(2009) 08 MAD CK 0314

Madras High Court

Case No: Criminal O.P. No. 7699 of 2009 and M.P. No''s. 1 and 4 of 2009

E.K. Palanisamy		APPELLANT
	Vs	
The Deputy Superintendent of Police, Erode Town Sub-Division		RESPONDENT

Date of Decision: Aug. 18, 2009

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 195, 2, 465, 482
- Penal Code, 1860 (IPC) - Section 109, 172, 173, 174, 175

Citation: (2010) CriLJ 1802

Hon'ble Judges: R. Regupathi, J

Bench: Single Bench

Advocate: A. Ramesh for V. Vijayakmar, for the Appellant; Paul Nobel Devakumar, Government Advocate and R. Sivaprakasam, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

R. Regupathi, J.
The petitioner herein, who is A1 amongst three accused in C.C. No. 591 of 2007 taken on file by Judicial Magistrate No. II, Erode, with reference to the charge sheet filed by the respondent police in Cr. No. 1376 of 1998 for offences under Sections 188, 420 IPC. & 466, 467, 468 and 420 read with 109 IPC., seeks to quash the said proceedings.

2. The defacto complainant is the owner of the land measuring 35000 sq. ft. in Ward-A, Block-15, T.S. No. 1, 2 and 3 in Erode Town and the case of the prosecution is that the petitioner herein/A1, with a view to clandestinely usurp the said property, created forged documents and fake revenue records and, in collusion and conspiracy with A2/Tahsildar and A3/Sub Inspector of Survey, procured patta in his favour and sold the land to third parties. After conclusion of the investigation, final

report has been filed, culminating in the aforesaid proceedings before the trial court.

3. Learned senior counsel for the petitioner points out that the 2nd and 3rd accused are admittedly public servants and in such circumstance, when there is an allegation against the petitioner for having committed an offence u/s 182 IPC. i.e., he furnished false information with the intent to cause the public servants to use their lawful power to the injury of another person, the procedure contemplated u/s 195 Cr.P.C. should have been strictly adhered to, for, by operation of the said provision in the procedural law, no court shall take cognizance of any offence punishable under Sections 172 - 188 of IPC or of any abetment of, attempt to commit such offence or of any criminal conspiracy to commit such offence except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate. According to the learned senior counsel, in the light of the allegation that the petitioner influenced A-2 and A-3/public servants to grant patta in his favour and in turn, both of them used their lawful power to issue the patta and of the fact that the complaint not having been lodged by the competent authority but by a third party/defacto complainant, who claims himself as the owner of the property, the charge sheet filed based on the investigation done with reference to the offence u/s 182 IPC. cannot be looked into by the court for taking cognizance. Referring to the definitions given for police report and complaint in Section 2(r) and 2(d) respectively of the Code, he argues that, in order to proceed with the investigation of a case pertaining to an offence u/s 182 I.P.C., the complaint should have been directly given before the learned Magistrate by the public servant concerned himself or by a superior officer and since, in the present case, there is deviation in complying with the specific procedure prescribed, Section 182 IPC. as found in the charge sheet must be deleted. In support of his submission, learned senior counsel relied on the case law in Daulat Ram Vs. State of Punjab, , wherein the Apex Court ruled as follows:

5. Now the offence u/s 182 of the Penal Code, if any, was undoubtedly complete when the appellant had moved the Tehsildar for action. Section 182 does not require that action must always be taken if the person who moves the public servant knows or believes that action would be taken. In making his report to the Tehsildar therefore, if the appellant believed that some action would be taken (and he had no reason to doubt that it would not) the offence under that section was complete. It was therefore incumbent, if the prosecution was to be launched, that the complaint in writing should be made by the Tehsildar as the public servant concerned in this case.... What the section contemplates is that the complaint must be in writing by the public servant concerned and there is no such compliance in the present case. The cognizance of the case was therefore wrongly assumed by the court without the complaint in writing of the public servant namely the Tehsildar in this case. The trial was thus without jurisdiction ab initio and the conviction cannot be maintained.

3-A. By referring to the ruling reported in 1994 SCC (Cri) 831 State of UP v. Mata Bhikh, learned Senior Counsel states that a successor in office of a public servant concerned will also fall within the ambit of the expression ''public servant concerned'' and any other view contrary to it will only create difficulties in certain situations and the successor in office of the public servant gets in the same position of the public servant concerned and he is in law eligible to file a complaint against wrongdoers and in other words, the successor in office falls within the ambit of the expression ''public servant concerned''. According to him, there was no compliance of the mandatory procedure involved by presenting the complaint through the public servant concerned, hence, no sanctity can be attached to the outcome of the investigation ie., police report.

3-B. Reliance is also placed on a Judgment of this Court reported in Ramalingam Vs. State, wherein, adverting to the observations made in the decision of the Apex Court in Daulat Ram case (cited supra), the proceedings before the trial court came to be quashed by holding thus:

10. Therefore, in terms of Section 195 Cr.P.C. it is that Public servant or his superior officer who should give a complaint before the Court to take cognizance. Therefore, a police officer of a different police station before whom the PCR Inspector has given a report, filing a charge sheet is illegal and consequently, the entire proceedings are illegal and the conviction and sentence has to be necessarily set aside.

3-C. Learned Senior Counsel ultimately submits that since the petitioner did not deceive the complainant and the allegation being false representation before the authorities for procuring a patta in his favour, an offence u/s 420 IPC is not made out. In other words, it is not the case of the prosecution that the petitioner intentionally induced the complainant to deliver him the property or caused any wrongful loss to him. In the above circumstances, this is a fit case to quash the proceedings since no offence is made out insofar as the petitioner/A1 is concerned.

4. Per contra, with regard to the argument advanced by the learned Counsel for the petitioner to the effect that the petitioner is not liable to be prosecuted for all the offences shown in the Final report, learned Counsel for the intervener/defacto complainant submits that it must be construed that the petitioner along with A-2 and A-3 committed the offences under Sections 466, 467, 468 and 420 read with 109 IPC apart from committing the offences under Sections 182 and 420 IPC in his individual capacity. According to him, but for the abetment by the first accused, A-2 and A-3 would not not have committed such other offences. Merely because the case has been investigated for an offence u/s 182 IPC amongst other IPC offences, it cannot be claimed that the Investigating Agency do not have any power to conduct the investigation in a wholesome manner. At best, having regard to the fact that the procedure prescribed in Section 195 Cr.P.C. has not been adhered to, the penal provision u/s 182 IPC. finding place in the charge sheet may be segregated or

deleted and the entire proceedings before the trial court cannot be quashed since final report has been filed for other offences involved and wealth of materials are available to substantiate the allegations. It must be taken note of that the discharge petitions filed by the co-accused are pending and in the meantime, a direction has been issued by this Court to conclude the trial within three months. The land in question is the ancestral property of the defacto complainant, who has got contemporaneous materials to substantiate his ownership through inheritance. That being so, only on the request and inducement of the petitioner, the co-accused/public servants issued the patta and subsequently, by creating documents, the land was sold to third parties; thus, the petitioner is the person who instigated the co-accused for the issuance of patta in his favour and all of them joined together to fraudulently deal with the property and committed the offences as aforementioned. It is pointed out that since Section 109 IPC. is also attracted, it cannot be loosely said that the petitioner is alleged to have committed only the offences under Sections 182 and 420 IPC and not the other ones. In support of his submission, learned Counsel referred to the ruling reported in 2002 SCC (cri) 539 State of Karnataka v. M. Devendrappa wherein it has been observed as follows:

8. ...It is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction u/s 482 of the code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. ...

9. ...The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to asses the material before it and conclude that

the complaint cannot be proceeded with....

Learned Counsel drew attention of this Court to a decision reported in 2002 (3) CTC 785 Mathew K.M. v. K.A. Abraham wherein, with reference to exercise of inherent powers u/s 482 Cr.P.C., the Supreme Court held thus:

21. ...The inherent power of the court u/s 482, Cr.P.C. should be very sparingly and cautiously used and only when the court comes to the conclusion that there would be manifest injustice or there would be abuse of the process of the court, if such power is not exercised. "So far as the order of cognizance by a Magistrate is concerned, the inherent power can be exercised when the allegations in the first information report or the complaint together with the other materials collected during investigation taken at their face value, do not constitute the offence alleged. At that stage, it is not open either to sift the evidence or appreciate the evidence and come to the conclusion that no prima facie case is made out." See State of Bihar Vs. Rajendra Agrawalla, .

Unless grave illegality is committed, the superior courts should not interfere. They should allow the court which is seized of the matter to go on with it. There is always an appellate court to correct the errors. One should keep in mind the principle behind Section 465 Cr.P.C. Any or every irregularity or infraction of a procedural provision cannot constitute a ground for interference by a superior court unless such irregularity or infraction has caused irreparable prejudice to the party and requires to be corrected at that stage itself. Frequent interference by superior courts at the interlocutory stage tends to defeat the ends of justice instead of serving those ends. It should not be that a man with enough means is able to keep the law at bay. That would mean the failure of the very system. (See Santhosh De and Anr. v. Archna Gupta and Ors. 1994 (2) SCC 42.

Learned Counsel submits that a prima case is made out to proceed against the petitioner, therefore, the proceedings before the trial court may be allowed to continue.

5. I have given my thoughtful consideration to the rival submissions made on either side and carefully perused the materials available on record.

6. Insofar as the contention put forth by the learned senior counsel that investigation into an offence u/s 182 IPC can be done only on the complaint given by a competent public servant; taking note of the fact that the procedure contemplated is not complied with in line with Section 195 Cr.P.C. as well as the settled legal position evolved through the decisions of the Apex Court, I am of the considered view that the cognizance assumed by the learned Magistrate for the offence u/s 182 IPC is erroneous and not sustainable in law.

7. As regards other offences reflected in the charge sheet, it must be pointed out that the respondent police have got every right to investigate into the case and file

final report. Though it is contended that, except for the alleged offence u/s 420 IPC., there is no material available to constitute the other offences against the petitioner, I am unable to appreciate such contention, for, the allegation u/s 420 IPC cannot be considered in isolation to the exclusion of other offences alleged against the petitioner including Section 109 IPC. Though the learned senior counsel, in his vigorous endeavor to make out a point, submitted that the petitioner continues to be in possession of the land and such possession has been upheld by civil court, it must be made clear that this Court cannot act upon such submission and quash the proceedings in its entirety when prima facie case is made out in respect of the offences mentioned in the charge sheet barring Section 182 IPC and the calendar case is pending adjudication before the learned Magistrate along with the discharge petitions filed by the co-accused.

8. Therefore, by holding that the cognizance taken by the learned Magistrate for an offence u/s 182 IPC. is erroneous for the reason that investigation into such aspect was not done in consonance with the procedure contemplated u/s 195 Cr.P.C. and, by ordering deletion of Section 182 IPC., the trial court is directed to proceed with the case and conclude the proceedings as expeditiously as possible.

9. Criminal Original Petition is dismissed with the above direction. Connected Miscellaneous Petitions are closed.