

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order Reserved on : 17.09.2020
Order Pronounced on : 08 .06.2021

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.OP.No.26594 of 2014
and
M.P.No.1 of 2014

S.Martin ... Petitioner/ Accused

Versus

1.The State Rep. by
The Inspector of Police,
B4 Race Course Police Station,
Coimbatore.
(Crime No.287 of 2012) ... Respondent/Complainant

2.K.Sankar ... Respondent/Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for records in C.C.No.74 of 2013 pending on the file of the Judicial Magistrate III, Coimbatore, and quash the same as illegal and abuse of process of law.

For Petitioner : Mr. Ramesh Kumar

For Respondents: Mr. Iyapparaj, (for R1)
Additional Public Prosecutor.

O R D E R

The petitioner, who is the accused facing trial in C.C.No.74 of 2013, for the offence under Section 353 and 506(ii) of IPC, pending before the Judicial Magistrate No.III, Coimbatore, has filed this quash petition.

2.The gist of the case is that the petitioner was detained under Goondas Act and detained in Central Prison, Coimbatore in Room No.11. On 08.03.2012 at about 6.30 p.m, the de-facto complainant/second respondent along with LW.2 to L.W.6, had gone to the petitioner's room to make a search. At that time, the petitioner had restrained the de-facto complainant and other witnesses stating that nobody could conduct any search in his room and thereby used criminal force and threatened the public servant from discharging their duty. When the de-facto

complainant and others proceeded further, the petitioner picked up a stone, which was available near the room and threatened the de-facto complainant and LW.2 to LW.6 with dire consequences. Hence, the de-facto complainant lodged a complaint to the first respondent/police at about 8.30 p.m. On registration of the complaint, the first respondent/police visited the scene of occurrence, enquired the witnesses LW.1 to LW.7 and thereafter in the presence of LW.8 & LW.9 recovered the stone, prepared observation mahazar and rough sketch. On conclusion of investigation filed a charge sheet, by listing the witnesses LW.1 to LW.12, documents viz., observation mahazar, rough sketch, seizure mahazar in this case.

3.The petitioner's submission is that he was under the custody of the second respondent/de-facto complainant, since he was detained under The Goondas Act. The second respondent and other witnesses were all in a dominant position as regards to the petitioner and the petitioner was under the mercy and control of the jail authorities. In this case, as per The Prisoners Act and the Tamil Nadu Prison Manual, it is the Superintendent of the prison who has to take action or lodge a complaint against the prisoners if there is any violation. Further, the case of the prosecution is highly artificial and the stone, being a prohibited item, the availability of the stone in jail premises is highly doubtful. Further, in this case, the other prisoner, who was sharing the room along with the petitioner viz., Prakash @ Rangasamy was neither examined nor cited as a witness. All the witnesses in is case are jail authorities, police personnel and no independent persons was cited, specifically co-prisoner and other prisoners were not examined in this case. Further, Deputy Jail Warden, Venugopalan / L.W.2, who had led a team of jail officials viz., LW.2 to LW.7, had attempted to make a search in the room of the petitioner. LW.1/Shankar, a warden, had lodged a complaint, who is not a witnesses to the occurrence and he is only in the nature of hearsay witness. The statements of LW.2 to LW.7 are parrot like version. He further submitted that as per the Prisoners Act, it is the Superintendent of prison, who is the authorized person to conduct enquiry and to impose punishment and in case, the offence is heinous in nature, the Superintendent may forward the complaint and the prisoner to the District Magistrate or any Magistrate having jurisdiction. Thereafter, the Magistrate has to take appropriate action. In this case, such procedure has not been followed. Further, Section 45 of the Prison Act prohibits the use of any assault or criminal force, and threatening, attracting the ingredients similar to Section 353 and 506(ii) of IPC. In view of the same, it is the Superintendent of prison, who has to conduct an enquiry for these offences. The de-facto complainant/second respondent, approaching the police and lodging the complaint, is

not proper, without sanction of law and rules. The prison offences are clearly mentioned in Section 45 and in Chapter XVIII of the Tamil Nadu Prison Manual, wherein the offences and the procedures have been clearly mentioned. As per Rule 301 of the Tamil Nadu Prison Manual, it is the Superintendent of prison, who has to determine the offence, which constitute both prison offence and offence under Indian Penal Code and it is for the Superintendent of prison to take further action in this regard. Further, on the materials available in this case, it is found highly improbable such offence could have taken place.

4. In support of his contention, the learned counsel for the petitioner relied upon the decisions of the High Court in the following cases:-

- (i) The State Vs. Radhey Shayam reported in AIR 1960 Raj 288
- (ii) Danial H. Walcott J. Prisoner Vs. Superintendent, Nagpur Central 1972 CrL LJ 673, reported in 1971 SCC Online Bom 19
- (iii) S. Nalini Vs. State rep. by Inspector of Police, Vellore reported in 2013 SCC Online Mad 2771
- (iv) in the case of N. Sivakumaran Vs. State of Tamil Nadu, reported in 2009 (1) MLJ 70, CDJ 2010 MHC 2240
- (v) Selvi J. Jayalalitha Vs. State of Karnataka reported in 2013 (4) MLJ (CrL) 139, CDJ 2013 SC 878 and
- (vi) Marathwada University Vs. Seshrao reported in 1989 AIR 1582. for the proposition that it is for the Superintendent of prison to take action for the prisoner's offence and if the offences are heinous in nature, it is for the Superintendent to forward and lodge the complaint with the concerned Magistrate for fair trial.

5. In the case of S. Nalini Vs. State Inspector of Police, Vellore Equivalent reported in 2013 SCC Online Mad 2771, on a similar situation, this Court had given a finding that as per Rule 301 of the Tamil Nadu Prison Rules, 1983, the Superintendent has got option either to exercise the power of punishment conferred under the Prison Rule or prosecute the prisoners before the regular Court. In that case it was found that the Superintendent had power to take action as well as to launch prosecution, hence, the criminal prosecution in that case was quashed.

6. The learned Additional Public Prosecutor filed his counter and submitted that the first respondent registered a case in Crime No. 287 of 2012 for the offence under Section 353 and 506(ii) of IPC, conducted investigation and on completion of investigation filed charge sheet before the learned Judicial Magistrate No. III, Coimbatore, which taken on file in C.C. No. 74 of 2013. The Lower Court on considering the materials and finding that prima facie case made against the petitioner had issued summons. The points raised by the petitioners are factual

and they are to be decided in trial. The petitioner's previous history was checked, the petitioner has got several cases against him and he was detained under Goondas Act. While he was in custody under the prisoner's authorities, he prevented the jail authorities to search his room. The petitioner had threatened the prison authorities by using stone and thereby restrained the jail authorities from discharging their official duty. The investigation of this case was conducted in a proper manner and the stone has been recovered, observation mahazar and rough sketch have been prepared. The statement of the witnesses have been recorded properly and therefore he prayed for dismissal of this petition.

7. The learned Additional Public Prosecutor further submitted that the points raised by the petitioner is that it is only the Superintendent of prison, who has the power to lodge a complaint. The other officials of the Jail Department are not empowered to lodge a complaint is not correct. The petitioner's main contention is based on the reported case in S.Nalini Vs. State Inspector of Police, Vellore Equivalent reported in 2013 SCC Online Mad 2771. This case is no more res-integra. The Division Bench of this Court, in the case of Kanchana Vs. The State and others reported in 2014 (5) CTC 717 have set aside the finding and held that law laid down in the case of S.Nalini Vs. State Inspector of Police, Vellore, is not correct law.

8. Considering the rival submissions and perusing the materials, it is seen that the petitioner, while he was detained in Central Prison, Coimbatore, the Deputy Warden/ LW.2 along with others had gone to search the room of the petitioner. At that time, the petitioner is said to have abused, restrained and threatened LW.2 to LW.6. Further it was added that he had also taken a stone available near the room and attempted to throw it against the jail authorities. In this case, admittedly, the petitioner was sharing the room along with one Prakash @ Rangasamy, who was very much available in the room at that time. The said Prakash @ Rangasamy, or any other jail inmates/prisoners, have not been examined as witness. The statement of LW.1 is in the nature of hearsay. LW.2 to LW.6 statements gives a parrot version. The availability of the stone, a prohibited item inside the prison, in the scene of occurrence is highly doubtful. From the statements of observation mahazar, witnesses LW.8 & LW.9, it is recorded that the stone was taken and produced by the petitioner, which is highly artificial. The petitioner/accused was not arrested and no Section 27 recovery can be used against the petitioner. From the seizure mahazar and the observation mahazar, it is seen that the description of the stone was not mentioned. Further, except for the complaint, all other documents in this case, had reached the Court belatedly only on 02.03.2013 along with the charge

sheet, which creates doubt and concern in the manner of investigation.

9. The petitioner was a prisoner, and the search has been taken at about 6.30 pm, After role call, all the prisoners are sent to their respective cells, the witnesses are all jail officials, who are in a dominant position. Further, no materials are found or seized from the petitioner's room and it is not the case that prohibited items were seized from the petitioner's room. Nothing recorded in the history ticket of the jail. In the absence of any seizure or recovery of prohibited item from the petitioner there is no reason for the petitioner to object for search of his room, show restrain or threaten the jail officials. In this case, there is nothing available to prove that the Superintendent of the prison had taken any action with regard to the violation of the prison offences by the petitioner. On the facts and circumstances of the case, it is highly improbable that such occurrence could have taken place in the jail. In view of the same, continuation of proceedings against the petitioner would amount to abuse of process of law. Hence, this Court is inclined to quash all further proceedings in C.C.No.74 of 2013 on the file of the Judicial Magistrate No.III, Coimbatore.

10. Accordingly, the Criminal Original Petition is allowed. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

klr

To

1.The Judicial Magistrate No. III,
Coimbatore.

2.The Inspector of Police,
B4 Race Course Police Station,
Coimbatore.

3.The Public Prosecutor, High Court, Madras.

+4cc to Mr.K.G.Senthil Kumar, Advocate, S.R.No. 27526

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GPL(CO)
GN(28/06/2021)