

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15-07-2015

Coram

THE HON'BLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No. 269 of 2009

K.P.S.Jayachandran, M/aged 43
Inspector of Police
Erode North Police Station (previously)
at present A.K.Palace
Kadampuliyur
Cuddalore District.

... Petitioner

Versus

1. G.Kaliyamurthy M/aged 50 years
Inspector of Police
District Special Branch, Erode District.
2. Arthanareeswaran
M/aged 48 years
Village Administrative Officer
Erode Town, Erode.
3. Balasubramaniam, M/aged 48 years
Head Constable - 1549
Erode North Police Station
at present Karungalpalayam Police Station
Erode.

4. A.Nagaraj

... Respondents

Criminal Revision Case is filed under Sections 397 and 401 of Cr.P.C. against the order dated 11.08.2008 passed in C.M.P.No.869 of 2006 on the file of the learned Chief Judicial Magistrate, Erode District and to direct the Chief Judicial Magistrate, Erode District, to take the private complaint of the petitioner on the file of the Court and dispose of the same according to the provisions of law.

For Petitioner : No Appearance

For Respondents : Mr.V.Ayyadurai for R.1

No Appearance for R.2 to R.4

ORDER

This Criminal Revision Case is filed by the complainant against the order passed by the learned Chief Judicial Magistrate, Erode District, in C.M.P.No.869 of 2006, dated 11.08.2008, whereby, the private complaint filed by the complainant under Section 200 Cr.P.C., was dismissed.

2. According to the petitioner/complainant, he was an Investigation Officer in Cr.No.167 of 2003 registered under Section 174 Cr.P.C.(suspicious death). On investigation, he altered the Section 174 Cr.P.C. into Sections 302 and 201 IPC. Further, while investigating the said case, he suspected the involvement of three persons, viz., Balachandran, Mani and Saravanan, in the murder case based on the circumstantial evidence. Subsequently, the complainant was transferred on 18.06.2004 from Erode District to Nilgiris District. On 21.07.2004, accused No.1, who joined as the successor of the complainant, took up further investigation in Erode North Police Station Cr.No. 167 of 2003. While so, it is alleged that one Rani @ Punithavalli had surrendered in connection with the said murder case and gave an extra-judicial confession. Based on which, a proposal was recorded by the Superintendent of Police in the Monthly Crime Meeting proceedings dated 08.01.2005 to initiate a grave charge memo against the petitioner/complainant. Thereafter, the petitioner himself was added as an accused in the said case in Cr.No.167 of 2003. Later on, the complainant has filed a Criminal Original Petition before this Court seeking to quash the complaint and the said petition was allowed. Now, the petitioner/complainant has filed a private complaint under Section 200 Cr.P.C., as against accused Nos.1 to 4 viz., the first respondent/Inspector of Police, who is the Investigation Officer in Cr.No.167 of 2003, second respondent/Village Administrative Officer, third respondent/Head Constable and fourth respondent/Independent Witness respectively, for the alleged offences under Sections 193, 194, 196, 201, 204, 211, 465, 469, 471 r/w. 120 (B) and 34 IPC. In the private complaint, it was averred that a false complaint has been unnecessarily lodged against the petitioner/complainant, which resulted in affecting his legal right. In the private complaint, the complainant has alleged that accused Nos.1 and 2 created false evidence with a help of a person having criminal antecedents, to gain some personal benefit and with an intention to procure conviction in a capital offence, used the evidence known to be false. Further, with an intention to cause injury or to institute criminal proceedings or to harm the reputation of others, committed forgery by making false documents. According to the complainant, the said private complaint has been dismissed by the Lower Court without any basis, therefore, he would contend that the order passed by the Lower Court dismissing the private complaint is per se illegal.

3. Continuously, on three previous occasions, learned counsel for the petitioner is absent. On 08.07.2015, again, there was no representation for the petitioner. Hence, the matter was directed to be posted under the caption, "for dismissal" next week. Even today, when the matter is taken up, there is no representation for the petitioner. In the judgment of the Hon'ble Apex Court reported in (2013)3 Supreme Court Cases 721, K.S.Panduranga vs. State of Karnataka, it has culled out certain principles and in paragraph No.19 has held as follows:-

"19. From the aforesaid decision in Bani Singh vs. State of Uttar Pradesh, reported in (1996) 4 SCC 720, the principles that can be culled out are:

19.1. That the High Court cannot dismiss an appeal for non-prosecution simpliciter without examining the merits;

19.2. That the Court is not bound to adjourn the matter if both the appellant or his counsel/lawyer are absent;

19.3. That the court may, as a matter of prudence or indulgence, adjourn the matter but it is not bound to do so;

19.4. That it can dispose of the appeal after perusing the record and judgment of the trial court;

19.5. That if the accused is in jail and cannot, on his own, come to court, it would be advisable to adjourn the case and fix another date to facilitate the appearance of the appellant-accused if his lawyer is not present, and if the lawyer is absent and the court deems it appropriate to appoint a lawyer at the State expense to assist it, nothing in law would preclude the court from doing so; and

19.6. That if the case is decided on merits in the absence of the appellant, the higher court can remedy the situation."

4. In the light of the principles culled out in the judgment of the Hon'ble Apex Court cited supra, it is crystal clear that the Court can decide the matter even in the absence of the petitioner or his counsel, but, only criteria is that the case should be decided on merits in the absence of the petitioner and the Court cannot dismiss an appeal for non-prosecution simpliciter without examining the case on merits. In the light of the decision cited supra, the main Criminal Revision Case itself is taken up and disposed of on merits, after hearing the learned counsel appearing for the first respondent and perusing the materials available on record.

5. The main ground raised in the grounds of revision is that the Lower Court is wrong in its conclusion that as the accused in Cr.No. 167 of 2003 of North Erode Police Station has not given any complaint against the respondents, the petitioner cannot maintain the private complaint.

6. Mr.V.Ayyadurai, learned counsel appearing for the first respondent would submit that the Lower Court has rightly dismissed the private complaint by passing a detailed order. He would further submit that the Lower Court, in its order, has categorically held that the private complaint given by the Investigation Officer will amount to instigation or helping the accused in the other case to circumvent them from suffering the conviction. He would further submit that as to whether an Investigation Officer can give a private complaint against another Investigation Officer was detailedly discussed by the Lower Court in the impugned order. To substantiate his contention that the Lower Court cannot take cognizance of the case without previous sanction of State Government, he would rely on a judgment of the Hon'ble Apex Court reported in (2015) 2 MLJ (Cri) 637, D.T.Virupakshappa vs. C.Subash, wherein, the question as to whether Magistrate can take cognizance of alleged offence and issue process without sanction from State Government under Section 197 of Cr.P.C. came up for consideration and ultimately, the Hon'ble Supreme Court has held that since the whole allegation is on police excess in connection with the investigation of a criminal case, the offensive conduct is reasonably connected with performance of official duty and hence, the Magistrate cannot take cognizance of the case without previous sanction of State Government. He would rely on a judgment of the Hon'ble Supreme Court reported in (2011) 10 SCC 696, Abdul Rehman and others vs. K.M.Anees-UL-HAQ, to substantiate his contention that the bar contained in Section 195 of Cr.P.C., is clearly attracted to the private complaint filed by the complainant and hence, the complaint was rightly dismissed by the Lower Court.

7. It is pertinent to note that earlier only at the intervention of this Court, the investigation in the case in Cr.No.167 of 2003 was transferred from the petitioner to the first respondent. After the investigation was done by the first respondent, he found out that the very investigation is wrong and he brought in some persons as accused persons and in that process, the petitioner was impleaded as an accused in that case. Thereafter, no doubt, the complaint as against the petitioner was quashed. Now, a private complaint under Section 200 Cr.P.C. has been given at the behest of the petitioner/original Investigation Officer as against the subsequent Investigation Officer, which was dismissed by the Lower Court and as against which, the revision is filed.

8. To substantiate the contention that even a bail proceeding is in relation to the proceedings in the Court and when it is a judicial proceeding, the bar contained in Section 195 Cr.P.C. was attracted, learned counsel appearing for the first respondent has relied on the judgment of the Hon'ble Apex Court reported in (2011) 10 SCC 696, Abdul Rehman and others vs. K.M.Anees-UL-HAQ. It is relevant to refer to paragraph Nos.21, 22, 24 and 25 of the said judgment, wherein, the Hon'ble Apex Court has stated as follows:-

"21. Applying the above principles to the case at hand, there is no gainsaying that the bail proceedings conducted by the Court of the Additional Sessions Judge, Karkardooma, Delhi, in connection with the case which the appellants had lodged with CAWC were judicial proceedings and the offence punishable under Section 211 IPC alleged to have been committed by the appellants related to the said proceedings. Such being the case the bar contained in Section 195 Cr.P.C. was clearly attracted to the complaint filed by the respondent.

22. The Metropolitan Magistrate and the High Court had both failed to notice the decision of this Court in Kamlapati Trivedi and Sk.Bannu cases and thereby failed in error in holding that the complaint filed by the respondent was maintainable. The High Court appears to have also failed to appreciate that the real question that fell for consideration before it was whether the bail proceedings were tantamount to judicial proceedings. That question had been left open by this Court in M.L.Sethi Case but was squarely answered in Kamlapati Trivedi case. Once it is held that bail proceedings amounted to judicial proceedings the same being anterior in point of time to the taking of cognizance by the Metropolitan Magistrate, there is no escape from the conclusion that any offence punishable under Section 211 IPC could be taken cognizance of only at the instance of the court in relation to whose proceedings the same was committed or who finally dealt with that case.

...

24. It was next argued by the learned counsel for the respondent that while an offence under Section 211 IPC cannot be taken cognizance of, there was no room for interfering with the proceedings insofar as the same related to the commission of an offence punishable under Section 500, since the bar of Section 195 CrPC was not attracted to the proceedings under Section 500 IPC. The argument though attractive does not stand closer scrutiny.

25. The substance of the case set up by the respondent is that the allegations made in the complaint lodged with CAWC accusing him of an offence punishable under Section 406 IPC and Sections 3 and 4 of the Dowry Prohibition Act were false which according to the respondent tantamounts to commission of an offence punishable under Section 211 IPC apart from an offence punishable under Section 500 IPC. The factual matrix for both the

offences is however one and the same. Allowing the respondents to continue with the prosecution against the appellants for the offence punishable under Section 500 IPC would not, in our opinion, subserve the ends of justice and may result in the appellants getting vexed twice on the same facts. We are doubtless conscious of the fact that any complaint under Section 500 IPC may become time-barred if the complaint already lodged is quashed. That is not an insurmountable difficulty and can be taken care of by moulding the relief suitably."

9. It is relevant to refer to Section 195 Cr.P.C., which reads as under:-

"195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.-- (1) No court shall take cognizance -- .. (b) (i) of any offence punishable under any of the following sections of the 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,.."

10. At this juncture, I would like to refer to the recent judgment of the Hon'ble Apex Court reported in (2015) 2 MLJ (Cr1) 637 (SC), D.T.Virupakshappa vs. C.Subash, which was relied upon by the learned counsel appearing for the first respondent, wherein, the Apex Court had an occasion to consider the question, as to whether the Lower Court can take cognizance of the alleged offence and issue process without sanction from the State Government under Section 197 of Cr.P.C. The Hon'ble Apex Court in the said judgment by referring to the various decisions of the Apex Court has ultimately held in paragraph Nos. 6, 7, 8, 9 and 10 as follows:-

"6. The question, whether sanction is necessary or not, may arise on any stage of the proceedings, and in a given case, it may arise at the stage of inception as held by this Court in Om Prakash and Others vs. State of Jharkhand Through The Secretary, Department of Home, Ranchi and Another, (2012) 12 SCC 72: LNIND 2012 SC 1298 : (2012) 4 MLJ (Cr1) 433. To quote:

"41. The upshot of this discussion is that whether sanction is necessary or not has to be decided from stage to stage. This question may arise at any stage of the proceeding. In a given case, it may arise at the inception. There may be unassailable and unimpeachable circumstances on record which may establish at the outset that the

police officer or public servant was acting in performance of his official duty and is entitled to protection given under Section 197 of the Code. It is not possible for us to hold that in such a case, the Court cannot look into any documents produced by the accused or the public servant concerned at the inception. The nature of the complaint may have to be kept in mind. It must be remembered that previous sanction is a precondition for taking cognizance of the offence and, therefore, there is no requirement that the accused must wait till the charges are framed to raise this plea. ..."

7. In the case before us, the allegation is that the appellant exceeded in exercising his power during investigation of a criminal case and assaulted the respondent in order to extract some information with regard to the death of one Sannamma, and in that connection, the respondent was detained in the police station for some time. Therefore, the alleged conduct has an essential connection with the discharge of the official duty. Under Section 197 of CrPC, in case, the Government servant accused of an offence, which is alleged to have been committed by him while acting or purporting to act in discharge of his duty, the previous sanction is necessary.

8. The issue of 'police excess' during investigation and requirement of sanction for prosecution in that regard, was also the subject matter of State of Orissa Through Kumar Raghvendra Singh and Others v. Ganesh Chandra Jew, AIR 2004 SC 2179: (2004) 8 SCC 40: LNIND 2004 SC 393, wherein, at paragraph-7, it has been held as follows:-

"7. The protection given under Section 197 is to protect responsible public servants against the institution of possibly vexatious criminal proceedings for offences alleged to have been committed by them while they are acting or purporting to act as public servants. The policy of the legislature is to afford adequate protection to public servants to ensure that they are not prosecuted for anything done by them in the discharge of their official duties without reasonable cause, and if sanction is granted, to confer on the Government, if they choose to exercise it, complete control of the prosecution. This protection has certain limits and is available only when the alleged act done

by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant of the protection. The question is not as to the nature of the offence such as whether the alleged offence contained an element necessarily dependent upon the offender being a public servant, but whether it was committed by a public servant acting or purporting to act as such in the discharge of his official capacity. Before Section 197 can be invoked, it must be shown that the official concerned was accused of an offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duties. It is not the duty which requires examination so much as the act, because the official act can be performed both in the discharge of the official duty as well as in dereliction of it. The act must fall within the scope and range of the official duties of the public servant concerned. It is the quality of the act which is important and the protection of this section is available if the act falls within the scope and range of his official duty...."

(Emphasis supplied)

9. In *Om Prakash and Others v. State of Jharkhand Through The Secretary, Department of Home, Ranchi and Another (supra)*, this Court, after referring to various decisions, particularly pertaining to the police excess, summed-up the guidelines at paragraph-32, which reads as follows:

"32. The true test as to whether a public servant was acting or purporting to act in discharge of his duties would be whether the act complained of was directly connected with his official duties or it was done in the discharge of his official duties or it was so integrally connected with or attached to his office as to be inseparable from it (K. Satwant Singh). The protection given under Section 197 of the Code has certain limits and is available only when the alleged act done by the public servant is reasonably connected with the discharge of his official duty and is not merely a cloak for

doing the objectionable act. If in doing his official duty, he acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant of the protection (Ganesh Chandra Jew). If the above tests are applied to the facts of the present case, the police must get protection given under Section 197 of the Code because the acts complained of are so integrally connected with or attached to their office as to be inseparable from it. It is not possible for us to come to a conclusion that the protection granted under Section 197 of the Code is used by the police personnel in this case as a cloak for killing the deceased in cold blood."

(Emphasis supplied)

10. In our view, the above guidelines squarely apply in the case of the appellant herein. Going by the factual matrix, it is evident that the whole allegation is on police excess in connection with the investigation of the criminal case. The said offensive conduct is reasonably connected with the performance of the official duty of the appellant. Therefore, the learned Magistrate could not have taken cognizance of the case without the previous sanction of the State Government. The High Court missed this crucial point in the impugned order."

11. Here is a case, where only at the intervention of this Court, the investigation in the case in Cr.No.167 of 2003 was transferred from the petitioner to the first respondent. After the investigation was done by the first respondent, he found out that the very investigation is wrong and he brought in some persons as accused persons and in that process, the petitioner was impleaded as an accused in that case. From the plain reading of the above provision would show that there is a legal bar to any Court for taking cognizance of the offences punishable 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 except on a complaint in writing, of that court or by such officer of the court as may be authorised in that behalf, or by some other court to which that court is subordinate. Thus, in this case, it is evidently clear that only on the basis of the Court proceedings, the investigation was transferred from the petitioner to the first respondent and therefore, it tantamount to a judicial proceeding. Such being the case, the bar contained in Section 195 Cr.P.C. is clearly attracted to the complaint filed by the petitioner.

12. Further more, on a plain reading of the decision cited supra, viz., (2015) 2 MLJ (Crl) 637 (SC), D.T.Virupakshappa vs. C.Subash, it is crystal clear that, if in doing an official duty, if a person acted in excess of his duty, but there is a reasonable connection between the act and the performance of the official duty, the excess will not be a sufficient ground to deprive the public servant of the protection under Section 197 of the Cr.P.C. If the above tests are applied to the facts of the present case, the police must get protection given under Section 197 of the Code because the acts complained of are so integrally connected with or attached to their office as to be inseparable from it. Going by the factual matrix of the case on hand, it is evident that the whole allegation is on police excess in connection with the investigation of the criminal case. The said offensive conduct is reasonably connected with the performance of the official duty. Therefore, in my considered opinion, the Lower Court has rightly not taken the cognizance of the case and rightly dismissed the private complaint, because, without the previous sanction of the State Government, the case cannot be taken cognizance by the Lower Court.

13. For the foregoing discussions held, I do not find any reason to interfere with the reasoned order passed by the Lower Court. The order passed by the Lower Court is confirmed and the revision fails. This Criminal Revision Case is dismissed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

paa

To

1.The Chief Judicial Magistrate,
Erode District.

2.The Public Prosecutor,
High Court, Madras

+1cc to Mr.V.Ayyadurai, Advocate, S.R.No.36101

Crl.R.C. No. 269 of 2009

CA(CO)
CA(08/10/2015)