.Elango, learned Government Advocate on the criminal side would contend that the statement of the first accused is

not only admissible as against him, but also can form the basis of the proceeding against the second accused (petitioner before this Court) as well.

Whether the statement of the co-accused can be the basis for convicting the second accused or not is a matter for appreciation of the evidence and

judgment and therefore the said criteria cannot enter into the mind of this court at this stage, to quash the proceedings. The learned Government

Advocate also contended that u/s 56-D of the Tamil Nadu Forest Act, a presumption is created in favour of the prosecution and against the

person accused of any offence under this Act in respect of any scheduled timber and therefore this presumption section also will stand in the way

of the petitioner having the relief of quashing the proceedings, even at this stage. The Learned Government Advocate contended that this

presumption u/s 56-D of the said Act could be drawn against the second accused also from the statement of the first accused. Mr.V.Gopinath,

learned senior counsel, on the arguments advanced by the learned Government Advocate regarding the presumption section referred to above,

contended that raising of such a presumption on the basis of the statement of the co-accused against another accused is impermissible in law.

According to the learned senior counsel, unless there are facts directly against the particular accused, namely the second accused in this case, it is

not possible to fall back upon section 56-D of the Act and shift the burden to the accused.

4. In the light of the arguments advanced by the learned senior counsel and the learned Government Advocate for the respondent, I perused the

complaint filed before the lower court. The sum and substance of the allegations in the complaint is that on 6.1.97 at 10.30 pm. a vehicle bearing

No.TN-04-13-0860 was intercepted and checked. The first accused by name C.Gnanasekaran was in command of the vehicle. There was none

else. As many as 57 pieces of sandalwood blocks were found in the lorry at the time of check and they were accordingly seized. The first accused,

namely, the driver of the vehicle was also arrested. P.W.2, the Forest Ranger examined the first accused and at that time the first accused gave a

voluntary statement which was reduced into writing. In that statement, the first accused is stated to have disclosed that only on the instructions of

the owner of the vehicle namely, the second accused (the petitioner before this court) that he transported the sandalwood pieces. It also appears

that the first accused had retracted the statement later on. The complaint itself discloses as to what the eight witnesses cited in the complaint are

going to depose in the court. None of the witnesses are disclosed to speak anything about the involvement of the second accused in the

commission of the offence. They are to be examined only to speak about the stopping of the vehicle, examination of the driver of the vehicle (first

accused); recording of the statement; seizure of the vehicle as well as the goods and the follow-up action. Therefore the question that falls for

consideration at this stage is whether there are any materials, other than the statement of the first accused implicating the second accused, which

prima facie disclose the involvement of the second accused (the petitioner before this court) in the commission of the crime. I find none except the

statement of the co-accused already referred to above. The point that falls for decision is whether taking cognizance of the offence against the

second accused on this sole materials referred to above can be legally sustained. The offences complained of in this case are under Sections 21(d)

(e) read with Section 35, 36-A, 36-E of the Tamil Nadu Forest Act.

5. It is no doubt true that there is the statement of the first accused implicating the second accused in the commission of the crime That statement is

definitely admissible against the maker as well as admissible u/s 30 of the Evidence Act, against the other accused as well as in the same case

provided, there are other independent materials against the concerned accused also. Admittedly in this case, except the statement of the co-

accused against the present petitioner, there is no other independent evidence available. In the absence of such material, I am of the opinion that

the available statement of the co-accused can not be treated as substantive evidence in the eye of law on the basis of which the court can take

cognizance of. In other words, unless there is legal evidence before court, it may be impermissible for the court to take cognizance of any offence

against any individual. It is true that Section 56-D of the Tamil Nadu Forest Act creates as rule of evidence in the form of presumption against a

person who is accused of an offence under the Act. But it must be remembered that the presumption that can be raised can only be from the legal

admissible materials and not on materials that lacks the legal sanction.

6. In support of his arguments referred to above, the learned senior counsel brought to my notice a judgment of the Hon"ble Supreme Court of

India reported in R.P. Kapur Vs. The State of Punjab, wherein their Lordships have laid down the nature and scope of the inherent jurisdiction of

this court u/s 561-A of the Criminal Procedure Code as it then stood. In that Judgment, their Lordships have held as follows:-

Where the allegations made against the accused person do constitute the offence alleged but there is either no legal evidence adduced in support of

the case or the evidence adduced clearly or manifestly fails to prove the charge the High Court would exercise its inherent jurisdiction. In dealing

with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence

which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may

not support the accusation in question.

Another judgment of the learned Single Judge of this court reported in Pragasam, P. v. State rep. by Inspector of Police, Karaikal (1994 I L.W.

(Cri.) 208) was also brought to my notice by the learned senior counsel. The question of admissibility of the statement of a co-accused against

another accused, came up for consideration in that case. The learned Single

Judge of this Court while dealing with that question had held as follows:-

Held: That the confession of "S" implicating the present petitioner is the only evidence available against him is not disputed. It is true that u/s 30 of the Evidence Act, when more persons than one are being tried jointly for the same offence, and a confession made by one of such persons affecting himself and some other of such persons is proved, the court may take into consideration such confession as against such other persons as well as against the persons who made such confession. But, there should be substantive evidence before the confession of co-accused can be used to set at rest any doubt. Conviction based on confession of co-accused alone is illegal. Such confession can be used only for lending re-assurance of other substantive evidence. The statement given by an accused involving himself in the crime and also implicating third person cannot be proved legally in the court. It will be conflicting with Ss.25 and 26 of the Indian Evidence Act. If such evidence or confession cannot be proved, then the occasion for utilising that statement against another person does not arise. The result is that reliance of such statement against another person while framing charge does not arise. In the absence of any such substantive evidence it is seen that there is practically no material against the present petitioner to be proceeded against. The proceedings herein against the petitioner, are liable to be quashed.

The learned single judge in the above case had followed the judgment of the Honourable Supreme Court of India referred to above. Therefore it is clear according to me, that there is no legal evidence before the lower court in this case on the basis of which it can proceed against the second accused and on that ground alone, the proceedings pending now on the file of the lower court as far as the second accused is concerned has to be necessarily quashed.

7. However, the learned Government Advocate on the criminal side for the respondent contended that in view of Section 56-1) of the Tamil Nadu Forest Act, raising presumption of guilt against the accused the proceedings at this stage cannot be quashed as it is permissible to raise the presumption even on the basis of the statement of the co-accused against the petitioner as well. Therefore it has become necessary for me to

answer that point as well. It is no doubt true that Section 56-1) of the Tamil Nadu Forest Act which reads as follows:-

Whenever any person is accused of any offence under this Act in respect of any scheduled timber, it shall be presumed until the contrary is proved

that such person has committed such offence

raises a presumption of guilt against the accused until the contrary is proved. This presumption can be invoked, according to me only when there

are basis legal evidence against any person and otherwise not. The materials available in this case clinchingly form the basis legal evidence, which

can be substantive in nature, against the first accused and therefore there cannot be any difficulty in drawing the presumption against the first

accused. While dealing with the power of the court to draw the statutory presumption whenever it is provided for, the Honourable Supreme Court

of India has laid down as to what extent the presumption is permissible, in its judgment reported in Manipur Administration Vs. M. Nila Chandra

Singh, Sub Clause (2) of Clause 3 of the Manipur Foodgrains Dealers Licensing Order (1958) came up for consideration and in that context, the

Hon'ble Judges have stated as follows:

There is no doubt, as Mr. Khanna has contended that if CI.3(2) which is in the nature of a deeming provision provides for a fiction, we ought to

draw the fiction to the maximum extent legitimately permissible under the words of the clause.

Section 56-D of the Tamil Nadu Forest Act does not create any new offence, but only lays down a rule of evidence enabling the court to raise the

presumption of guilt in certain circumstances a rule which is a complete departure from the established principle of criminal jurisprudence that the

burden always lies on the prosecution to prove all the ingredients of the offence charged and that the burden never shifts to the accused to disprove

the charge framed against him. What I have now said above is verbatim reproduction of the words of the Honourable Supreme Court of India,

who had an occasion to consider Section 5(3) of the Prevention of Corruption Act 1947, which judgment is C.S.D. Swamy Vs. The State, the

only difference being in that case the presumption Section in the Prevention of Corruption Act 1947 was under consideration while in the case on

hand, the statutory presumption created u/s 56-D of the Tamil Nadu Forest Act is

under consideration.

8. It may be true that the statutory presumption created under the Prevention of Corruption Act referred to above may have to be drawn only

when the stated circumstances indicated in the section itself are established. However in Section 56-D, there is no indication of such positive

circumstance. In other words, to draw the presumption under the Prevention of Corruption Act, it has to be proved by evidence in court that the

money said to have been paid to the accused was actually recovered from his possession and it is only then the court may presume that the amount

received would be deemed to be an illegal gratification. But however the absence of any such positive circumstances in Section 56-D of the Tamil

Nadu Forest Act, would not change the situation altogether. The opening words of Section 56-D of the Tamil Nadu Forest Act is ""Whenever any

person is accused of any offence under this Act... ""'. Therefore it is clear that the accusation against the particular person must be based on certain

facts, which shall be legal and substantive in the eye of law.

9. The learned Government Advocate on the criminal side brought to my notice a judgment of the Honourable Supreme Court of India reported in

Radhey Shyam Vs. Kunj Behari and Others, and a judgment of the Patna High Court reported in National Insurance Company Ltd. and Others Vs.

Narendra Kumar Jhanjhri,). The learned Government Advocate relying on the above judgments contended that it is too early to quash the

proceedings and that the trial should be allowed to run to reach its logical end namely, conviction or acquittal. In the said Judgment, the

Honourable Supreme Court of India has held that inadequacy of evidence cannot be a ground for quashing. In the second case, the assertion that

chances of conviction are bleak and no case is therefore made out, was held to be not a ground for quashing the proceedings. As I already

referred to above, in the case on hand, there is no legal evidence. Since on facts, the case on hand can be distinguished from the cases decided by

the Honourable Supreme Court of India and the High Court of Patna, I am of the respectful opinion that the Judgments relied upon by the learned

Government Advocate for dismissing this petition may not apply to the case on hand. Therefore in conclusion, I am of the opinion that the reliance

placed on section 56-D of the Tamil Nadu Forest Act, which raised the statutory

presumption of guilt against accused, cannot be invoked in this case against the second accused/petitioner before this court, since there are no legal and substantive evidence on record against him. I have already held that the statement of the co-accused in this case cannot be substantive legal evidence against the second accused. Under these circumstances, I am of the considered view that the proceedings in C.C.256/97 on the file of the Judicial Magistrate, Thirupattur as far as the second accused in that case is concerned have to be necessarily quashed and it is accordingly quashed. This petition is allowed.