
(2015) 08 KL CK 0088
In the High Court Of Kerala
Case No : Criminal M.C. No. 2706 of 2015

T.K. Sasi

APPELLANT

Vs

The Sub Inspector of Police and Others

RESPONDENT

Date of Decision : 18-08-2015

Acts Referred:

Constitution of India, 1950 — Article 311

Criminal Procedure Code, 1973 (CrPC) — Section 2, 2(w), 2(x), 259, 374

Citation : (2015) 5 KHC 10

Hon'ble Judges : Alexander Thomas, J

Bench : Single Bench

Advocate : Johnson Manayani, Benhur Joseph Manayani and Jeevan Mathew Manayani, for the Appellant; Tom Jose Padinjarekara, Additional D.G.P, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Alexander Thomas, J—The prayer in this CrI.M.C. is for an order to quash the impugned Anx.A-3 judgment dated 6.12.2013 in C.C. No. 1008/2013, whereby the plea of the petitioner accused admitting his guilt for the crime in question and finding him accordingly guilty as also the resultant order of conviction thereunder and the impugned sentence to pay fine and imprisonment till rising of the court, etc. The petitioner was accused in the impugned Anx.A-2 Crime No. 228/2012 of Kodumon Police Station, Pathanamthitta district for offence under Sec.118(a) of the Kerala Police Act. This resulted in the institution of Calendar Case, C.C. No. 1008/2013 on the file of the Judicial First Class Magistrate's Court, Adoor in respect of the aforesaid crime and when the said case was taken up for consideration before the court below on 6.12.2013, the court below has recorded that the petitioner volunteered to come up with the plea that he is guilty and accordingly the court below accepted the said plea and found him guilty and convicted him thereunder for the offence under Sec.118(a) of the Kerala Police Act. Consequently, the court below as per Anx.A-3 judgment rendered on 16.12.2013 has ordered that the petitioner accused is sentenced to

pay a fine of Rs. 3,000/- for the offence under Sec.118(a) of the Kerala Police Act and in default thereof, he had to undergone simple imprisonment for one month and imprisonment till raising of the court.

2. The petitioner is a regular employee of the 4th respondent Kerala Water Authority, as Draftsman Grade I. It is the case of the petitioner that when the petitioner was about to be considered for promotion to the next higher post, some disgruntled elements, who were jealous of his career advancement, had raked up the issue of Anx.A-3 conviction and thereby it resulted in Anx.A-4 memo of charges, issued against him by the respondent Kerala Water Authority, it is stated. As per Anx.A-4 memo of charges issued on 16.3.2015, the 3rd respondent Deputy Chief Engineer of the Kerala Water Authority has directed the petitioner to show cause to the subject matter of the allegations, which were raised in the impugned criminal proceedings related to his alleged drunken behavior and his resultant conviction in terms of Anx.A-3 judgment for the offence under Sec.118(a) of the Kerala Police Act. The petitioner has been accordingly directed to show cause as to why disciplinary action shall not be imposed on him in terms of the provisions contained in the Kerala Civil Services (Classification, Control and Appeal) Rules, 1960 [KCS(CC&A) Rules].

3. It is pointed out that the petitioner has reliably learnt that apart from the show cause notice, the respondent Water Authority is not contemplating any detailed enquiry to prove the guilt or otherwise of the petitioner, but is seeking to invoke the extraordinary power conferred under Sec.18 of the the Kerala Civil Services (Classification, Control and Appeal) Rules, in order to terminate the service of the petitioner consequent on his conviction in terms of Anx.A-3 judgment.

4. It is the case of the petitioner that the petitioner was wrongly advised to plead guilty and that as per the provisions contained in Sec.118(a) of the Kerala Police Act, any person, who is found in a public place, in a intoxicated manner or rioting condition or incapable of looking after himself, shall on conviction be punishable with imprisonment for a term, which may extend to three years or with fine not exceeding ten thousand rupees or with both. Accordingly, it is contended by Sri. Johnson Manayani, learned counsel that since the punishment for the offence under Sec.118(a) of the Kerala Police Act, is for imprisonment which may extend to three years, the procedure for warrant trial is mandatory, if the imprisonment in that regard would extend beyond two years.

5. The learned counsel for the petitioner on this aspect of the matter would place serious reliance on the provisions contained in Sec.2(w) and 2(x) of the Code of Criminal Procedure.

6. Sec.118(a) of the Kerala Police Act reads as follows:

"Sec.118 Penalty for causing grave violation of public order or danger.--Any person, who,

(a) is found in a public place, in an intoxicated manner or rioting condition or incapable of looking after himself; or

xxx xxx xxx.

shall, on conviction be punishable with imprisonment for a term which may extend to three years or with fine not exceeding ten thousand rupees or with both."

Sec.2(w) of the Code of Criminal Procedure provides as follows:

""Sec.2. Definitions.--In this Code, unless the context otherwise requires.--

xxx xxx xxx

(w) "summons-case" means a case relating to an offence, and not being a warrant-case""

Sec.2(x) of the Code of Criminal Procedure provides as follows:

""Sec.2. Definitions.--In this Code, unless the context otherwise requires.--

xxx xxx xxx

(x) "warrant-case" means a case relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years;""

7. The learned counsel for the petitioner would further place reliance Sec.259 of the Cr.P.C., which provides as follows:

"Sec.259: Power of Court to convert summons-cases into warrant-cases.--When in the course of the trial of a summons-case relating to an offence punishable with imprisonment for a term exceeding six months, it appears to the Magistrate that in the interest of justice, the offence should be tried in accordance with the procedure for the trial of warrant-cases, such Magistrate may proceed to re-hear the case in the manner provided by this Code for the trial of warrant-cases and may recall any witness who may have been examined."

8. Accordingly it is contended by Sri. Johnson Manayani, learned counsel for the petitioner that since the term of imprisonment for the offence under Sec.118(a) of the Kerala Police Act would extend upto 3 years, it is mandatory that the warrant trial procedure should have been adopted by the trial court. Therefore, it is pointed out that the adoption of procedure for summary trial in the instant case, which has led to Anx. A3 judgment, is in breach of mandatory provisions of the Code of Criminal Procedure and therefore the conviction and sentence ordered in term of Anx.A-3 are void ab initio.

9. Yet another contention raised by the learned counsel for the petitioner is that the petitioner was wrongly advised by some of his friends and his Advocate that he should plead guilty to the charge and that actually he is not guilty of the charges imputed against him, but that he was constrained to take the advice

given by the Advocate concerned as legally sound and was advised that he need not go through the rigour of the trial and that on the bona fide belief that the rendering of the conviction in the manner effected in Anx.A-3 judgment will not have any serious consequence, except apparently favourable factor of short-circuiting the lengthy process of having to endure the trial. Therefore, it is contended that this Court in exercise of its powers conferred as per the Code of Criminal Procedure may set aside the impugned Anx.A-3 judgment and order for a fresh trial in the matter by following the rigorous mandatory provisions for the conduct of a warrant trial.

10. Per contra, Sri. Tom Jose Padinjarekkara, learned Addl. D.G of Prosecution & State Prosecutor would submit on behalf of the respondent State of Kerala that the petitioner has a right royal remedy of statutory appeal as envisaged in Sec.374 of the Code of Criminal Procedure. Still further Sri. Tom Jose Padinjarekkara, learned Addl. D.G. of Prosecution would point out that even if it is assumed for argument sake that the plea of the petitioner that he had not actually contemplated to make a plea of guilt on a voluntary basis and that he was constrained to act on misguided and wrong advice, then also he has remedy in view of the legal principles laid down by this Court in the case State of Kerala Vs. Gopinatha Pillai , wherein, in para 8 thereof, this Court has held that since there was no genuine plea of guilt, the bar under Sec.375 of the Code of Criminal Procedure does not operate and an appeal both on the question of guilt and conviction as well as on the question of quantum of sentence could be preferred by such a aggrieved convicted person. Sec.374(3) of the Code of Criminal Procedure reads as follows:

"Sec.374: Appeals from convictions.--

(1).....

xxx xxx xxx

(3) Save as otherwise provided in sub-section (2), any person,-

(a) convicted on a trial held by a Metropolitan Magistrate or Assistant Sessions judge or Magistrate of the first class, or of the second class, or

(b) sentenced under Section 325, or

(c) in respect of whom an order has been made or a sentence has been passed under Section 360 by any Magistrate, may appeal to the Court of Session."

Sec.375 of the Code of Criminal Procedure provides as follows:

"Sec.375: No appeal in certain cases when accused pleads guilty.-- Notwithstanding anything contained in Section 374, where an accused person has pleaded guilty and has been convicted on such plea, there shall be no appeal,-

(a) if the conviction is by a High Court; or

(b) if the conviction is by a Court of Session, Metropolitan Magistrate or Magistrate of the first or second class, except as to the extent or legality of the sentence."

Therefore, it is contended by the learned Addl. D.G. of prosecution that the petitioner has the remedy of either preferring an appeal as conceived by the judicially engrafted law envisaged in Gopithanath Pillai's case supra, whereby the whole issues regarding the guilt, conviction and sentence could be at large in such appellate consideration and the bar under Sec.375 will not apply if he successfully pleads and establishes before the appellate court that the plea of guilt was not voluntary and made due to other extraneous factors or the petitioner could even limit his challenge to the quantum of the sentence as envisaged in Sec.375(b) of the Code of Criminal Procedure, assuming that the bar under Sec. 375 is to apply in the facts of this case. It is indisputable that the petitioner has not preferred any statutory appeal as stated above even now and therefore extraordinary remedy under Sec. 482 of the Cr.P.C. need not be entertained, it is urged. Sri. George Mathew, learned Standing Counsel for the Kerala Water Authority would submit that the respondent Water Authority has only acted within the broad parameters of law and once it has come to the official knowledge of the respondent Water Authority about the conviction and sentence ordered to suffer by an incumbent employee of the Water Authority, then in such cases, the Water Authority like any other State instrumentality, is bound to proceed in accordance with law and in the facts in this case, the Water Authority is well justified to proceed in accordance with extraordinary procedure contemplated under Rule 18 of the KCS(CC&A) Rules. This, the learned learned Standing Counsel for the respondent Water Authority would submit that this procedure is permissible and is contemplated where it is on the ground of conduct, which has led to the conviction of the incumbent concerned on a criminal charge, as envisaged in Rule 18(i) of the KCS(CC&A) Rules. The learned Standing Counsel has also adverted to the provisions contained in Rule 18 of the KCS(CC&A) Rules, which reads as follows:

"Sec 18. Special Procedure in certain cases.--Notwithstanding anything contained in rules 15,16 and 17,

(i) where a penalty is imposed on a Government servant on the ground of conduct which had led to his conviction on a criminal charge; or

(ii) where the Disciplinary Authority is satisfied for reason to be recorded in writing that it is not reasonably practicable to follow the procedure prescribed in the said rules; or

(iii) where the Governor is satisfied that in the interest of the security of the State it is not expedient to follow such procedure;

the Disciplinary Authority or the Governor, as the case may be, may consider the circumstances of the case and pass such orders thereon as he deems fit:

Provided that before passing such orders under clauses (i) and (ii) the Commission shall be consulted in cases where such consultation is necessary under the rules:

Provided further that where a Government servant is convicted on a criminal charge by a criminal court and sentenced to imprisonment and/or with fine;-

(a) he shall be dismissed or removed from service forthwith by invoking the provisions contained in item (a) of the second proviso to clause (2) of Article 311 of the Constitution of India irrespective of the fact that an appeal is pending or that the execution of sentence is suspended in respect of the said conviction, and

(b) in case the said conviction is subsequently set aside in appeal or otherwise and the Government servant is acquitted of the charges, the order of dismissal or removal ceases to have effect and revised orders shall be issued forthwith to reinstate him in service entitling him all the benefits to which he would have been entitled had he been in service:

Provided also that in case where conviction is on a summary trial for petty offences and the sentence is for a fine upto Rupees Two Thousand only such conviction shall not be treated as a conviction for the purpose of this rule and for the entry into service or retention in service as the case may be."

It is also pointed out that as per the last proviso to Rule 18 of the KCS(CC&A) Rules, it is envisaged that in a case of conviction on a summary trial for petty offences and the sentence is for a fine upto rupees two thousand only, such conviction shall not be treated as a conviction for the purpose of this rule and for the entry into service or retention in service as the case may be.

11. In reply to the aforestated submissions made by the learned Addl.D.G. of Prosecution and the learned Standing Counsel for the Water Authority, Sri. Johnson Manayani, learned counsel for the petitioner submitted that apart from his main submissions, the petitioner would also make a plea that because of the imminence of the threat of the disciplinary proceedings as evident from the impugned Anx.A-4 proceedings, this Court may exercise its power under Sec.482 of the Cr.P.C. so as to at least modulate the punishment imposed as per the impugned Anx.A-3 judgment, if this Court is not otherwise inclined to set aside the impugned Anx.A-3 in its entirety. This, the learned counsel for the petitioner would submit that the petitioner has a very strong ground of violation of mandatory provisions of warrant trial case in the impugned decision making process, which led to the impugned Anx.A-3 judgment and that because of the delay involved it might take some time for the appellate court to examine the matter on merits for the consideration of merits of the matter. Moreover, he would also urge that ordinarily the criminal appellate court is only empowered to consider the question of suspension of the execution of the impugned sentence and in this case that issue has become rather irrelevant and otiose inasmuch as the petitioner has already paid the fine amount, etc.

12. It is also pointed out that ordinarily the criminal court may not consider the grant of a prayer for stay of the conviction and therefore even if the appeal is prosecuted and the petitioner succeeds thereon ultimately, it will take quite a long time and by that time, the impugned penalty of termination from the service would be imposed on the petitioner, as the respondent Water Authority is taking recourse to the extraordinary power conferred under Rule 18 of the KCS(CC&A) Rules and is not contemplating the conduct of a major penalty disciplinary enquiry proceedings.

13. Heard Sri. Johnson Manayani, learned counsel for the petitioner, Sri. Tom Jose Padinjarekkara, learned Addl. D.G. of Prosecution & Addl. State Prosecutor appearing for the respondent State of Kerala and Sri. George Mathew, the learned Standing Counsel appearing for the respondent Kerala Water Authority.

14. Having considered the submissions on both sides of the Bar, this Court is of the considered opinion that the petitioner has made out a strong prima facie case regarding his ground, based on the violation of the mandatory provisions for the conduct of a trial for a warrant case, etc. It is also by now too well established that the criminal court is ordinarily empowered only to consider the question of suspension of the execution of the impugned sentence and the criminal court would not be properly exercising its discretion to consider the question of grant of stay of the conviction especially in the case where the convicted person is an employee. Therefore, the remedies which are otherwise available in a case like this, preferring an appeal with the conditional benefit of challenging only the quantum as envisaged under Sec. 375 of the Cr.P.C. or availing a full-fledged regular appeal as envisaged in the judicially grafted law envisaged in Gopinatha Pillai's case supra, the learned counsel for the petitioner is quite right in contending that it would be futile exercise as by then the disciplinary proceedings would have become a fait accompli, especially considering the fact that detailed enquiry proceedings are dispensed with for recourse to the power available under Rule 18 of the KCS(CC&A) Rules. This Court is also taking cognizance of the crucial fact that the last proviso engrafted in Rule 18 of the KCS(CC&A) Rules which mandates that in cases where conviction is on a summary trial for petty offences and the sentence is for a fine upto rupees two thousand only, such conviction shall not be treated as a conviction for the purpose of Rule 18 and for the entry into service or retention in service as the case may be. It is also by now too well established that the power available under the extraordinary provision envisaged in Sec.482 of the Code of Criminal Procedure is of wide plentitude and can be invoked to prevent miscarriage of justice and in aid of justice.

15. Having regard to the strong prima facie case made out by the petitioner, this Court is inclined to exercise its discretion in the peculiar facts and circumstances of this case and accordingly, this Court is inclined to order that having regard to the nature of the allegations raised and the nature of the contentions now advanced by the petitioner, it is ordered in the interest of justice that the fine

amount of Rs. 3,000/- stipulated in the impugned Anx.A-3 judgment will stand reduced to Rs. 1,500/-. Further it is made clear that as the petitioner has already paid the fine amount, the provision for the default sentence has become irrelevant and otiose and is to be treated accordingly. The further sentence of imprisonment till rising of the court is also treated as set aside. Sri. Johnson Manayani, learned counsel for the petitioner submits and undertakes on behalf of the petitioner that the petitioner would not initiate any proceedings either civil, criminal or any other proceedings for impugning in any manner the imprisonment till rising of the court that was already suffered by him. This submission made on behalf of the petitioner is also recorded.

16. It is further ordered in the interest of justice that as the impugned punishment in Anx.A-3 judgment has now been reduced only to a fine of Rs. 1,500/-, the impugned Anx.A-4 proceedings will stand automatically rescinded and cancelled in view of the statutory operation of the last proviso to Rule 18 of the KCS(CC&A) Rules. It is made clear that the issuance of the directions as stated above by invoking the provisions contained in Sec.482 of the Code of Criminal Procedure has been done in the instant case only in view of the peculiar facts and circumstances narrated above, etc.

With these observations and directions, the Crl.M.C. stands finally disposed of.