

(2000) 04 MAD CK 0024

In the Madras High Court

Case No : W.A. No's. 733 and 734 of 2000 and C.M.P. No's. 7082 to 7084 of 2000

V. Krishnan and etc.

APPELLANT

Vs

Inspector of Police and Others

RESPONDENT

Date of Decision : 20-04-2000

Acts Referred:

Constitution of India, 1950 — Article 226, 226(2), 227
Criminal Procedure Code, 1973 (CrPC) — Section 482, 80, 81
Penal Code, 1860 (IPC) — Section 420, 467, 468, 471, 506(2)

Citation : (2000) CriLJ 3684

Hon'ble Judges : K.G. Balakrishnan, C.J;K. Govindarajan, J

Bench : Division Bench

Advocate : R. Karuppan, for the Appellant;

Final Decision : Dismissed

Judgement

K.G. Balakrishnan, C.J.—These two writ appeals are directed against the common order dated 27-3-2000 passed by the learned single

Judge in W.P. Nos. 5245 and 5246 of 2000.

2. These appellants are husband and wife and they are arrayed as accused in C.C. No. 839 of 1999 on the file of Chief Judicial Magistrate,

District Gothambooth Nagar, Noida, Uttar Pradesh. That criminal case originated pursuant to a complaint filed by one Dr. Purushothamlal and he

alleged that these appellants have committed offences punishable under Sections 420, 467, 468, 471, 506(2) of I.P.C. It appears that the Chief

Judicial Magistrate, Noida, U.P. has taken cognizance and issued non-bailable warrant against these appellants. When these warrants issued

against these appellants were about to be executed, the appellants filed criminal application before this Court and a learned single Judge of this

Court was pleased to grant interim bail till 3-4-2000 and directed the appellants to appear before the Chief Judicial Magistrate at Noida on or

before 3-4-2000 for further orders. These appellants had also moved for habeas corpus petition and the same was dismissed by a Division Bench

of this Court.

3. In the present writ petitions the appellants have prayed for a writ of certiorari or any other order or direction in the nature of a writ, calling for

the records connected with C.C. No. 839 of 1999 on the file of the Chief Judicial Magistrate, District Goothambooth Nagar, Noida, U.P. and

quash the same. In the writ petition it is alleged that the de facto complainant Dr. Purushotham Lal had financial transactions with the company

wherein the appellant-Maheswari Krishnan was the Managing Director and it is alleged in para 4 of the affidavit as follows :-

One Dr. Purushotham Lal had financial transaction with the company. It appears that Canara Bank, Villivakkam Branch granted loan of Rs. 50

lakhs to Maha krishna Financial Services Limited for its operation (appellant-Maheswari Krishnan is the Managing Director). This loan was

granted by Canara Bank on the collateral of NRI deposits standing in the name of Purushotham Lal. The company entered into an agreement with

the said Purushotham Lal agreeing to pay 36% interest on the loan which will include the amount payable by way of interest to the Canara Bank.

This loan was granted to the Company by Canara Bank, Villivakkam Branch in the year 1996. The said Purushotham Lal had been repaid by

Demand Draft in a sum of Rs. 28 lakhs which are all borne out by bank records.

4. It is further alleged that the de facto complainant had misused his authority and the appellants came to know that the de facto complainant filed a

criminal complaint against them for the alleged offences under Sections 420, 467, 468, 471, 506(2) of I.P.C. and according to the appellants, the

criminal case initiated by Dr. Purushotham Lal before Chief Judicial Magistrate, Noida is without any authority and it is an abuse of process of the

Court.

5. The learned single Judge held that this Court has no jurisdiction to consider the writ petitions and that no grounds have been made out to

interfere with C.C. No. 839 of 1999 and the proper remedy of the appellants is to move the higher forum in U.P. This order is now challenged

before us.

6. We heard the counsel for the appellants.

7. Counsel for the appellants contended that the petition is filed under Article 226 of the Constitution and in view of the amended provisions of

Article 226 if part of the cause of action has arisen within the jurisdiction of this Court, a writ petition under Article 226 of the Constitution is

maintainable and that the proceedings pending before the Chief Judicial Magistrate at Noida could be set aside. The counsel for the appellants

contended that in the criminal case, a warrant was issued against these appellants and the procedure contemplated under Criminal Procedure Code

has not been followed in issuing the warrant. There is violation of Sections 80 and 81 of Cr. P.C. and the warrant issued by the authorities has no

seal of the Court and for all these reasons, these illegalities could be challenged before this Court and consequently, the proceedings in respect of

C.C. No. 839/99 pending on the file of Chief Judicial Magistrate, Noida, U.P. also could be quashed by this Court, exercising the power under

Article 226 of the Constitution.

8. It is true that under Article 226(2) of the Constitution, power under Article 226 could be exercised and direction orders could be issued against

any authority or person beyond the jurisdiction in relation to the territories within which the High Court exercise the power provided the cause of

action wholly or in part arises for the exercise of such power. But in the instant case the relief sought for by the appellants is to quash the

proceedings in C.C. No. 839 of 1999 pending before the Chief Judicial Magistrate, Noida, U.P. The appellants challenged the proceedings on

various grounds and even contend that Dr. Purushotham Lal had no authority to file the complaint. The appellants prayed that the power either

under Article 227 or u/s 482 of Cr. P.C. has to be exercised and reliance was placed on a decision reported in Pepsi Foods Ltd. and Another Vs.

Special Judicial Magistrate and Others, . That was a case where a criminal case pending before Ghazipur Court was sought to be quashed by filing

the writ petition under Article 226 of the Constitution before the Allahabad High Court. The High Court declined to exercise the power under

Article 226 and the Hon"ble Supreme Court held as follows (para 26) :-

Nomenclature under which petition is filed is not quite relevant and that does not

debar the Court from exercising its jurisdiction which otherwise it possesses unless there is special procedure prescribed which procedure is mandatory. If in a case like the present one, the Court finds that the appellants could not invoke its jurisdiction under Article 226, the Court can certainly treat the petition one under Article 227 or Section 482 of the Code. It may not, however, be lost sight of that provisions exist in the Code of revision or appeal but some time for immediate relief Section 482 of the Code or Article 227 may have to be resorted to for correcting some grave errors that might be committed by the subordinate Courts. The present petition though filed in the High Court as one under Articles 226 and 227 could well be treated under Article 227 of the Constitution.

9. The Chief Judicial Magistrate, Noida, U.P. is not within the supervisory or administrative control of this Court. If the powers u/s 482 of Cr. P.C. are to be exercised, this Court should have had the administrative supervisory control over that Court. So also the power under Article 227 is to be exercised when the Tribunals or the Courts must be within the territories in relation to which it exercises the jurisdiction. Article 227 reads as follows :-

Power of superintendence over all Courts by the High Court: - Every High Court shall have superintendence over all Courts and Tribunals throughout the territories in relation to which it exercises jurisdiction.

10. As the Chief Judicial Magistrate, Noida, U.P. is not within the territories in relation to which it exercises the jurisdiction, power under Article 227 also cannot be exercised.

11. Counsel for the appellants also placed reliance on a decision reported in Punjab Sugar Mills Co. Ltd. Vs. State of U.P. and Others, for the proposition that the award passed by the Industrial Tribunal could be set aside even though the Tribunal is not within the territorial jurisdiction of the High Court. It is true that if the award had been passed without jurisdiction and such award is sought to be enforced against a person and in that manner cause of action arisen within the jurisdiction of the High Court, certainly powers under Article 226 could be exercised.

12. Reliance was also placed on a decision reported in A. Thangal Kunju Musaliar Vs. M. Venkitachalam Potti and Another, . That decision was based on the provisions of the Travancore Act XIV of 1124 and we do not think

that by the said observations the High Court can exercise the power under Article 226 beyond the territorial jurisdiction of the High Court.

13. We do not propose to express anything on merits relating to the contentions advanced by the counsel for the appellants in respect of C.C. No.

839 of 1999. Counsel for the appellants further submitted that the period stipulated by the learned single Judge to appear before the Chief Judicial

Magistrate, Noida, U.P. has expired and advocates strike is going on in the Court at Noida in U.P. and, therefore, the appellants are not in a

position to enter appearance before the said Court and time is to be extended for such appearance. The appellants would be at liberty to move

before the learned single Judge for seeking time for the said appearance. Without prejudice to such right of the appellants, both the writ appeals

are disposed of. Consequently, C.M.P. Nos. 7082 to 7084 of 2000 are closed.