

Babuji Vs. State

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Court : Chennai

Decided On : Jul-10-2013

Judge : S. Palanivelu

Appellant : Babuji

Respondent : State

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS Date:

10. 07.2013 Coram THE HONOURABLE MR. JUSTICE S. PALANIVELU CRL.RC No.1552 of 2012 Babuji ... Petitioners/Accused 3 -Vs.- State rep.by Inspector of Police ACB: CBI Chennai Shastri Bhavan, Chennai 6. ... Respondent/Complainant Criminal Revision Case filed u/s.397 r/w 401 of Cr.P.C. to call for the records pertaining to the order dated 20.04.2010 made in Cr.MP No.1502/2010 in C.C.No.7 of 2010 on the file of Principal Sessions Judge, Puducherry, Special Judge under PC Act. For Petitioner : Mr.Ganesh for M/s.Sivalingam For Respondents : Mr.N.Chandrasekaran Spl. Public Prosecutor for CBI Cases. -----

ORDER

This revision has been filed to call for the records pertaining to the order dated 20.04.2010 made in Cr.MP No.1502/2010 in C.C.No.7 of 2010 on the file of Principal Sessions Judge, Puducherry, Special Judge under PC Act.

2. The case of the prosecution is that the petitioner along with others entered into criminal conspiracy at Puducherry during the period from December 2005 to July 2008 by misusing their official position and converted self accident into road traffic accident for filing a false claim of Rs.20,00,000/- as compensation and thereby cheated the National Insurance Company Ltd., Puducherry.

3. The following are the allegations contained in the petition filed by the petitioner under Section 239 Cr.P.C. for discharging him from the case:- 3.[a]. On 19.12.2005 at about 3.00 p.m., late Karunakaran drove TVS XL Motor Cycle bearing Regn.No.PY012636 of his brother Ganesh and dashed against a Mango Tree in front of a provision shop of Alagamurugan in Kanniyakoil Manapattu Road, Puducherry and sustained head injuries. He was admitted at PIMS hospital on the same day and was treated in Neuro department but he expired on 27.12.2005 while undergoing treatment. On 22.12.2005, Govindan @ Govindasamy Chettiar (A.4) arranged Shri Sathiyaseelan as if he drove his TVS50Motor cycle with Karunakaran as pillion rider and met with an accident for the purpose of false claim of insurance. Govindan also made arrangements with this petitioner (A.3) who was Sub-Inspector of Police and Selvam (A.2) Head Constable of Kirugambakkam Police Station for registration of a case to suit for the motor accident claim. 3.[b]. In furtherance of conspiracy, a record was created as if Sathiyaseelan was arrested on 23.12.2005 and released on bail. The petitioner signed the arrest cum court surrender form and memo of arrest. Selvam (A.2) prepared false 161 (3) Cr.P.C. statements and a false inquest report. After the transfer of the petitioner from Kirugambakkam Police Station, Shri U.Rajasekaran took charge as SI of Police and filed charge sheet against Sathiyaseelan u/s.304A IPC before JM No.1, Puducherry without verifying the earlier investigation. 3.[c]. During March 2007, Sathyaseelan falsely admitted the case and paid the fine of Rs.5000/-. V.Govindan @ Govindasamy Chettiar had filed an MCOP claim No.638 of 2008 before Motor Accidents Claims Tribunal, Puducherry enclosing false certificate of employment of late Karunakaran as if he was working as Production Supervisor in Suba Organics Pvt. Ltd. and claimed a sum of Rs.20 lakhs as compensation.

4. In the counter filed by the respondent, it is averred as follows:

4. [a]. A case in RC.MA2009A0027 was registered on 30.05.2009 on the basis of source information against the accused u/s. 120-B, r/w 420 IPC, 467, 471, 511 IPC and Sec.13 (2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 alleging that the named police officials entered into criminal conspiracy with private persons at Puducherry during the period from December 2005 to July 2008 by misusing their official position and converted self accident into road traffic accident for filing a false claim of Rs.20,00,000/- as compensation and thereby cheated the National Insurance Company Ltd., Puducherry, that on the strength of information received, FIR was registered in accordance with the provision of law envisaged u/s.154 of Cr.P.C. and that the charge sheet against the petitioner was filed on the basis of oral and documentary evidence collected during investigation of the case. 4.[b]. The petitioner had misused his official position by registering a case on the false complaint and created false records in order to suit the false complaint by dishonestly concealing the facts with a view to help the accused and allowed the change of accident vehicle and driver of the accident vehicle so as to get compensation from Motor Accident Claims Tribunal, that the petitioner conspired to cheat National Insurance Company Ltd. and in furtherance of the said conspiracy a case was registered on a false complaint, created false records in order to suit for the false complaint by dishonestly concealing the facts with a view to help the accused Govindan in registering a case on the basis of his false complaint and allowed to change the accident vehicle and driver of the accident vehicle so as to get compensation from Motor Accident Claims Tribunal proves the dishonest intention of the petitioner, that since the cases are decided based on the evidences oral and documentary submitted by the judicial authority in the trial court for deciding the case and the claim of the petitioner is devoid of merits and baseless and hence, the Court may be pleased to dismiss the petition for discharge.

5. After hearing both sides, the learned Principal Sessions Judge, Puducherry has dismissed the petition by observing that a roving enquiry cannot be conducted at this stage and the petitioner is at liberty to agitate his claims during the course of trial. Aggrieved at the order of the learned Principal Sessions Judge, Puducherry, the petitioner is before this Court.

6. Point for consideration: Whether prima facie materials are available in prosecution case for framing charges against the petitioner ?. Point :
7. Lodging of F.I.R is outcome end product of receipt of a source information by the respondent as to the occurrence which took place during the year 2004 2008.
8. The following is the gist of the source information - 8.[a]. CBI, ACB, Chennai registered a case vide RC MA1 2009 A0027 on the basis of a source information, that named police officials entered into criminal conspiracy with named private persons at Puducherry during the period from December 2005 to July 2008, misused their official position and converted self accident into road traffic accident for filing a false claim of Rs.20 lakhs, as compensation and cheated the National Insurance Company Ltd., Puducherry for the commission of offences punishable u/s.120-B r/w 420 I.P.C.,, 467, 471, 511 I.P.C., and Sec.13(2) r/w 13(1) (d) of Prevention of Corruption Act, 1988.
9. At the outset, the petitioner was arrayed as third accused in the F.I.R and afterwards when the final report was filed, he has been shown as second accused. The following are the material allegations indicating the culpability of the petitioner in the F.I.R.
10. On 19.12.2005, at about 3.00 p.m., late Karunakaran s/o V.Govindan @ Govindasamy Chettiar drove TVS XT Motor cycle bearing Regn.No.PY01 2636 of his brother Ganesh and dashed against a Mango Tree in front of the provision shop of Alagumurugan in Kanniyakoil Manapattu Road, Puducherry and sustained head injuries. He was taken to Mahatma Gandhi Medical College and Research Institute, Kattukuppam, Puducherry, then to Krishna Hospital, Cuddalore and from there to Pondicherry Institute of Medical Sciences (PIMS), Ganapathy Chettikulam, Pondicherry for better treatment. The injured Karunakaran was admitted in PIMS Hospital on the same day and was treated in Neuro Department. Karunakaran expired on 27.12.2005 while undergoing treatment and the postmortem was conducted on 28.12.2005.
11. On 22.12.2005, Govindan @ Govindasamy Chettiar arranged Sathiyaseelan as if Sathiyaseelan drove his TVS50 Motor Cycle with Karunakaran as pillion rider

and met with an accident on 19.12.2005, for the purpose of false claim of Insurance. Govindan also made arrangements with Babuji, Sub-Inspector and Selvam, Head Constable of Kirumambakkam Police Station, the public servants, for registration of a case to suit for the motor accident claim.

12. In furtherance of conspiracy, Govindan @ Govindasamy Chettiar had lodged a false complaint at Kirumambakkam Police Station, Puducherry and R.Selvam, Head Constable, Kirumambakkam Police Station, Puducherry, registered a case in Crime No.225 dated 22.12.2005 u/s. 279, 337 I.P.C. Govindan, the complainant and father of Karunakaran, Sivkumar, son-in-law of Govindan and Sathiyaseelan were not present at the time of accident at the accident spot on 19.12.2005. A record was created as if Sathiyaseelan was arrested on 23.12.2005 and released on bail. Babuji, SI of Police signed the Arrest cum Court Surrender Form and Memo of Arrest. Selvam, Head Constable had prepared false 161 (3) Cr.P.C. Statements of Murugan @ Kattadi Murugan, Sivannadam and Kaliaperumal as eye witness for the said accident and a false inquest report.

13. The above said Sathiyaseelan was examined u/s.161 Cr.P.C. by the learned Judicial Magistrate, Chengalpet. He has stated therein that he had admitted the case before the learned Judicial Magistrate, Puducherry in the alleged accident and paid the fine imposed on him in the case registered under Crime No.225/2005. He was also given a tender of pardon. In the statement given before the investigating officer of the respondent, he has stated that Govindan @ Govindasamy Chettiar offered his plot of 2400 sq.ft. for Rs.1 lakh for sale for stating a work shop and he paid Rs.20,000/- as advance and subsequently he paid Rs.64,000/- towards the sale of the plot and he told him that since there was a dispute in the land, he would settle it soon and hence he did not give the plot to him and that he repaid a part of the said amount of Rs.40,000/- that on 22.12.2005, Govindan asked him to come to the iron scrap shop of Kaliaperumal at Kanniakoil, that he asked him whether he was having driving licence and vehicle insurance for which he replied positively, that he asked him to bring his TVS50Motor cycle to show it to the police station to show that it was the offending vehicle at the time of accident which caused fatal injury to Late Karunakaran whose Motor cycle was not having insurance, that he also told him that

Karunakaran was not having driving licence also and he further asked him to tell that he drove the TVS50motor cycle with Karunakaran as pillion rider who met with accident on 19.12.2005, that when he did not agree stating that there would be problem in future for which Govindan informed him that he had already spoken to one Babuji, SI of Police and Selvam, Head Constable of Kirumambakkam Police Station and made arrangements and they would take care and there would be not be any problem, that he asked him to come with him for a day to the police station, that he gave his license copy and insurance to Govindan at Police Station which were then given to Selvam, Head Constable, that he and his fried were waiting outside, that Babuji, SI of Police was available in the police station, that he lodged a complaint with IG, Puducherry on 19.02.2008 with copy of suit property about not returning of Rs.84,000- or registration of plot by Govindan and that he was called by Babuji, SI, Kirumambakkam Police Station who asked him to give a fresh complaint about non-payment of Rs.84,000/- and asked him to wait for some time.

14. From the materials available on record, it has been shown that the petitioner has signed the arrest cum court surrender form and a memo of arrest and that he also had discussion with registration of false case for the purpose of false claim from the insurance company, as per the statement of Sathiyaseelan. In addition to these things, materials are also available to show that he has recorded statements of alleged eye witnesses to the accident, that he put his signature on the inspection report obtained from RTO as stated by LW5 one Kaliamurthy who was working as head constable at Government Press. LW3 one Kalivaradhan, head constable has stated that he arrested Sathiyaseelan and the memo of arrest was signed by Babuji, that since it is mandatory for the arresting officer to sign the arrest memo, he did not sign, that the writer wrongly obtained signature from Babuji, SI and that when he was asked about the inconsistency, he told that the SI might have returned to the station while preparing the document and signed it.

15. The petitioner has set up an alibi to the effect tht on 22.12.2005 he was on evening rounds in the police station limits when Govindan @ Govindasamy Chettiar came to the police station to give a complaint. In the petition, the petitioner has given relevant entries to show that he was not in the police station at the time of receipt of complaint.

16. The following are the relevant entries in the GD maintained in the police station - Sl.No.Time of Entry Gist of Entry Brief of Entry 32 16.30 hrs. S.I. Left I am proceeding on evening rounds in the P.S. Limit and G.D. with H.C.

1192. 59 3.10 hrs. S.I. Returned I returned to station after had performed the rounds in the P.S. Limit and to G.D. from H.C.

1192. Sl.No.Time of Entry Gist of Entry Brief of Entry 21 11.15 hrs. Accused surrendered One Sathyaseelan, age 25, son of Kuppusamy, No.8, Murugan Koil Street, Murthykuppam involved in Cr.No.225/2005 u/s.279 of 337 I.P.C., who was surrendered in P.S. Arrest Memo, interrogation register, P.S.R., arrest card was prepared and handed over to sentry P.C.

1999. 24 12.30 hrs. Accused released on bail Accused Sathyaseelan, age 25, son of Kuppusamy, No.8, Murugan Koil Street, Murthykuppam released on station bail with two sureties and two witnesses as per order of S.I.

17. The above are the relevant entries as projected by prosecution showing the actual participation of the petitioner in the investigation of the alleged case.

18. The learned counsel for the petitioner Mr.Ganesan would submit that none of the offences under Section 120-B r/w 420 I.P.C., 467, 471, and 511 of I.P.C., and that without materials connected against the petitioner, these sections have been included by the respondent in the final report. He also relies upon a decision of the Honble Supreme Court reported in AIR 1977 SC1448= 1996 (11) SC622[Guru Bipin Singh v. Chongtam Manihar Singh and anr.]. wherein their Lordships have observed as follows - 9. In view of all the above, we agree with Shri Jethmalani that the allegations made in the complaint, even if true, do not make out the case of forgery. Now, if forgery be not there, allegations under section 420 would fail because the allegation in para 5 of the complaint is that by ".forging the said book". deception was caused and members of the public were induced to purchase the same. So, forgery is the principal allegation; cheating being a consequential offence. If forgery goes, cheating cannot stand. So,the complaint sections, namely 420, 465 and 468. It may be pointed out that 468 is intimately connected with 420 and 465.

19. He also cited a judgment of this Court reported in CDJ 2010 MHC3392[Dr.M.Kamatchi Sundaram Vs. State by the Inspector of Police, City Crime Branch, Coimbatore]. with a preposition that mere knowledge on the part of the accused is not sufficient to show that he committed the offence as regards the allegations under sections 120-B and 109 I.P.C., are concerned.

20. Mr.N.Chandrasekaran, Special Public Prosecutor for CBI cases would contend that the court has to see whether there is ground to presume that the accused has committed the offence and gave a chance of suspicion about existence of facts constituting the offence are sufficient to refuse discharge, that the court could not at intermediate stage speculate whether allegations are true or false and direct discharge, that ample materials are available to show the nexus between the offences and the material, that there is no valid ground for discharge of the petitioner and that no convincing features have been adduced to differ from the order passed by the trial court.

21. In support of his contention, he strongly relies upon a judgment of the Honble Supreme Court reported in AIR 2013 SC52[Shoraj Singh Ahlawat and Ors. v. State of UP and Anr.]. wherein their Lordships, after referring to earlier decisions of the Honble Supreme Court have observed as follows - 12. Support for the above view was drawn by this Court from earlier decisions rendered in State of Karnataka v. L.Muniswamy, 1977 Cr LJ1125: (AIR 1977 SC1489, State of Maharashtra & Ors. v. Som Nath Thapa and Ors., 1996 CrLJ2448: (AIR 1996 SC1744:

1996. Cri LJ1977 and State of MP v. Mohanlal Soni, 2000 Cri LJ3504: (AIR 2000 SC2583:

2000. AIR SCW2674. In Som Nath's case (supra) the legal position was summed up as under : ". if on the basis of materials on record, a court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of a charge, probative value of

the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage.

13. So also in Mohanlal's case (supra) this Court referred to several previous decisions and held that the judicial opinion regarding the approach to be adopted for framing of charge is that such charges should be framed if the Court prima facie finds that there is sufficient ground for proceeding against the accused. The Court is not required to appreciate evidence as if to determine whether the material produced was sufficient to convict the accused. The following passage from the decision in Mohanlal's case (supra) is in this regard apposite: ".8. The crystallized judicial view is that at the stage of framing charge, the court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused."..

16. To the same effect is the decision of this Court in Union of India v. Prafulla Kumar Samal and Anr. (1979) 3 SCC4: (AIR 1979 SC366, where this Court was examining a similar question in the context of Section 227 of the Code of Criminal Procedure. The legal position was summed up as under :

10. Thus, on a consideration of the authorities mentioned above, the following principles emerge: (1) That the Judge while considering the question of framing the charges under Section 227 of the Code has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. (2) Where the materials placed before the Court disclose grave suspicion against the accused which has not been properly explained the Court will be fully justified in framing a charge and proceeding with the trial. (3) The test to determine a prima facie case would naturally depend upon the facts of each case and it is difficult to lay down a rule of universal application. By and large however if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully within his right to discharge the accused. (4) That in exercising his jurisdiction under Section 227 of the Code the Judge which under the present Code is a senior and

experienced court cannot act merely as a Post Office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on. This however does not mean that the Judge should make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

22. Following are the principles laid down by the Apex Court guiding the courts to deal with the applications for discharge of accused. 1.The Court would find prima facie case against the accused that there is sufficient ground for proceeding against him. 2.The Court need not take up a roving enquiry or fishing enquiry at the stage of framing of charges. 3.The Court ought to discern a strong suspicion over the existence of facts constituting offence as against the accused. 4.There is no necessity for the Court to evaluate the probative and evidentiary value of the materials nor oral evidence placed by the prosecution and see whether they would be adequate to convict the accused. 5.The Court is not at a duty at the intermediate stage to speculate whether allegations are true or false to direct discharge.

23. Adverting to the facts of the present case, following the principles laid down by the Honble Supreme Court, a deep study of materials on record would show that there are prima facie materials available against the petitioner to frame charges and a strong suspicion about existence of facts constituting offence against the petitioner is also discernible. Whatever be the contention of the petitioner, they could be agitated very well by him at the time of trial at the final hearing of the case. In such view of this matter, I find no merits in the revision which suffers dismissal. This point is answered accordingly.

24. In fine, the Criminal Revision is dismissed. 10.07.2013 Internet : Yes Index : Yes rgr To The Principal Sessions Judge, Puducherry, Special Judge under PC Act. S. PALANIVELU, J rgr Pre-delivery Order in CRL.RC No.1552 of 2012 10.07.2013