

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 16-10-2015

CORAM:

THE HONOURABLE MR. JUSTICE A. SELVAM

Criminal Revision Case No.2 of 2009
and M.P.No.1 of 2009

M. Sivamani (M/57 years)

..Petitioner/Accused-5

Vs.

State by

The Inspector of Police

SPE:CBI:ACB:CHENNAI

Chennai - 6

FIR No.RC MA1 2006 A-0042 dt.02-08-2006

..Respondent/Complainant

Criminal Revision Case filed under Section 397 and 401, Cr.P.C., against the order made in Crl.M.P.No.1333 of 2008 in C.C.No.15 of 2007 on the file of the Additional Special Judge for CBI cases, Chennai dt 25/11/2008 examine the correctness, legality or propriety of the findings made in the impugned order, set aside the same and discharge the petitioner from the case and pass orders

For petitioner : Mr. I. Subramaniam, SC
for Ms.M. Shakkira Banu

For respondent : Mr. K. Srinivasan,
Spl. PP to CBI cases

ORDER

This criminal revision case has been directed against the order dated 25-11-2008 passed in Crl.M.P.No.1333 of 2008 in C.C.No.15 of 2007 by the Additional Special Judge for CBI cases, Chennai.

2. The case of the prosecution is that a false complaint with regard to road traffic accident has been lodged in Neyveli Township Police Station. The deceased has himself fallen down from his Scooter which resulted in his death. But in the complaint it has been falsely stated that the deceased (scooterist) has been hit by an auto rickshaw bearing registration No.TN 31-Y-2806. The driver of auto rickshaw has pleaded guilty in respect of the charges framed under Section

304(a) and 279, IPC before the concerned criminal court and thereby, suffered punishment. The dependants of the deceased have filed a false claim Motor Accidents Claims Tribunal, Cuddalore in M.C.O.P.No.282 of 2003. In the said petition, witnesses have been examined and an award has been passed and subsequently, the same has been set aside by way of holding that claim is false. The further case of the prosecution is that the accused are parties to the aforesaid fraudulent acts.

3. The present petition has been filed under Section 195(1)(a) and (1)(b), Cr.P.C., praying to set aside the cognizance already taken in Calendar Case No.15 of 2007.

4. It is averred in the petition that the petitioner has been arrayed as A5 in C.C.No.15 of 2007, wherein all the accused have been charged under Sections 120-B read with 182, 420, 468 read with 471 and 511, IPC and also under Sections 13(2) and 13(1)(d) of Prevention of Corruption Act, 1988. Further it is averred in the petition that before taking cognizance, mandatory provisions of Section 195(1)(a) and (b) of the Code of Criminal Procedure, 1973 has not been followed. Under the said circumstances, the present petition has been filed for getting the relief sought therein.

5. The Court-below after considering the divergent contentions raised on either side has come to a conclusion to the effect that the present petitioner is also a party to the offence punishable under Section 120-B along with other offences mentioned in the final report and ultimately, dismissed the petition stating that the High Court has directed the Central Bureau of Investigation('CBI' in short) to conduct investigation and accordingly, an investigation has been done and consequently, a final report has been filed.

6. The learned counsel appearing for the revision petitioner/petitioner has meticulously contended that the petitioner and others are facing charges under Section 120-B r/w 182, 420, 468 r/w 471 and 511, IPC and also under Sections 13(2) and 13(1)(d) of Prevention of Corruption Act, 1988. As per Section 195, Cr.P.C., a complaint in writing of the public servant or of some other public servant to whom he is administratively subordinate is very much essential. In the instant case, no complaint has been given and therefore, the concerned Court is not having power to take cognizance. Under the said circumstances, the present petition has been filed. But the Court-below has simply dismissed the same on the ground that the High Court has directed the CBI to conduct investigation and file final report. The reason given by the Court-below is totally erroneous in law and therefore, the order passed by the Court-below is liable to set aside.

7. The learned Special Public Prosecutor appearing for the respondent has contended that in the instant case, a false complaint has been given as if the deceased has passed away only due to the accident wherein the driver of auto rickshaw has pleaded guilty in respect of charges framed under Sections 304(a) and 279, IPC. Subsequently, a claim petition has been filed before the Motor Accidents Claims Tribunal wherein an executable award has been passed and only after coming to High Court, it is found that the entire case is false and thereafter, as per direction of the High Court, a detailed investigation has been conducted by the respondent and subsequently filed a final report and the same has been taken on file in C.C.No.15 of 2007 and further, apart from Section 182, IPC, other Sections of law are available in the final report and therefore, the Court-below is competent to take cognizance. Under the said circumstances, the dismissal order passed by the Court-below is perfectly correct and the same does not warrant interference.

8. Before pondering the rival submissions made on either side, the Court has to look into Section 195, Cr.P.C. and the same reads as follows:

"(1) No Court shall take cognizance-

(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or (ii) of any abetment of, or attempt to commit, such offence, or (iii) 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;

(b) (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or (ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or (iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii), except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate.

(2) Where a complaint has been made by a public

servant under clause (a) of sub- section (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint: Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.

(3) In clause (b) of sub- section (1), the term " Court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a Court for the purposes of this section.

(4) For the purposes of clause (b) of sub- section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the principal Court having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court is situate: Provided that-

(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;

(b) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed."

9. Section 195, Cr.P.C., can be vivisected as follows:

If any one of the offences committed under Sections 172 to 188 (both inclusive), IPC (45 of 1860), the Court shall not take cognizance of the same except on a complaint in writing of the public servant concerned or some other public servant to whom he is administratively subordinate as per Section 195 (1)(a) of the said Section. Further, if any one of the offence is committed under Sections 193 to 196 (both inclusive) 199,200,205 to 211 (both inclusive) and 228, IPC when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, for taking cognizance, complaint in writing of that Court or by such Officer of the Court as the Court may authorize in writing in this behalf or of some other Court to which that Court is subordinate is very much essential.

10. The vital difference between Section 195(1)(a) and 195(1)(b) is if any one of the offences committed under Sections 117 to 188, IPC, complaint in writing must be given by a public servant or some other public servant to whom he is administratively subordinate. Likewise, if any one of the offences mentioned under Sections 193 to 196, 199, 200, 205 to 211 and 228 is committed, a complaint in writing is very much essential from the concerned Court or by such Officer of the Court as the Court may authorize him in writing in this behalf or some other Court to which that Court is subordinate.

11. To put it in a nutshell, for taking cognizance of the offences mentioned in Section 195(1)(a)(i) and 195(1)(b)(i), a written complaint is very much essential from competent authority. Otherwise, no Court is entitled to take cognizance.

12. With these legal backdrops, the Court has to analyse the present case. For the sake of convenience, the Court has to once again narrate the case of the prosecution.

13. On the side of the prosecution, it is stated that a false complaint has been given as if one scooterist has been hit by an auto rickshaw bearing registration No.TN-31-Y-2806 and consequently, the scooterist passed away. The driver has pleaded guilty in respect of charges framed under Sections 304 (a) and 279, IPC and subsequently, a false claim petition has been filed in M.C.O.P.No.282 of 2003 wherein an executable award has been passed and only in the High Court, it is found that the entire claim as well as complaint are false and no accident has taken place and the deceased himself has fallen down from a scooter, driven by him. In the final report, it is mentioned that the present petitoin and the other accused have committed offences under Sections 120-B r/w 182, 420, 468 read with 471 and 511, IPC and also under Sections 13(2) and 13(1)(d) of Prevention of Corruption Act, 1988. As pointed out earlier, Section 195(1)(a)(i) deals with offences punishable under Sections 172 to 188, IPC. Section 182, IPC deals with false information with intent to cause public servant to use his lawful power, injury of another person. Therefore, it is quite clear that as per Section 195(1)(a) a complaint in writing of the public servant concerned or some other public servant to whom he is administratively subordinate must be given. Otherwise, the Court cannot take cognizance of the offences. In the instant case, as pointed out earlier, no complaint has been given, as contemplated under Section 195(1)(a)(i), Cr.P.C..

14. The learned counsel appearing for the revision petitioner has drawn the attention of the Court to the following decisions:

(i) In AIR 1966 SC 1775 (Durgacharan Naik Vs. State of Orissa) the Honourable Supreme Court has held that provisions of Section 195 cannot be evaded by changing the garb or label of an offence which is covered by the provisions of the said Section.

(ii) In 2000 (1) SCC 278 (Ahlawat Vs. State of Haryana) in paragraph No.10, it is observed as follows:

"It was made clear in Supreme Court Bar Association case (supra) that under Article 142 of the Constitution this Court cannot altogether ignore the substantive provisions of a statute and pass orders concerning an issue which can be settled only through a mechanism, prescribed in another statute. This Court notices that "a complaint of professional misconduct is required to be tried by the Disciplinary Committee of the Bar Council, like the trial of a criminal case by a court of law and an advocate may be punished on the basis of evidence led before the Disciplinary Committee of the Bar Council after being afforded an opportunity of hearing. The enquiry is a detailed and elaborate one and is not of a summary nature and it is, therefore, not permissible for this Court to punish an advocate for 'professional misconduct' in exercise of the appellate jurisdiction by converting itself as the statutory body exercising 'original jurisdiction' under Article 142 of the Constitution of India".

15. From a mere reading of the decisions rendered by the Honourable Supreme Court, it is pellucid that with regard to offences mentioned in Section 195, a complaint in writing is mandatory. But, as stated earlier, no complaint in writing has been given.

16. The defence taken on the side of the respondent is that apart from Section 182, I.P.C., other Sections of law are available and therefore, the Court is entitled to take cognizance of the offences mentioned in the final report. Since Section 182, IPC is found in the final report, a complaint in writing from the competent authority is very much essential and no deviation can be taken. Further, in Section 195(1)(a)(iii), it is mentioned that if there is any criminal conspiracy to commit such offence, complaint in writing by the competent authority is necessary. In the instant case, in the final report, it has been clearly stated that all accused have contrived themselves and agreed to perform the said act. Further, since the accused have been facing a charge under Section 120-B, IPC, the Court can very well come to a conclusion that each accused is having vicarious liability. Under the said circumstances, the defence taken on the side of

the respondent is sans merit. It has already been pointed out that in respect of the offences mentioned in Section 195 (1)(a)(i), a complaint in writing is very much essential. Further, as stated supra, in the instant case, Section 120-B is also available. Under the said circumstances also, a written complaint is very much essential as per the provisions of Section 195(1)(a)(i) and (iii) of Cr.P.C.. The Court-below has given a finding to the effect that the High Court has directed the CBI to conduct investigation and file a final report and the same has been done. It is pertinent to note that the order passed by the High Court is not at all sufficient to flout/bypass the mandatory provision of Section 195, Cr.P.C. Under such circumstances, the contentions put forth on the side of the respondent are not having any substance. It has already been discussed in detail that the reasons given by the Court-below for dismissing the present petition are totally against the existing law and the same can be eschewed.

In fine, the criminal revision case is allowed and the order passed by the Court-below is set aside and the petition filed in CrI.M.P.No.1333 of 2008 in C.C.No.15 of 2007 is allowed, thereby quashed the proceeding of C.C.No.15 of 2007, in respect of the petitioner is concerned.

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

To

- 1.The Additional District Judge/Special Judge for CBIcases,Chennai
 - 2.The Inspector of Police
SPE/CBI/EOW/Chennai
 3. The Public Prosecutor,
High court madras.
- +1 cc to Mr.K.Srinivasan,Advocate(sr.57312)
+2 copies of cc to Mr.R.Sreedhar,Advocate(sr.57428)

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ug(co)
cp 29/10/2015