

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 10.08.2018
Pronounced on : 23.08.2018

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.Nos.19740, 19741, 20482 & 20486 of 2010
and
M.P.Nos.1, 1 & 2 of 2010

Crl.O.P.Nos.19740 & 19741 of 2010

C.Velumani,
S/o.Chinnasamy,
Inspector of Police,
Special Branch Office,
Nilgiris.

... Petitioner/PW10 in
Crl.O.P.Nos.19740 &
19741 of 2010

Vs.

State represented by
the Inspector of Police,
Wellington Circle,
The Nilgiris.
[Cr.No.157 of 2008].

... Respondent/Complainant
in Crl.O.P.Nos.19740 &
19741 of 2010

PRAYER in Crl.O.P.No.19740 of 2010 : Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to set aside the notice dated 05.08.2010 issued in S.C.No.7 of 2010 on the file of the Sessions Court, Nilgiris, Udhagamandalam as not in accordance with law.

PRAYER in Crl.O.P.No.19741 of 2010 : Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to expunge the adverse remarks made in Judgment dated 29.07.2010 against the petitioner in S.C.No.7 of 2010 on the file of the Sessions Court, Nilgiris, Udhagamandalam.

Crl.O.P.No.20482 & 20486 of 2010

Sasikumar,
S/o.Kanniyappan,

Inspector of Police,
Wellington Circle,
Nilgiris.

... Petitioner/PW11 in
Crl.O.P.Nos.20482 &
20486 of 2010

Vs.

State represented by
the Inspector of Police,
Wellington Circle,
The Nilgiris.
[Cr.No.157 of 2008].

... Respondent/Complainant
in Crl.O.P.Nos.20482 &
20486 of 2010

PRAYER in Crl.O.P.No.20482 of 2010 : Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to expunge the adverse remarks made in Page No.20 and 22 of the Judgment dated 29.07.2010 against the petitioner in S.C.No.7 of 2010 on the file of the Sessions Court, Nilgiris, Udhagamandalam.

PRAYER in Crl.O.P.No.20486 of 2010 : Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to set aside the notice dated 05.08.2010 issued in S.C.No.7 of 2010 on the file of the Sessions Court, Nilgiris, Udhagamandalam as not in accordance with law.

For Petitioners : Mr.K.V.Sridharan
[in all Crl.O.P.Nos.]

For Respondent : Ms.V.Saratha Devi,
[in all Crl.O.P.Nos.] Government Advocate [Crl.Side]

C O M M O N O R D E R

The Crl.O.P.Nos.19740 & 19741 of 2010 has been preferred by the petitioner, who is PW10, Investigating Officer in S.C.No.7 of 2010 in Crime No.157 of 2008.

2.The petitioner namely C.Velumani has filed the Crl.O.P.No.19740 of 2010 to set aside the notice dated 05.08.2010 issued in S.C.No.7 of 2010 on the file of the Sessions Court, Nilgiris, Udhagamandalam, calling for explanation for proceedings against him for not conducting the investigation as per law in Crime No.157 of 2008. Likewise, the Crl.O.P.No.19741 of 2010 has been filed by the petitioner to expunge the adverse remarks made in Judgment dated 29.07.2010 against the petitioner in S.C.No.7 of 2010 on the file of the Sessions Court, Nilgiris, Udhagamandalam.

3.The Crl.O.P.Nos.20482 & 20486 of 2010 has been preferred by the petitioner, who is PW11, Investigating Officer in S.C.No.7 of 2010 in Crime No.157 of 2008.

4.The petitioner namely Sasikumar has filed the Crl.O.P.No.20486 of 2010 to set aside the notice dated 05.08.2010 issued in S.C.No.7 of 2010 on the file of the Sessions Court, Nilgiris, Udhagamandalam, calling for explanation for proceedings against him for not conducting the investigation as per law in Crime No.157 of 2008. Likewise, the Crl.O.P.No.20482 of 2010 has been filed by the petitioner to expunge the adverse remarks made in Page No.20 and 22 of the Judgment dated 29.07.2010 against the petitioner in S.C.No.7 of 2010 on the file of the Sessions Court, Nilgiris, Udhagamandalam.

5.All the four Criminal Original Petitions arise out of the common order passed in S.C.No.7 of 2010. Since the issue to be decided are common, hence, I propose to dispose of all the four Criminal Original Petitions by a common order.

6.The brief facts of the case is that one K.Ramesh had married one Sathya @ Sathiyavani about 14 years prior to 03.07.2008 and out of their marriage they had two sons namely Udayakumar aged about eight years and Dinesh aged about five years. Through out the marriage life, the said Ramesh subjected the said Sathya @ Sathiyavani to cruelty by suspecting her fidelity.

7.On 03.07.2008, after consuming alcohol, the said Ramesh is said to have scolded Sathya @ Sathiyavani in vulgar language, in front of the public, while she was returning back to her house after purchasing grocery, which caused mental cruelty and unable to tolerate the cruelty meted out to her. The said Sathya @ Sathiyavani at about 4.00 p.m. had committed suicide, which was informed to the father, mother and brother of the deceased Sathya @ Sathiyavani. At about 4.30 p.m., they had come to the house of Sathya @ Sathiyavani and found that her body being laid in a bench, her husband or no body was there. Thereafter, at about 10.00 p.m. the father of the deceased had lodged a complaint to the Sub-Inspector of Police namely Arokianathan (PW9), who had registered the complaint and had informed the Investigating Officer,

8.PW10 namely Velumai, Inspector of Police, who had visited the scene of occurrence on 04.07.2008 at about 6.00 a.m., thereafter, he had prepared the Observation Mahazar, Rough Sketch and conducted inquest on the body of the deceased Sathya @ Sathiyavani. At about 7.30 a.m. PW10, the Inspector of Police

had sent the body for post-mortem. Autopsy was conducted on the body of the deceased between 2.00 p.m. and 4.00 p.m. on 04.07.2008 by PW6 Dr.Gowthaman. Post-mortem report is that the death of the deceased was due to Asphyxia and further in the report presence of marks on the neck and abrasion over the right clavicle were observed. On completion of post-mortem the body was handed over to the parents of the deceased.

9.PW10 had conducted investigation upto 28.08.2008. During his investigation he has completed more or less the entire investigation by that time before filing the final report he was transferred and PW11 namely Sasikumar, Inspector of Police, who had taken over the investigation from 29.08.2008, had completed the investigation and filed the charge sheet against the accused before the Judicial Magistrate, Coonoor, which was taken on file in P.R.C.No.8 of 2009, thereafter, committed to the Court of Sessions Judge, The Niligirs, Udhagamandalam in S.C.No.7 of 2010, who had examined witnesses namely PW1 to PW11 and marked Ex.P1 to P14 and by his Judgment dated 29.07.2010 had acquitted the accused.

10.In the Judgment at page No.22 the Sessions Judge, Udhagamandalam had observed as follows:

"Therefore, on a careful perusal and well consideration of the evidence of PW10 and PW11 would manifest even for a grave crime, after receipt of the copy of the First Information Report, PW10 took up investigation with a delay of eight hours and further both the Investigating Officers failed to examine the material witnesses, failed to seize the weapon of offence (the sari used by the deceased for hanging) and hence, their negligence in duty, dereliction in duty, lethargic attitude in duty, irresponsible attitude to their service, resulted acquittal of the accused. Therefore, I am of the view there are materials on record, to find against both the Investigating Officers. The Hon'ble Supreme Court is of the view that before recording a finding against Officers, reasonable opportunity shall be given to put forth their representation. Under such circumstances, this Court is inclined to issue notice to both the Investigating Officers. Hence, issue notice to both the Investigating Officers along with the copy of Judgment to explain as to why a finding cannot be recorded against both the Officers and both the Officers are directed to appear before this Court on 26.08.2010.

A copy of the Judgment shall be forwarded to the District Collector, by name, who is the Administrative Head of the Nilgiris District and the Superintendent of Police, by name, who is the Administrative Head of the Police Force in the Nilgiris District, for information. Call on 26.08.2010."

Aggrieved against the same, the petitioners namely Velumani, PW10 and Sasikumar, PW11 have filed the above Criminal Original Petitions.

11.The Learned Counsel for the Petitioner contended that the Sessions Judge before passing an adverse remarks against the petitioners/PW10 & PW11 ought to have given an opportunity to defend them. On the contrary already an adverse remarks against them in paragraph 20 and 22 of the Judgment has been made, which is against the established law and violation of principles of natural justice.

12.The contention of the Learned Counsel for the Petitioners is that the adverse remarks have caused a serious aspersions on the petitioners affecting their character and reputations and may ultimately affect their career also. Condemnation of the petitioners without giving them an opportunity of being heard was complete negation of the fundamental principles of natural justice.

13.Further contention of the Learned Counsel for the Petitioners is that the Trial Court having failed to invoke its powers envisaged under Section 165 of the Indian Evidence Act, had independently on appraisal of the evidence and records available had come to a conclusion and acquitted the accused in the Sessions case cannot cause aspersion against the petitioners about their investigation of the case. In the absence of any inherent powers to the Sessions Court, the issuance of show cause notice by the Sessions Judge, Udhamandalam is illegal. Further, the adverse remarks have caused a serious aspersions on the petitioners affecting the petitioners character and reputation.

14.The learned counsel for the petitioners further contended that as it could be seen from the Judgment of the Trial Court that the trial Court had given a finding that though the case of the prosecution is that the accused scolded the deceased Sathya @ Sathiyavani in vulgar words and caused mental agony under Section 498-A of the Indian Penal Code and Section 4-B of TNPHW Act, 1998. PW1 and PW2, the father and mother of the deceased Sathya @ Sathiyavani in their evidence never deposed about the cruelty meted out to the deceased at the hands of the accused. Further, with regard to the offence under

Section 306 of the Indian Penal Code. The evidence of PW3, the brother of the deceased goes to show that the accused has not been the cause of abetment for the suicide of the deceased.

15.It is evident from the evidence of PW3 that there are no materials to prove the act of cruelty committed by the accused at about 3.30 p.m. on 03.07.2008. The Investigating Officers i.e. PW10 and PW11 have not taken any steps to examine the material witnesses, namely the Petty Shop owner, or examine any witnesses to speak about the fidelity of the deceased is uncalled for, further not examining any witnesses to speak about the Vulgar words used by the accused in public, while she was returning from the grocery shop at about 3.30 p.m. on 03.07.2008, is contrary to the finding of the Lower Court. The witness, who is said to have witnessed the happenings before the petty shop is PW3, the brother of the deceased, whose evidence the Lower Court has found to be of untrustworthy with serious infirmity, the categorical assertion of PW3 is that the deceased had quarrelled with the accused at about 12.00 Noon, which has been taken note by the learned Sessions Judge as a serious contradiction and extended the benefit to the accused and had acquitted him.

16.These material contradiction is taken note by the Trial Court. Further, considering and analysing the entire evidence available in the case, the Sessions Judge, Udhagamandalam had passed the Judgment of acquittal. The lacuna as per the Trial Court in investigation is with regard to the non-seizure of the saree by which the deceased had hung herself, non-examination of the grocery shop person and further, non-examination of any witnesses, to speak about the fidelity of the deceased and delay in visiting the scene of occurrence by PW10/petitioner, likewise, as regards, the subsequent Investigating Officer, PW11/petitioner is that he had not examined any witnesses to speak about the fidelity of the deceased and non-examination of any witnesses to speak about the occurrence, which took place in front of the petty shop and by not visiting the scene of occurrence and failure to seize the saree seems to be the reason of the Trial Court to make adverse remarks and issue notice to the petitioners.

17.On going through the Judgment, it is seen that there have been eleven witnesses, who have been examined, of which PW1 to PW3 are the father, the mother and the brother of the deceased. These material witnesses evidence had not inspired confidence of the Trial Court to place reliance on their evidence and on the other hand found that there have been material contradiction in their statements and based on which the Trial Court had rendered a Judgment of acquittal in S.C.No.7 of 2010.

18. On looking at the Ex.P1 to P14, it is seen that on receipt of the complaint, the First Information Report (FIR) had been registered immediately and thereafter, on receipt of the First Information Report, the petitioner/PW10, had gone to the scene of occurrence. On reaching the scene of occurrence, he had immediately prepared Observation Mahazar, Rough sketch and conducted inquest and thereafter, sent the body for post-mortem and had sent the vital parts for analysis/viscera study, and no investigation lapses has occurred. In fact, PW10 had shown diligence by sending the internal parts of the body of the deceased and the hyoid bone for examination, since, it is the death due to hanging.

19. Further, when PW11, the subsequent Investigating Officer took up the investigation almost major portion of the investigation is over. He had collected the records and thereafter, filed the charge sheet before the learned Judicial Magistrate at Coonoor, who had perused the final report, assigned P.R.C.No.8 of 2009 and forwarded the same to the Court of Sessions Judge, Udhagamandalam, who had taken the case on file in S.C.No.7 of 2010, framed charges and conducted the trial. After the full-fledged trial, the case has been disposed of.

20. The observation of the Trial Court is that the witnesses near the petty shop have not been examined is not correct, PW3 namely Parthiban, the brother of the deceased Sathya @ Sathiyavani has been examined as a material witness, who speaks about his presence during the abuse of accused near the petty shop on the deceased Sathya @ Sathiyavani. Further, the Trial Court's observation is that no witnesses were examined with regard to the fidelity of the deceased Sathya @ Sathiyavani is not correct, negative facts cannot be proved by direct evidence, which aspect has to be inferred from the circumstances of the case.

21. Further the Trial Court, who had examined the witnesses had power under Section 165 of the Indian Evidence Act. "The said section was framed by lavishly studding it with the word 'any' which could only have been inspired by the legislative intent to confer unbridled power on the trial Court to use the power whenever he deems it necessary to elicit truth. Even if any such question crosses into irrelevancy the same would not transgress beyond the contours of powers of the Court. This is clear from the words 'relevant or irrelevant' in Section 165. Neither of the parties has any right to raise objection to any such question".

22. The learned counsel for the petitioner submitted that

the principles of natural Justice has been violated and relied upon the Judgment of the Hon'ble Apex Court of India in the case of State of Karnataka Vs. Registrar General, High Court of Karnataka reported in (2000) 7 Supreme Court Cases 333 wherein the Hon'ble Apex Court had held that under what circumstances the Section 165 of the Indian Evidence Act is to be resorted to by the Trial Court which reads as follows:

"Judicial disposition is definitely different from a paper presented for seminar discussion. Nor can it be equated with a dissertation. Judicial decorum requires that judgments and orders should confine to the facts and legal points involved in the particular cases which Judges deal with. May be, sometimes Judges would, perhaps wittingly or even unwittingly, jut outside the contours of the litigation, but even such overlappings should be within bounds of propriety and sobriety. But there is no justification for traversing so far beyond the canvass as was done by the High Court in this case or to cover areas which are grossly extraneous to the subject matter of the case. If the subordinate courts are also to be tempted and encouraged to follow suit by travelling far outside the scope of the lis the consequences would be far too many. Demoralisation of departments would badly erode the already impaired efficiency of our forces".

23. The Trial Court failed to exercise its Powers under Section 165 of the Indian Evidence Act and to pass adverse remarks against the petitioners, without giving them the opportunity to defend by following the principles of natural justice is bad in law. Hence, adverse remarks passed by the Trial Court against the petitioner/PW10 and PW11 is liable to be expunged, as the same has been passed without giving them any opportunity.

24. The Learned Counsel for the Petitioner relied upon the citation of the Hon'ble Apex Court of India reported in 2001 Cri. L. J. 133 in the case of Manish Dixit and other Vs. State of Rajasthan. The relevant paragraphs are extracted hereunder:

"40. If the trial court felt that some of the answers given by that witness during cross-examination were so inconsistent or contradictory and that such answers per se required judicial castigation the court also had a duty to invoke its powers envisaged in Section 165 of the Evidence Act. The width of the powers of the court to put questions is almost plenary and no

party can possibly raise an objection thereto. This can be discerned from the language employed in the first limb of the section. It reads thus:

"The Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties, about any fact relevant or irrelevant; and may order the production of any document or thing; and neither the parties nor their agents shall be entitled to make any objection to any such question or order, nor, without the leave of the Court, to cross-examine any witness upon any answer given in reply to any such question."

41. This Court has indicated the very wide dimension of the powers of the court under section 165 of the Evidence Act in *State of Rajasthan vs. Ani* (1997) 6 SCC 162 : [1997 AIR SCW 973: AIR 1997 SC 1023 : 1997 Cri LJ 1529]. We extract the following observations which would amplify the position [Para 11 of AIR, Cri LJ]:

"The said section was framed by lavishly studding it with the word any which could only have been inspired by the legislative intent to confer unbridled power on the trial court to use the power whenever he deems it necessary to elicit truth. Even if any such question crosses into irrelevancy the same would not transgress beyond the contours of powers of the court. This is clear from the words relevant or irrelevant in section 165. Neither of the parties has any right to raise objection to any such question."

43. Even those apart, this Court has repeatedly cautioned that before any castigating remarks are made by the court against any person, particularly when such remarks could ensue serious consequences on the future career of the person concerned he should have been given an opportunity of being heard in the matter in respect of the proposed remarks or strictures. Such an opportunity is the basic requirement, for, otherwise the offending remarks would be in violation of the principles of natural justice. In this case such an opportunity was not given to PW30 (Devendra Kumar Sharma). [(*State of U.P. vs. Mohd. Naim* (1964) 2 SCR 363, : [AIR 1964 SC 703 : 1964 (1) Cri LJ 549], *Ch. Jage Ram vs. Hans Raj Midha*, (1972) 1 SCC 181 : [AIR 1972 SC 1140 : 1972 Cri LJ 768], *R.K. Lakshmanan vs. A.K. Srinivasan* (1975) 2 SCC 466 : [AIR 1975 SC 1741 :

1975 Cri LJ 1545]; Niranjan Patnaik vs. Sashibhusan Kar (1986) 2 SCC 569 : [AIR 1986 SC 819 : 1986 Cri LJ 911]; State of Karnataka vs. Registrar General (2000) 5 Scale 504 : [2000 AIR SCW 2794 : AIR 2000 SC 2626].

44. It is apposite in this context to extract the following observations made by this Court in Dr. Dilip Kumar Deka v. State of Assam (1996) 6 SCC 234: [1996 AIR SCW 4046 at p. 4048]:

"We are surprised to find that in spite of the above catena of decisions of this Court, the learned Judge did not, before making the remarks, give any opportunity to the appellants, who were admittedly not parties to the revision petition to defend themselves. It cannot be gainsaid that the nature of remarks the learned Judge has made, has cast a serious aspersion on the appellants affecting their character and reputation and may, ultimately affect their career also. Condemnation of the appellants without giving them an opportunity of being heard was complete negation of the 10 fundamental principle of natural justice."

25. The learned Government Advocate had submitted that the remarks of the Trial Court is correct and finds no reason to be interfered with. The Trial Court failing to exercise its Power under Section 165 of the Evidence Act, for eliciting the truth in the matter concerned passing adverse remarks without providing the petitioners an opportunity of being heard will not make the order of the Trial Court bad in law to be interfered with. In this case, the Trial Court after passing adverse remarks has contemplated notice to the petitioners, which is violative of principles of natural justice.

26. The learned counsel for the petitioner further contended that such disparaging remarks and the direction to initiate departmental action against the petitioners could have a serious impact on their official career. Condemnation of the petitioners without giving them an opportunity of being heard is in complete negation of the fundamental principles of natural justice. The Supreme Court in the case of State of Rajasthan Vs. Anil reported in (1997) 6 SCC 162 has held as follows:

"The said section was framed by lavishly studding it with the word any which could only have been inspired by the legislative intent to confer unbridled power on the trial court to use the power whenever he deems it necessary to elicit truth. Even if any such question crosses into irrelevancy the same would not transgress

beyond the contours of powers of the court. This is clear from the words relevant or irrelevant in section 165. Neither of the parties has any right to raise objection to any such question."

27.The learned Government Advocate submits that no appeal has been filed against the Judgment of acquittal of the Trial Court both by the State and the Defacto complainant.

28.The learned counsel for the petitioner submitted that once the Trial Court had rendered its Judgment of a case it becomes functus officio and thereafter, it has no legal sanction in issuing notice to the petitioners and sought the notices to be quashed.

29.This Court is in conformity has rightly contended by the petitioners once the Trial Court becomes functus officio the issuance of notice is bad in law and hence, they are to be quashed. Further, the adverse remarks passed against the petitioners are neither warranted nor are in conformity with the settled law as propounded by the Hon'ble Supreme Court of India and considering the submissions of the either side and on perusal of the records this Court comes to a conclusion that the adverse remarks passed in the Judgment and issuance of notice thereof against the petitioner are to be expunged and quashed.

30.In view of the above finding adverse remarks and notice dated 05.08.2010 issued in S.C.No.7 of 2010 to Velumani, PW10 and Sasikumar, PW11 are hereby quashed. Accordingly, the Criminal Original Petitions stand allowed. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

सत्यमेव जयते Assistant Registrar (CS-IV)

//True Copy//

WEB COPY

Sub Assistant Registrar

ah

To

1.The Sessions Judge,
Nilgiris, Udhamandalam.

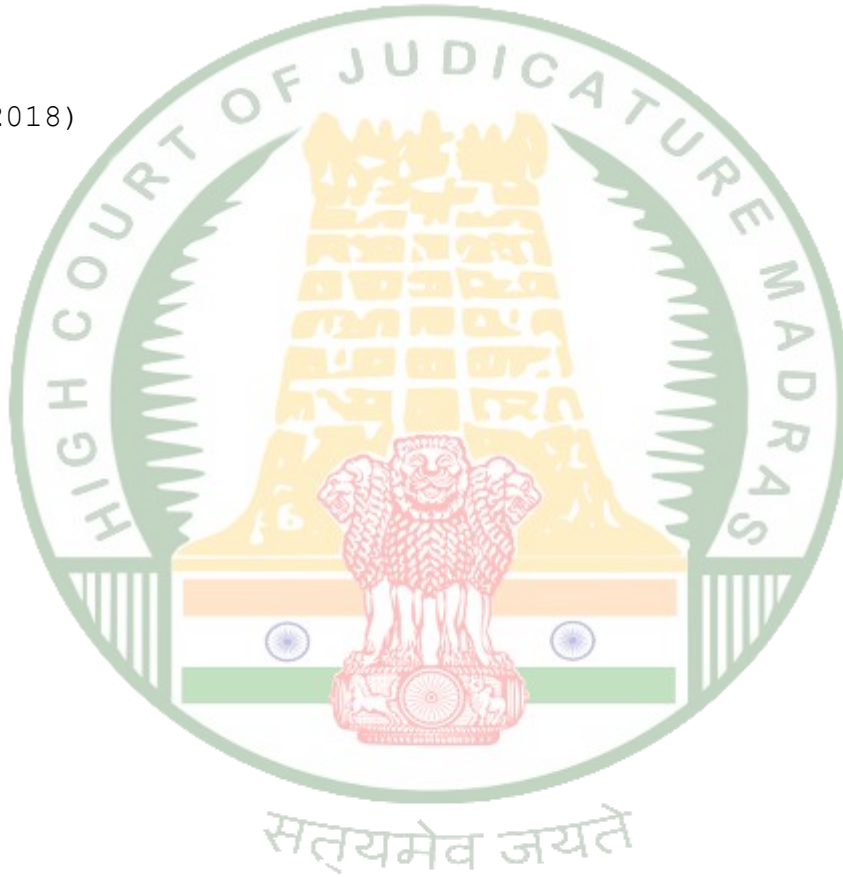
2.The Inspector of Police,
Wellington Circle,
The Nilgiris.

3.The Public Prosecutor,
High Court, Madras.

+3cc to Mr.K.V.Sridharan, Advocate, S.R.No. 57791

Crl.O.P.Nos.19740,
19741, 20482 & 20486
of 2010

GJII(CO)
GN(17/09/2018)



WEB COPY