
(2008) 09 MAD CK 0184
In the Madras High Court
Case No : Criminal R.C. No. 717 of 1997

T.T.V. Dhinakaran

APPELLANT

Vs

Enforcement Officer, Enforcement Directorate Chennai

RESPONDENT

Date of Decision : 12-09-2008

Acts Referred:

Citation : (2008) 09 MAD CK 0184

Hon'ble Judges : K.N. Basha, J

Bench : Single Bench

Advocate : B. Kumar, SC, for the Appellant; M. Ravindran, A.S.G. for Mr. M. Dhandapani, Spl. Counsel for Enforcement Directorate, for the Respondent

Final Decision : Dismissed

Judgement

K.N. Basha, J.—The Petitioner has come forward with this revision challenging the order of dismissal dated 20.10.1997 passed in EOCC. No. 27/1996 dismissing the petition filed by the Petitioner under Sections 173(2) and 173(8) Code of Criminal Procedure seeking for the relief of directing the Respondent/complainant to file the supplementary complaint or final report pursuant to the further investigation done and to comply with Section 173(2) Code of Criminal Procedure and consequently to adjourn the trial in EOCC. No. 27/1996 until the above procedures are completed.

2. Mr. B. Kumar, the learned Senior Counsel appearing for the Petitioner contended that the Petitioner having been implicated as an accused in this case is entitled to know the exact and definite allegation leveled against him by the complainant, otherwise it is not possible for him to defend his case by effectively cross-examining the prosecution witnesses. It is contended that unless and until the Petitioner/accused knows the case of the complainant in its entirety, the Petitioner would be prevented in defending his case and that would result in violation of the principles of natural justice. It is submitted that though the complaint is instituted otherwise than on a police report, the complainant should follow the procedures contemplated under the Code of Criminal Procedure as well

as Foreign Exchange Regulation Act (hereinafter referred to as "FERA Act").

3. The learned Senior Counsel would contend that such being the position, the provisions under Sections 173(2) and 173(8) are also equally applicable to the proceedings initiated otherwise than on a police report and as such, as and when the prosecution, viz., the complainant collects further materials by further investigation, those materials and documents should be furnished to the accused, otherwise, that would cause a serious prejudice to the accused in defending his case. Therefore, it is contended by the learned Senior Counsel that the learned Trial Magistrate has passed the impugned order without considering those difficulties and the fundamental requirements has contemplated under the Code of Criminal Procedure in respect of rights of the accused, viz., the Petitioner herein to defend his case and as such, the impugned order is liable to be set aside.

4. Per contra, Mr. M. Ravindran, learned Additional Solicitor General contended that the petition filed under Sections 173(2) and 173(8) Cr.P.C., by the Petitioner itself is not maintainable as the complaint in this case was instituted otherwise than on a police report and therefore, only a private complaint procedure is to be adopted in the instant case. The learned Additional Solicitor General also highlighted the provisions contained u/s 244 Cr.P.C, wherein the prosecution is entitled to produce all such evidence in support of the prosecution and the accused is always entitled to cross-examine the prosecution witnesses after the chief examination as the chief examination would reveal the allegations of the prosecution through the respective witnesses and the documents would also come to light as the same were going to be produced before the trial court. The learned Additional Solicitor General contended that the revision Petitioner has come forward with the above petition only with a view to protract the proceedings. It is submitted that the case itself is pending for more than 11 years.

5. The learned Additional Solicitor General also pointed out that in a similar matter in respect of the very same question, viz., entitlement of the accused to direct the complainant to file supplementary reports, this Court has categorically held by order dated 30.04.1998 in CrI. Rc.711/1997 that such petition is not at all maintainable and Section 173(2) or 173(8) Cr.P.C., is not applicable to the proceedings instituted otherwise than on a police report. The learned Additional Solicitor General would further submit that the order of this Court in the said revision also reached finality as the SLP in SLP (Cri.) No. 1954/1998 filed challenging that order was dismissed by the Hon''ble Apex court as withdrawn by order dated 22.06.1998. Therefore, it is contended that there is no infirmity or illegality in the impugned order passed by the learned Magistrate.

6. I have carefully considered the rival contentions put forward by either side and also perused the entire materials available on record and also perused the petition filed by the Petitioner as well as the impugned order passed by the learned Additional Chief Metropolitan Magistrate, EO-II, Egmore, Chennai dated

20.10.1997.

7. The crux of the question involved in this matter is to the effect whether the accused is entitled to get direction for the prosecution, viz., the complainant to file supplementary or additional report after filing the complaint in a case instituted otherwise than on a police report with the apprehension of the complainant getting further materials and collection of further evidence.

8. At the outset, this Court is constrained to state that, admittedly, this is a case which was instituted otherwise than on a police report. The fact remains the complaint was preferred by the Enforcement Officer (Enforcement Directorate), Chennai, for the alleged offence under the provisions of the FERA Act. Therefore, it is crystal clear from the provisions contained under the Code of criminal Procedure-the procedure is to be adopted only as per Chapter XIX (B) and as per provisions u/s 244 to 247 Code of Criminal Procedure It is also pertinent to be noted that the provisions u/s 173(2) Cr.P.C, is not at all applicable to the case instituted otherwise than on a police report and as such, the question of filing any additional or supplementary report as per the provision u/s 173(8) Cr.P.C, not at all arises.

9. The only grievance of the Petitioner as per the submission of the learned Senior Counsel is to the effect that the Petitioner being an accused in this case, must be aware of the allegations in its entirety even before the examination of a particular witness enabling him to cross-examine that particular witness effectively. Before proceeding to consider the question involved in this matter, this Court is also constrained to state that the accused has no locus standi to be heard or to interfere or to prevent the investigating agency or to seek any opportunity to oppose even in respect of the case instituted on a police report regarding further investigation. The Hon'ble Apex court has held in Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwandadha Maharaj Vs. State of Andhra Pradesh and Others, that:

Constitution of India, Article 14:

Power of the police to conduct further investigation, after laying final report, is recognised u/s 173(8) of the Code of Criminal Procedure. Even after the court took cognizance of any offence on the strength of the police report first submitted, it is open to the police to conduct further investigation. In such a situation the power of the court to direct the police to conduct further investigation cannot have any inhibition. There is nothing in Section 173(8) to suggest that the court is obliged to hear the accused before any such direction is made. Casting of any such obligation on the court would only result in encumbering the court with the burden of searching for all the potential accused to be afforded with the opportunity of being heard. As law does not require it, Magistrate cannot be burdened with such an obligation.

Therefore, it is crystal clear that in view of the settled position of law, the accused has no locus standi or right to seek any relief in respect of further

investigation conducted even in a case instituted otherwise than on a police report and as such, the question of affording opportunity to the accused to raise objection or for seeking the relief of directing the complainant to file any additional report or supplementary report after filing the complaint not at all arises.

10. This Court is of the considered view that the grievance of the Petitioner could have very well been solved in view of the in built provisions as per the Code of Criminal Procedure as the Petitioner is having an opportunity to cross-examine the witnesses at the initial stage of taking evidence and thereafter, after framing the charges, the Petitioner would be having yet another chance to cross-examine the concerned witnesses. This aspect is also considered by the learned Magistrate while passing the impugned order in respect of the effective opportunity available for the accused to defend his case. It is also pertinent to be noted that even in the event of any additional evidence or any additional materials produced before the court, the Petitioner/accused is having liberty to peruse those documents by seeking permission of the court and also he is having the right to object the marking of any document which is said to be irrelevant to the case in accordance with law.

11. As rightly pointed by the learned Additional Solicitor General, in a similar matter, this Court has already rejected the prayer for direction to the complainant to submit additional and supplementary report in CrI.RC. No. 711/1997 by order dated 30.04.1998. It is seen that even that order of this Court has reached finality as the SLP in SLP.(Cri.)No.1954/1998 was dismissed by the Hon"ble Apex court by order dated 22.06.1998 as the same was dismissed as withdrawn.

12. Therefore, this Court is unable to accept any of the contentions put forward by the learned Senior Counsel appearing for the Petitioner for the aforesaid reasons. It is made clear that in the event of the complainant/prosecution producing additional evidence or additional material documents, it is always open to the Petitioner/accused to take permission from the court to peruse the documents and the learned Trial Magistrate shall give effective opportunity to the Petitioner to cross-examine any witness by affording reasonable time. The Petitioner should also give effective cooperation for the speedy disposal of the trial.

13. Considering the fact that the case itself is pending for more than a decade right from the year 1996, this Court is constrained to direct the learned Additional Chief Metropolitan Magistrate, EO-II, Eg-more, Chennai, to expedite the trial as ex-peditiously as possible, and more particularly, within a period of six months from the date of receipt of a copy of this order. The complainant should also produce witnesses without taking unnecessary time as there was already an inordinate delay in this matter in conducting the trial as the right to speedy trial is a fundamental right which is available not only to the accused but also to the complainant and such right cannot be infringed at any costs.

14. The revision is dismissed with the above said observations.