(2013) 09 MAD CK 0271

Madras High Court

Case No: Criminal R.C. No. 442 of 2013 and M.P. No. 1 of 2013

P.G. Sundararaj and Others		APPELLANT
	Vs	
V. Arul		RESPONDENT

Date of Decision: Sept. 17, 2013

Citation: (2014) 1 LW(Cri) 272 : (2013) 4 MLJ(Cri) 632

Hon'ble Judges: K.B.K. Vasuki, J

Bench: Single Bench

Advocate: N. Manokaran, for the Appellant; E.C. Ramesh, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

K.B.K. Vasuki, J.

The petitioners herein are A1 to A5 in S.C. No. 198 of 2012 taken cognizance on the basis of the complaint given by the first respondent Arun, for the offences under Sections 147, 148, 426, 447, 395 and 506(H) IPC. At the time of framing of charges, the accused filed an application u/s 227 of Cr.P.C., for discharging the accused from the charges. The complaint proceeds as if the petitioners/accused 1 to 5 along with 30 other persons came in two tractors at about 3 p.m. on 2.2.2011 with deadly weapons and demolished the compound wall of the complainant and removed the debris and when the same was questioned by the complainant, the complainant was threatened with dire consequences, which compelled him to lodge a complaint before Andhiyur Police Station and on their failure to take any action, the complainant approached the concerned Judicial Magistrate by way of private complaint, which culminated as S.C. No. 198 of 2012.

2. The criminal proceedings is opposed by the accused 1 to 5 mainly on the ground by denying the complainant''s claim for title and ownership and for possession of the property in question. According to them, the property in question belongs to them and the same is lying vacant and there is already a civil suit in O.S. No. 73 of 2011 filed by the complainant''s mother for the relief of permanent injunction and mandatory injunction on

the file of Additional District Munsif, Bhavani, in respect of the same cause of action and though the Civil Suit is filed along with Interlocutory Applications for interim reliefs, no interim relief was granted in favour of the plaintiff and pending Civil Suit for determination of the title dispute in respect of the property between the parties, the question of subjecting the petitioners for any ordeal of trial for the offences above mentioned does not arise herein.

3. The trial Court, after due contest, dismissed the discharge petition by saying that the averments raised in the complaint and the sworn statement of the witnesses do make out prima facie case. Aggrieved against the same, the accused have preferred the present Criminal Revision before this Court.

4. Heard the rival submissions made on both sides.

5. The reading of the impugned order of the trial Court would reveal that the trial Court has simply reproduced the pleadings raised in the Civil Suit and the averments raised in the complaint and the sworn statement of the witnesses and arrived at a conclusion that until and otherwise it is established that the compound wall is situated within the boundary of the accused, it is to be presumed that the accused damaged the property as per the complaint and as per the sworn statement of the witnesses. The trial Court has further, at the end of paragraph 10, found that the accused 1 to 5 committed the act of mischief by way of damaging the compound wall and caused loss to the property, value of which is more than Rs. 100/- and there is sufficient ground to proceed against the accused and no ground is made out to discharge the accused at this stage

6. In my considered view, such a finding arrived at by the trial Court merely on the basis of the pleadings raised in the civil suit and the averments raised in the complaint and the sworn statement of the witnesses is legally not sustainable. As rightly argued by the learned counsel for the petitioners by relying upon the judgment of the Hon''ble Supreme Court in Central Bureau of Investigation, Hyderabad Vs. K. Narayana Rao, the scope of Sections 227 and 228 of the Code is now enlarged by the principle laid down by the Hon''ble Supreme Court. In the same judgment, the Hon''ble Supreme Court has, referred to the earlier judgments of the Hon''ble Supreme Court in P. Vijayan Vs. State of Kerala and Another, ; State of Bihar Vs. Ramesh Singh, , Sajjan Kumar Vs. Central Bureau of Investigation, and agreed with the view of the earlier judgments of the Supreme Court. The Supreme Court has in paragraph 21 of ''Sajjan Kumar v. CBI (supra) laid down the following principle:--

(i) The judge while considering the question of framing the charges u/s 227 Cr.P.C. has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained, the Court will be fully justified in framing a charge and proceeding with the trial.

(iii) The Court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basis infirmities, However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the Court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into, but before framing a charge the Court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the Court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence.

For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.

7. The Hon"ble Supreme Court has in the latest judgment reported in Central Bureau of Investigation, Hyderabad v. K. Narayana Rao (supra) applying the same principle observed that

15..... A Judicial Magistrate enquiring into a case u/s 209 of the Code is not to act as a mere post office and has to arrive at a conclusion whether the case before him is fit for commitment of the accused to the Court of session. He is entitled to sift and weigh the materials on record, but only for seeing whether there is sufficient evidence for commitment, and not whether there is sufficient evidence for conviction. On the other hand, if the Magistrate finds that there is no prima facie evidence or the evidence placed is totally unworthy of credit, it is his duty to discharge the accused at once. It is also

settled law that while exercising jurisdiction u/s 227 of the Code, the Magistrate should not make a roving enquiry into the pros and cons of the matter and weight the evidence as if he was conducting a trial. This provision was introduced in the Code to avoid wastage of public time and to save the accused from unavoidable harassment and expenditure. While analysing the role of the respondent herein (A-6) from the charge-sheet and the materials supplied along with it, the above principles have to be kept in mind.

8. It is contended by the learned counsel for the petitioners that in the present case, the pleadings and the controversy in issue in the Civil Suit, which is earlier in point of time would disclose the civil nature of the dispute between the parties regarding the claim for ownership in respect of the same property and unless and otherwise the ownership of one party is decided, the question of deciding the act of trespass and the act of causing mischief and loss to the property in question by other party and the question of fastening criminal liability on the other party for committing such acts in the criminal proceedings does not arise herein and the civil dispute can only be decided by the Civil Court and unless and otherwise finality is reached in the Civil Suit, no presumption can be raised against the accused. This Court finds greater force in the argument so advanced on the side of the accused. It cannot be disputed that the right of the parties is to be duly established before the Civil Court of law and this Court is not the forum, where the issue regarding the title can be gone into. Further contra the observation of the trial Court, the presumption is in favour of the innocence of the accused until the contrary is proved. But the trial Court has proceeded on the erroneous basis as if until the ownership is proved by the accused, the accused shall be presumed to have committed the act of mischief.

9. Further, the trial Court has rendered the categorical finding on the basis of the sworn statement of the witnesses as if the accused have committed the act of mischief. It is nowhere stated that the complainant has made out the prima facie case against the accused. In my considered view, the dispute is of mere civil in nature and shall be decided by the Civil Court and until finality is reached in the Civil Suit, the respondent cannot maintain any complaint against the accused for the acts alleged against them and there cannot be two parallel proceedings in respect of the same cause of action. Though there are instances where it gives rise to both civil and criminal liability, the present case is mere civil in nature and no criminal flavor can be attached to it as such there is no sufficient ground is made out for proceeding against the accused and in the event of the criminal trial being allowed to go on, it amounts to wastage of public time and accused also are prejudiced by harassment of trial and unnecessary expenditure. Thus, on the basis of the available materials, this Court is hence inclined to discharge the accused from the charges levelled against them. In the result, the Criminal Revision is allowed by setting aside the order of the trial Court and the accused are discharged from the charges levelled against them. Consequently, connected Miscellaneous Petition is closed.