

Sulphikar Vs. D.Sujtha

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Court : Kerala

Decided On : Jan-24-2014

Judge : Honourable Mr.Justice K.Harilal

Appellant : Sulphikar

Respondent : D.Sujtha

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE K.HARILAL FRIDAY, THE 24TH DAY OF JANUARY 2014 4TH MAGHA, 1935 Crl.Rev.Pet.No. 1642 of 2011 ()
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ORDER

IN CMP NO.303/2011 IN CC1942010 OF JUDICIAL FIRST CLASS MAGISTRATE COURT, (HARIPAD) REVISION PETITIONER/1ST ACCUSED::
----- SULPHIKER, SUB INSPECTOR OF POLICE, KANAKAKUNNU, NOW WORKING AT VEEYAPURAM POLICE STATION. BY ADVS.SRI.P.SREEKUMAR SRI.K.S.MANU (PUNUKKONNOOR) RESPONDENTS/COMPLAINANT:: ----- 1. D.SUJATHA, AGED 39 YEARS, D/O.DEVAKI, JAYA BHAVANAM, MUTHUKULAM VADAKKUM MURI, MUTHUKULAM VILLAGE-687616.

2. THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA. R,R1 BY ADV. SRI.ARUN CHANDRAN R,R1 BY ADV. SRI.MANSOOR.B.H. R BY PUBLIC PROSECUTOR SRI. ROY THOMAS THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 24-01-2014, THE COURT ON THE SAME DAY PASSED THE FOLLOWING: CrI.Rev.Pet.No. 1642 of 2011 () APPENDIX PETITIONER'S EXHIBITS: ANNEXURE A1: A TRUE COPY OF THE

JUDGMENT

IN WP(C) NO.4692 OF 2008 DATED 24-09-2008. ANNEXURE A2: A TRUE COPY OF THE APPLICATION CMP3032011 IN C.C. NO.194 OF 2010 ANNEXURE A3: A TRUE COPY OF THE

ORDER

DATED 14-06-2011 PASSED IN CMP NO.303 OF 2011 IN CC NO.194 OF 2010 RESPONDENTS' EXHIBITS: NIL //TRUE COPY// PA TO JUDGE Scl. K.HARILAL, J.

===== CrI.R.P.No.1642 of 2011 ===== Dated this the 24th day of January, 2014

ORDER

The revision petitioner is the accused in C.C.No.194 of 2010 on the files of the Judicial First Class Magistrate's Court, Haripad. He is a public servant working as Sub Inspector of Police. The above complaint was filed under Sec.190 read with 200 of the Code of Criminal Procedure by the 1st respondent herein as the complainant. In the above complaint, the allegation against the revision petitioner is that he along with accused Nos.2 to 4 have committed offences punishable under Secs.323, 324, 354, 427 and 447 read with 34 of the Indian Penal Code against the 1st respondent herein.

2. The 1st respondent alleged that the revision petitioner who is working as Sub Inspector of Police came to her residence on 20/08/2008 at about 9.30 a.m. while the complainant was about to repair the fencing of her CrI.R.P.No.1642 of 2011 2 property. It is further alleged that the revision petitioner uttered indecent words and

threatened the 1st respondent that she should not enter the property and should not do any work in the property. Thereafter, the revision petitioner stabbed the complainant with a batten. The complaint also narrates the acts allegedly committed by A2 to A4. According to her, A1 to A4 also committed overt acts on her. It is further alleged that the revision petitioner along with A2 to A4 were acting in furtherance of their common intention. The learned Magistrate took cognizance of the offences and issued process to the accused.

3. The revision petitioner entered appearance and filed a petition seeking discharge under Sec.245(1) of the Code of Criminal Procedure, claiming that no prosecution can be launched against him without sanction under Sec.197 of the Cr.P.C. The 1st respondent resisted the said application contending that the revision petitioner was not acting in discharge of his official duties and he is not CrI.R.P.No.1642 of 2011 3 entitled to get protection under Sec.197(1) of the Cr.P.C. It was also contended that the power under Sec.245(2) of the Cr.P.C cannot be invoked as per the application of the revision petitioner.

4. After considering the rival contentions, the learned Magistrate dismissed the petition on a finding that sanction 197(2) is not required for prosecuting the revision petitioner as the act alleged to have been done by him does not come under an act in discharge of his official duty.

5. The learned counsel for the revision petitioner advanced arguments in support of the grounds raised in the memorandum of revision petition. According to him, the act alleged to have been done by the revision petitioner in the complaint was an act in discharge of his official duty. The alleged incident was on 20/08/2008 at about 9.30 a.m. But, Mr.Bhaskaran the 2nd accused, had already filed a writ petition as W.P.C No.4692 of 2008 before this Court seeking police protection against the threat caused by the husband CrI.R.P.No.1642 of 2011 4 of the 1st respondent by name one Mr.Jayachandran and five others including his son. In that writ petition, this Court on 08/02/2008 issued notice to the respondents and passed an interim order directing the police to provide adequate protection to the life of the said Bhaskaran if the complaint of the said Bhaskaran is genuine. Later, the writ petition was disposed of directing the police to provide adequate police

protection to the said Bhaskaran as and when requested. On 20/08/2008, the revision petitioner was informed of the threat caused by the husband of the 1st respondent herein. Immediately, in compliance with the interim order granting police protection to the Bhaskaran as and when required, the revision petitioner proceeded to the residence of the 1st respondent. The 1st respondent and the said Bhaskaran are immediate neighbours and they are at logger heads in connection with the property dispute and also on the allegation that the said Bhaskaran is fighting against illicit arrack manufacturing of the husband of the 1st respondent. The sum and substance of the arguments advanced by the learned counsel for the revision petitioner is that the presence of the revision petitioner in the property as alleged by the 1st respondent, even if it is true, required by the direction of this Court granting police protection to the said Bhaskaran. So, even if the act alleged is true, or even if the act exceeds the power, the same will come under an act in discharge of official duty. Therefore, sanction under 197 is required for prosecuting the revision petitioner.

6. In view of the rival contentions, the short question that arises for consideration is, whether the alleged act was so occurred while acting or purporting to act in discharge of his official duty 7. Admittedly, the revision petitioner is a public servant working as a Sub Inspector of Police and he is a public servant entitled to get protection under Sec.197 of the Cr.P.C, if his alleged act was occurred while acting or purporting to act in discharge of his official duties.

8. While analysing the alleged incident, it is to be remembered that in *Moosa Vallikkadan v. State of Kerala* [2010 (3) KLT437, this Court held as follows: "Prosecution sanction which is a pre- condition for taking cognizance in a given case is not an immunity from prosecution. It only insulates the public servant from being unnecessarily vexed and harassed by dragging him to a criminal court. The purpose behind the provision is that public servants (against whom there will be disgruntled elements) can function without fear or favour and with peace of mind and they are actually prosecuted only on genuine complaints." 9. In *Sankaran Moitra v. Sadhna Das & Another* [AIR 2006 SC1599, the Supreme Court held that: "8. Thus, the test appears to be that if the accused public servant or member of

the Forces, when challenged, can reasonably claim that what he did was by virtue of his office, then the protection under S.197 Cr.P.C will be available to him and he CrI.R.P.No.1642 of 2011 7 can be prosecuted for the act before a criminal Court only with the previous sanction of the Government. It is the quality of the act that is important and if the act falls within the scope and range of his official duties, then the protection contemplated by S.197 Cr.P.C would be available to him".

10. In H.B.Gill v. The King (AIR 1948 PC128, the Privy Counsel held that: "test may well be whether the public servant, if challenged, can reasonably claim, that what he does, he does in virtue of his office".

21. Speaking for the Constitution Bench of this Court, Chandrasekhar Aiyer, J.

restated the same principle, thus: :..... in the matter of grant of sanction under Sec.197, the offence alleged to have been committed by the accused must have something to do, or must be related in some manner, with the discharge of official duty..... there must be a reasonable connection between the act and the discharge of official duty, the act must bear such relation to the duty that the accused could lay a reasonable claim, but not a pretended or fanciful claim, that he did it in the course of the performance of his duty". CrI.R.P.No.1642 of 2011 8

11. The revision petitioner is working as a Sub Inspector of Police. The sanction of the Government is not required to remove him from his office as per Kerala Police Department Enquiries Punishment & Appeals Rules 1958, so he would not come directly under the purview of 197 of the Cr.P.C. But, certainly, he will be entitled to get protection under the notification dated 6th December, 1977 No.61135/A2/77/Home issued by the Government of Kerala under Sec.197(3) of the Cr.P.C. According to notification, the protection under 197 is available to all members of the Kerala State Police charged with maintenance of public order. Then the question is whether the alleged act was an act charged with maintenance of public order.

12. The scope and extent of 'duty charged with maintenance of public order' was considered by the Apex Court in Rizwan Ahmed Javed Shaikh and others Vs. Jammal Patel and others [(2001) 5 SCC7. CrI.R.P.No.1642 of 2011 9 13. In that case, relying on the Constitutional Bench decision in Madhu Limaye Vs. S.D.M.,

Monghyr (AIR1970(3) SCC746, held that the phrase "maintenance of public order" need not be assigned a narrow meaning as is assigned to it in preventive detention matters; the police officers do discharge duties relating to maintenance of public order in their wider sense can be taken into consideration for determining whether the act would come under an act charged with maintenance of public order.

14. So, in the instant case, the question is whether the act said to have been done by the revision petitioner was an act charged with maintenance of public order. In the above decision, the Supreme Court held that the question whether the act done by a police officer was an act charged with maintenance of public order can be determined by asking a question whether the act alleged to be an offence was done or purported to have been done in the discharge of the official duty of the accused. Such CrI.R.P.No.1642 of 2011 10 official duty need not necessarily be one related to the maintenance of public order. The maintenance of public order can be interpreted in a wider sense.

15. Coming to instant case, Annexure A order shows that Mr. Bhaskaran has already filed a writ petition No.4692 of 2008 before this Court seeking police protection from the threat caused by the husband of the 1st respondent. While admitting the revision petition, this Court passed an interim order dated 08/02/2008 directing the revision petitioner to provide adequate police protection to the said Bhaskaran and his family members in case the husband of the 1st respondent causes any threat against them. The alleged incident was occurred on 20/08/2008, while the interim order was in force. Therefore, I find that the alleged incident was occurred in connection with the investigation of the matter complained of by Bhaskaran and the revision petitioner was liable to visit the spot and enquire the same in compliance with the CrI.R.P.No.1642 of 2011 11 interim order dated 08/02/2008 of this Court in W.P.(C) 4629/2008. Even if the alleged overt act is proved, it may amount to excess of power or abuse of the power while in discharge of official duties. However, it is clear that the incident was occurred while acting in discharge of official duty. Therefore, I find that sanction under 197 Cr.P.C is required to prosecute the revision petitioner. Admittedly, the 1st respondent has not obtained sanction under 197 of the Cr.P.C to prosecute the

revision petitioner. Therefore, the impugned order under challenge is set aside and the revision petitioner will stand discharged of the offences under Sec.245(2) of the Cr.P.C. The Criminal Revision Petition is allowed accordingly. K.HARILAL, JUDGE. Stu //True copy// P.A to Judge

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