

(2003) 10 MAD CK 0093

In the Madras High Court

Case No : Criminal Original Petition No. 12054 of 2002

V. Kannapiran presently Inspector of Police

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 16-10-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 174
Penal Code, 1860 (IPC) — Section 147, 149, 302, 304, 323

Citation : (2004) 2 LW(Cri) 951

Hon'ble Judges : N. Dhinakar, J

Bench : Single Bench

Advocate : V. Gopinath, S.C. for A.M. Rahamath Ali, for the Appellant; M.K. Subramanian, Government Advocate (Crl. Side), for the Respondent

Final Decision : Partly Allowed

Judgement

N. Dhinakar, J.—This is a petition to expunge the remarks made by the Sessions Judge (Fast Track Court No. 1), Madras in paragraph Nos. 19, 20, 21, 22 and 23 of the judgment passed in S.C. No. 594 of 1999.

2. The petitioner is the investigating officer in Crime No. 2784 of 1998 of Ayanavaram Police Station and the said crime was registered against the accused u/s 174 Cr.P.C. and later, it was altered to one under Sections 147, 341, 323 and 302 IPC. by the petitioner. After the completion of investigation, the final report was filed against the accused under Sections 147, 323 and 304 Part-II read with 149 IPC. The trial Judge acquitted the accused holding that the prosecution has not succeeded in establishing that the deceased died on account of the injuries, in view of the evidence of the doctor, who conducted autopsy. The trial Judge, while acquitting the accused made certain observations in the paragraphs mentioned above, which are sought to be expunged by petitioner.

2. The learned Senior Counsel appearing for the petitioner submits that the observations made by the learned trial Judge are unwarranted and they are not required for arriving at a decision in the case.

3. I have perused the above paragraphs and also heard the respondent. On going through paragraph No. 19 of the judgment, I find no observations, which are adverse to the petitioner, requiring this Court to expunge them. Therefore, the observations made in paragraph-19 are allowed to remain. In paragraph No. 20 of the judgment, the learned Judge has observed that the conduct of the petitioner, who was examined as P.W.8 in the case, is to be deprecated and since the officer has filed the final report in spite of the opinion of the doctor that the death was on account of natural causes by feigning ignorance of the said report and if such conduct of the officer is allowed without action being taken against him, there will be an increase of such officers in the police force and poor and innocent people will be made to climb the stairs of the Court. He has further observed that the conduct of the Assistant Public Prosecutor is to be condemned in giving an opinion and such conduct of the Assistant Public Prosecutor in giving the final report shows that such Assistant Public Prosecutors will only give trouble to the public and will not be the persons, who discharge their duties in a noble manner. The trial Judge thereby condemned the Assistant Public Prosecutor and also directed action to be initiated against him. In paragraph No. 21 of the judgment, he has stated that the officer has conducted the investigation in a disgraceful manner and it is to be condemned. Similarly, in paragraph No. 22 of the judgment, he has stated that the petitioner has made false allegations by filing the final report against the accused and by giving opinion, the Assistant Public Prosecutor also is responsible for such false allegations and that therefore, action must be initiated, as they were responsible for the arrest and detention of the accused in the crime.

4. I am of the view that the observations made by the learned Judge in paragraph Nos.20, 21 and 22 are unwarranted. It is to be remembered that initially the case was filed u/s 174 Cr.P.C. and later, it was altered to one u/s 302 IPC. and after the receipt of the opinion of the Assistant Public Prosecutor, the final report was filed only u/s 304 Part-II IPC. The allegation against the accused is that the deceased was pushed down and the doctor, who conducted autopsy, gave opinion stating that the injured died on account of myocardial infarction. Therefore, at that stage, the investigating officer could not have come to a conclusion nor could the Assistant Public Prosecutor have given an opinion that myocardial infarction was not on account of pushing of the injured. The fact remains that the officer, though registered the complaint u/s 302 IPC., filed the final report only u/s 304 Part-II IPC. probably under the impression that the act of pushing the deceased was done with the knowledge that it is likely to cause death; but without any intention to cause death or cause such bodily injury as is likely to cause death. In fact, it is to be remembered that the trial Judge framed charges against the accused on the basis of the materials collected by the investigating officer and the post-mortem certificate. The post-mortem certificate containing the opinion of the post-mortem doctor and the statement of the doctor, are an integral part of the materials collected by the investigating officer, which the trial judge would have perused before framing charges, and if the trial

Judge was of the view that the doctor has opined that the death was on account of myocardial infarction, he could have restrained from framing charges and the trial Judge having chosen to frame the charges, was not justified in making such unwarranted remarks against the investigating officer and the Assistant Public Prosecutor. In fact, the trial Judge has exceeded his brief by making the above observations, which are not in good taste. If he had been of the view that no offence u/s 304 Part-II IPC. is made out, on account of the medical evidence, he could have either discharged the accused or could have sent the matter to any subordinate Court for trying the accused for any lesser offence. The trial Judge, having chosen to frame charges and having conducted the trial, ought not to have passed such scathing remarks against the investigating officer and the Assistant Public Prosecutor, who gave the opinion and in my view that the remarks made by the trial judge are not necessary for the decision of the case, as they are not integral part thereof to animadvert on that conduct.

5. One cardinal principle in the administration of justice is proper freedom and independence of Judges and Magistrates, which must be maintained and they must be allowed to perform their functions freely and fearlessly without any undue interference by anybody, even by this Court. At the same time, it is equally necessary that in expressing their opinions, Judges and Magistrates must be guided by considerations of justice, fair-play and restraint. It is not infrequent that sweeping generalisations defeat the very purpose for which, they are made. It has been judicially recognised that in the matter of making disparaging remarks against persons or authorities, whose conduct comes into consideration before courts of law in cases to be decided by them, it is relevant to consider (a) whether the party, whose conduct is in question, is before the court or has an opportunity of explaining or defending himself, (b) whether there is evidence on record bearing on that conduct justifying the remarks, and (c) whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct. It has also been recognised that judicial pronouncements must be judicial in nature and should not normally depart from sobriety, moderation and reserve. - vide STATE OF UTTAR PRADESH -v. MOHAMMAD NAIM 1964 (1) CRI.L.J. 549.

6. When we apply the above principles to the present case, the remarks made by the learned Sessions Judge are not material to decide the matter and they have to be expunged.

7. In view of the above discussion, the observations of the trial Judge in paragraphs-20, 21 and 22 are expunged. The petition is partly allowed.