A.Rani Vs. Kumar

A.Rani Vs. Kumar

SooperKanoon Citation : sooperkanoon.com/1169046

Court : Chennai

Decided On : Sep-25-2013

Judge : The Hon'Ble Ms. Justice K.B.K.Vasuki

Appellant : A.Rani

Respondent : Kumar

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED: 25.09.2013 CORAM: THE HON'BLE Ms.JUSTICE K.B.K.VASUKI Crl.R.C.No.198 of 2005 A.Rani .Petitioner versus 1.Kumar 2.Varadhan 3.Kamalam 4.State represented by the Deputy Superintendent of Police, Namakkal.Respondents Criminal revision is filed under Sections 397 and 401 of the Code of Criminal Procedure, against the judgement dated 6.10.2004 made in SC.No.193/2003 on the file of the Chief Judicial Magistrate, Namakkal.

For Petitioner : Mr.R.Sankarasubbu For Respondents : Mr.Karunakaran -R1 to R3 Mr.C.Iyyapparaj, GA(Crl.Side) (R4)

ORDER

The complainant/PW1 is the petitioner herein.

This Criminal Revision is filed against the order of acquittal of the respondents 1 to 3 herein from the charges under sections 498A and 304B IPC and Section 4 of the

Dowry Prohibition Act in SC.193/2003.

2.The petitioner herein is none else that the mother of one Vijayakumari since deceased, who committed suicide at 9.30am on 8.9.2000 in her matrimonial house.

The complaint was given on the same day by the petitioner herein before the 4th respondent police as if Vijayakumari was forced to commit suicide by the reason of ill-treatment meted out in the hands of the respondents 1 to 3 herein and the same was registered as FIR in Crime No.1037/2000 and the same was investigated into and the culmination of the same was SC.No.193/2003 on the file of the Chief Judicial Magistrate, Namakkal.

3.The prosecution, in order to prove the charges framed against the accused, examined PW1 to PW16 witnesses and produced Exs.P1 to P33 documents, besides MO1 to MO9 material objects before the trial court.

No oral or documentary evidence was adduced on the accused side.

The trial court, on the basis of the available materials, arrived at the conclusion that the prosecution failed to prove the guilt of the accused beyond reasonable doubt and extended the benefit of the same and acquitted the accused.

Hence, this criminal revision by the complainant before this court.

4.The petitioner/complainant would vehemently question the correctness of the order of acquittal passed by the trial court, mainly by relying on the evidence of PW1/mother and Ex.P5 diary, which are according to the learned counsel for the petitioner, sufficient enough to prove the charges framed against the accused.

5.Whereas, the learned counsel for the respondents 1 to 3/ accused would, by relying on the failure of the prosecution to produce any independent and corroborative evidence, defend the order of acquittal of the accused.

6.Heard the rival submissions made on both sides.

7.The respondents 1 to 3 herein were charged for the offences under sections 498A and 304(B) IPC r/w Section 4 of the Dowry Prohibition Act.

The respondents 1 to 3 are the husband and parents-in-law of the said Vijayakumari, whose death is suicidal in nature.

She ablaze fire on herself, inside the house of her husband in the presence of her husband within less than 7 years from the date of her marriage and died of the burn injuries, leaving behind her two children.

The complaint arising out of which is the present criminal revision, was lodged by the mother of the deceased and the mother-in-law of the fiRs.accused on the same day.

The complaint proceeds as if the complainant had two sons and two daughters and were living at Mettur and the deceased, who was the elder daughter, got married with one Kumar six years back and she gave birth to two children and the deceased was working as Staff NuRs.in Primary Health Centre, Erumaipatti and son-in-law was working as Health Inspector at Paramathi and they had been living in Sennthamangalam Main Road, Namakkal in rented house.

The complaint further proceeds as if her daughter Vijayakumari came to Mettur, ten days back and complained about ill-treatment and harassment meted out in the hands of her husband by demanding money and because of his suspicious nature and she stayed there for two days and thereafter, she was at the instance of the complainant, returned to her matrimonial home and thereafter, they were informed about the suicide committed by the deceased and they had been to Namakkal, where they were informed about the death of her daughter.

8.It is not in dispute that the only evidence relied on to prove the complainant's case is that of her evidence as PW1 and nothing else.

None of her family members was examined to speak about the demand for dowry made by the husband and in-laws and ill-treatment and harassment meted out by the deceased in the hands of husband and in-laws for complying with such demand.

The reading of the entire judgment of the trial court would reveal that there are only two incriminating factors available against the accused, which are the evidence of PW1 and Ex.P5-diary purportedly written by the deceased.

The complainant has not in her complaint mentioned anything about the nature of the demand made and the manner in which, the deceased was ill-treated and the person, who ill-treated her.

PW1 in her evidence did not speak in detail as to the statement made before the Revenue Divisional Officer and in the court during enquiry under section 164 Cr.P.C.Further, the complainant has also not furnished any particulars as referred to in her Section 161 Cr.P.C statement recorded by the Investigating Officer.

The trial court has in detail explained the contradictions and improved versions in the evidence of PW1 at different stage of the proceedings.

As already referred to, the complaint is bald and vague regarding the demand for dowry and the act of ill-treatment and harassment for complying with such demand.

Her statement before the Revenue Divisional Officer and the Investigating Officer are also equally bald and vague.

9.Whereas, the complainant for the fiRs.time has in the witness box come forward with the detailed version regarding the act of dowry at different dates and act of harassment of her daughter for complying with such demand.

There is absolutely no explanation forth coming on the prosecution side for the failure of PW1 to speak about the nature of the demand and the manner of compliance of the same and the manner of harassment of the wife by the husband and in-laws.

Further, none of the family members was examined in support of the evidence of PW1 that all the demands made by the husband were meted out by PW1 with the assistance of Suresh, who is one of the sons of PW1, who is in abroad.

However, the prosecution did not think fit to examine the son to substantiate the evidence of PW1 that she, with the help of her son, complied with the demands made by her son-in-law.

That apart, the trial court has explained in detail as to how the prosecution evidence was far from truth and was unbelievable in this regard.

Thus, as rightly argued by the learned counsel for the accused, there is no cogent, independent and corroborative and tangible evidence to believe the prosecution case.

10.Excluding the evidence of P.W.1, other incriminating material available herein is Ex.P5 purported to be written by the deceased.

As far as Ex.P5 Diary is concerned, it may be true that as per Expert opinion, the handwriting in the diary as well as in Ex.P6 leave letters were written by the one and the same handwriting i.e.Vijayakumari.

It is also true that the contents of the diary would disclose the serious act of cruelty on the part of the husband, mother-in-law and sister-in-law, but the same does not relate to any act of dowry demand.

Even otherwise, the entire prosecution case cannot be held to be proved through uncorroborated contents of Ex.P5 diary.

11.Thus, here is the case, wherein the evidence of PW1 is not satisfactory enough to make out the case of dowry demand to attract section 498A IPC and the prosecution failed to prove the same.

In that event, the presumption for charging the accused under section 304(B) IPC does not arise herein.

Under such circumstances, the burden is always on the prosecution to prove their case beyond reasonable doubt and the same never shifts to other side.

12.The trial court has in its own manner duly appreciated the testimonies of witnesses and has recorded sound and tenable reasons for disbelieving the

prosecution case and for acquitting the accused.

The petitioner is unable to make out any error apparent on the face of the record, illegality or infirmity in the order passed by the trial court, without which, the revisional court has no role to interfere with the order of acquittal.

13.In the result, the criminal revision is dismissed by confirming the order of acquittal of the accused passed by the trial court.

rk Index:Yes/No Internet:Yes/No 25.09.2013 To 1.The Chief Judicial Magistrate, Namakkal.

2.The Deputy Superintendent of Police, Namakkal.

3.The Public Prosecutor, High court, Madras.

K.B.K.VASUKI, J.

rk Crl.R.C.No.198 of 2005 25.9.2013 WP.4750/2006 The petitioner, who was denied for promotion on the ground of pendency of disciplinary proceedings, is now before this Court for his being considered for promotion pending disciplinary proceedings.

2.The petitioner was originally appointed as Junior Inspector of Co-operative Assistant and thereafter, he was promoted as Senior Inspector and co-operative sub registrar.

While he was working as Reserve as special grade II officer, he was issued with charge memo as if he deposed falsely before II Additional City Civil Court as proseuction witness No.4 with a view to help the accused to get out of the criminal case, thereby conducting himself in a manner and unbecoming of govt.

servant and in violative of Government servant conduct rules.

Pending disciplinary proceedings, the petitioner made representation to the fiRs.respondent for cosndiering him for promotion to the post of registrar and his reprsentation was rjectedby the impugnedordr on the gorund that he will nto be

cosnidred for promotion until setion 17(b)charges finalies and the impugned ordr further says his name will be removed from the promotional panel.

Aggrieed against the same, this writ petiion, the fhort point considerd a to thwther any right is conferred by merely inclusion of his name in the promotional panel and whether he is entitled to get his promotion pending disciplinary proceedings.

The same is directly answered in the judgment of the Hon'bla Apex Co.1991 Service Law Reporter SC cited on the side of the respondent.

The Hon;ble AC has in para 5 of the jdugement observed as follows: if the petitioner's case is examined in the light of the principles laid down by the Apex court in the judgment cited supra, the same will dis-entitle the petitioner to claim any promotion.

The promotional panel for the year 2002-2003 enclosed at page 5 to 8 of the typed set of reveals that the ptitioner name T.K.Muthu is included in the panel at sl.no.11.whie promto panel is dated.the petitioner was on the very next day issued with charge memo under section 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) rules 1955.

pending the same, the promotions are given to from the cadre of sub registrar to Deputy registrar from and out of the penal 2004-2005 and the petitioenr was not considered for promotion effected on27.5.2005.

The same is followed by the impgne roder, thereby his name was removed from the panel for the year 2002-2003 on the ground fo epndency fo disicplinary proceedigns.

Though the learned ocusnel for the petitioner would seriously argue before thsicourt that his name in the panel confers a right to thepetitioenr for his promotion.

Such conention is liable to the begative in view of the principles laid down by the AC.

As rightly aruged by the learn ocusnel for theptitoner two dates are cruicil.

One date of prepation of panel and the date of atual promotion.

As per the observation fo the AC, thependency of disciplinary action, as on the date of actual promoion is likely to defer further promotional chances fo the deliquent and the pendency fo disciplinary proceedings is reasonable ground for posponign the rpomtoion as observedby the Hon'ble Apex court, in the event of his examine from the charges and if he found otherwise suitable, she shall be considered with restropespection from the date on which his junior are considee.

Whereas the inclusion of the name for promotion and failure to ocnsider him for the promotion due to him, cnanot eb otherwise challenged in the present case.

In the result, the writ petition is dismissed, with liberty given to the petitioner to approach the authority concerned for considering his name for promotion at the appropriate stage.

Promotion to the post of Regisrar, depyt registrer ...WP.26073/2005 The relief sought for herein is to quash the impugned order of the fiRs.respondent, in and under which, the punishment of removal from service was imposed on the petitioner Forest guard for the charges proved against him in the Tribunal in the disciplinary proceedings.

Few facts, which are relevant for consideration herein are: The petitioner was appointed as Forest Guard on 28..and subsequently promoted to the post of Forest Guard, while working as Forest Guard Kavara in Murappur ...forest range, Dharmapuri , he was issued with charge memo dated..for the tribunal for the disciplinary proceedings.

The two charges issued against the petitioner are .....( ) in short, the charges issudagisnt thepetitioenr are the petitioner demanded Rs.1000 for releasing three pesons mariappan, madhu and raman all belonging to Kathirpuram.

Who have detained by the forest guard for the alleged ...green bamboo in the reserved area on 15.1.1983 and in pursuance of the agreement,t eh petitioner agreed to receive Rs.600 and received Rs.500 form one karuppan on 15.3..and relased three persoonf rom dtneton and received balance maount of Rs.100 from

chinnasmay accompanied with one Rajagopal on 20.1.83 and while relasign them, the officer obtained signature of one...and one Krishnan who is father of school goinr aman and on spearate blanck sheet on 15.and foisted false against threee persons and created recordsas if they are arrested on.....and while illiticy gree banmoo..at kavaraithre as if they admitted the statement and agreemtn dot pay the ..and remitted the bambook and Rs.60/- and Rs.20/- in forest range officer and karur under dur eceitp out fo Rs.600/- received from the officer.

The same was followed by show cause notice, reply and departmental proceesign by the triabunal by disciplinary proceedings, by Coimbatore.

After disciplinary proceedings, enquiry, the tribunal filed its report holding the petitioner guilty fo both the charges to the disciplianry authorty, who disagreed with the ...forwarded the same to the Government.

He was again second show cause notice about theproposed punishment of remvoal from service and the same was fllowed byt eexplanatio.

Thereafter, the fiRs.respodnetn Government has obtained view of the Tnp SC and the fiRs.erspondent on the basis of the findigs rendred by the tribuanla nd the views expressed by Tn PSC decided to remove the petitoen from service and according the passed impugend order.

The same is challegned by way of O.A.and the same is trenaffered to the court and the same is renumberd as the present writ pteiton.

The petitioner has in this writ eptiton challengd th correctness not only qyuestinign the manner in which enquiry is conducted by the tribunal, but also the manner in which the final roder is passe dby the authority cocnerned.

It is contended before ths corut, whil eenquiry sws without examining the material witnesses and without givng opportunity to the petitioner to cross exmine them, amount to the principles of natural justice, the fiRs.respondent has passed the impugend order, without following the same, by pretentive issue and without duly cosnidering the contenton raised in the explanation and without independent of mind in the materials availbel and is purely based on enquiyr rpeort and the view

fo the TNPSC.

The leatned cousnel for the petitioner hasl also challenged the correctness of the finding fo the tribunal as perveRs.for the same reason as stated above.

Per contra, the learned Governemtn advocte would seriously defend the impugned order of punishment by relying in the finding of the tribunal and the view of the TNPSC.

Heard the rival submissions made on both side.

As far as the charges are concerned, the same is on tow folds.

(i)The petitioner received illegal gratification of Rs.600 and dtained..(ii)while doing so, he obtained signature from them in blank sheet and misused the same as if they are forest offenders and they were duly arrested and they admitted the same and compounded the offences and pay compounding fees.

It is brought to the notice of this court that the case is initiatedagainst the petitioner much after the offence is compounded as forest officer which..the charge memo is issued to the on the basis of the complaint in writng given by one anbazhagan.

Anbaza is admitted not examined before the tribunal.

Though the petitioner alleged to have received rs.600/- as illegal gratification, one Rajagopal who have said to have paid balance sum of Rs.100 on 20.1.193 is not examined before the tribunal.

The entire finding against the petitioenr is based on the evidence of one chinnaswmay and krishnan who is none else than the father of detneue and karuppan who was examined as prosecution side witnesses as PW5, 6 and 8, out of three witnesses, the disciplinary authority, who is the second respondent herein has in his proceedings 15.7.1989 found them to be booked for forest offence by the present in his capacity as forest guard.

The remaining witnesses found to be relatives of PW6 and 7.

the second respondent Disciplinary authority is of the view that 6witnsses aggrieved against the forest guard booked forest offence agains them.

The disciplinary authority for th failure to the tribunal for not examining the complainant and rajagopal who are the material witnesses and by disbelieving the version of the evidence of PW1 to 7 which are interested witnesses and by considering the evidence of PW14 clerk in the forest department and PW17 kailaperual forest ranger to the effect that the offence was compounded on 20.1.1983 and compounding fee was paid and the amount was collected from the offendeRs.and also in the basis of the evidence of the accused officer was of the view that this is a fit case wherein, the case be remitted to the government for passing final order and accordingly..However, the fiRs.respondent has after receipt of the reprot issued showcause ntoice,for the proposed punishment of removal from service.

Thereafter obtained views of Tn PSC and passed the final order on the basis of the same.

As rightly aruged by tehlearned cousnelf ro the petitioner.

The perusal fo the order passed by the fiRs.respondet would reveal that the same does not disclose the independent application of mind of the respondetn into charges explanation and the nature of the materials available and proceedings of the disciplinary autority and the circumstance undr which the fle was forrwarded to the Govt, the explanation offered by the leiginque and th view of t NPSC.

In this conneciton, the lenard cocunel for the peititoner drawn the attention of the TNC(D.) Tribunal ruesl 1955.

For better understanding, rule 10 the tribunal on receipt fo the finding fo the tribunal and copy of after sending the communicationof the dleigque for makign further representation, .any representation rp from the deliquent shall taken onto any order imposing penalty.

The fiRs.proviso to the same says that the TNPSC shall be consultd for its advane and such advice shall be tkaen into befoe imposin any penalyt.

Whereas in tehpresent case, the R1 bas nt considered the explation submitted byt eh ldeliquent.

When it is reuqird to consult TNPSC if it is necessary and before imposing penalty, the entire conclusion arrived at the on the basiso fht ehveiws expressed TNPSC.

That way the r1 commtited graoss violationfo the procedure laid down under the aCt and th failure to consider the expalnation by the deliquen would also amount to violation of pricnipes of nature justice.

Going back to the manner inw hich the enqiyr is conducted, the facts made availeb would recveal that material witneses are not examined.

In this contenxt, the one of the priciples of the Apexcourt referred to n the DB judgement of our High court in Tmil Naud Housing board, R.Sankarapani....is to be rcolelcted.

It is observed therein that the employe rdepartmnt should taenquiyr mkust he coudced bona fide and fair must be taken to see that the qnuiry do nto becme empty formality and on receipt of the nequiry ..it is incumber to supply the copy of the enquiry and all connected amterial relied on y the enquiry officer to enable his to offer his views.

When tehdiscipliary ahtoris icnlined to base his decision on the views of the TNPSC the deliqneutn oght ot have give opprot to offer his view if any on tehsame which is adveRs.to him and which is strongly relied by the disciplinary authoity to arrive at the final conclusion.

The act of commission and omission by the tribnal dn by the disciplinary as above discusison,w oudl ars rigtly aruged by tehelarnd ocusne fro the petitioenr, render the findings of the Enquiry rporert and the R1 tribunal perveRs.and based on no material evience, contry to the evidence or over looking material factors and the impugned order is legllay usnstuaineable and liabel to be seet asdie.

And the same is The complainant itself not examiend and the contents of the complainant at whose instance the proceedings are intiated is nto though as cited

as witnesses, not produced befoe the tirbunl.

Like wise one of the amterial witnesses who have paid the amoutn to delinque is also not examined.

Unexplianed Failrue to produce those iwtnessesis as pointedout the disciplinary uthority in his reprot.

The deisciplinary authority ahs also refered toa s to how..for his booked forest offence againt them.

Had all these aspectsocnsidred in proepr perspective, It is also to be ntoed herein that except the oral evidenc eo fintersted witnesse or witness who are grudge agaisnt the f ORS.guard, there is aboslutely no eivdence to show that the persons are detained on 15.1.1983 and they are relasd on same day on reciept fo illalgal gramticat and case was regisred on 18.1.210 and the case was componded on 201.1983.

the office reords avialbelr eouc real htat eh cawewas egisredon16.1.1983 and the ptietion was compoined receie dby the forest range on 17.1.1983 and permtited to be comoiend on 18..1.

ad the amoutn was olelcted on 20.1.it is nobody case tht the comoining was done in the basnece of offendeRs.On 15.1.183 on the asusrnce that no case wa regsitered against them and the case was falsely registred on the enxt dya, there i no poisible to appear before the forest range for compoinindghte aoffice it is stted tthat th eforest ranger permtited to cmmound offende iwhout presence of the offder No specif statement is obtaine dby the fort ranger in this regard.

That the event, th fofender being presnt athte time of compoinding offence and making payment of compoindng fee int ehoffoce if the forest office nanot be ruled out.

It if is not so, if the case is compoine dint ehabsenc of foreisng offender, then the f ORS.ranger is also grater extent ot be held to responsible for compoinding the offenc in tehri absen.whereas no case is regsiteerd againt the foresg foffnder.

If that si n, the case basedon official record, isdeemd to have been acceptd as true.

In that event, the complainant case as if the offenders are relased otn 18.85 and thecase wasregisrredn15.9.2003 is contains no untr.

This material aspect is omitted to be considerd bt tegh tribnal dn R1 disciplinary authority, whih has reuslted in glarsing erroe and seriiosumiscarriageof jsutic in arriving at proepr conclusion.

Viewing from any angl, the finding of the tribunal and the fiRs.rpeosndent of the firstrespodnetn order suffers from perversityand standsviated.

Enqiry extract GSV In the result, the writ petition is allowed and the impgned ordr stands quashed.

Wioth all attendant benefits ...incomplete order: Heard the rival submissions here is the case wherein, the petitioner though accepted thereceipt fo Rs.2000/- denied the prupsoe for which it is accepted, while according to the enquiry officers reprot, the same is received byw ay of illegla gratification for settling the land acqusition award amount to the awardee, according to tepetitoner, the same is received from one of the awardees for arranging counsel for him to obtain succession certificate in this regard.

The consistent stand is taken by the petitioner though out.

The petitioner has stated so from the moment from the arrest and seizure of the amount ill date.

Before going into the genuineness or otherwise of the statement so made by the delinquent, the following few factors are relevant for consideration.

(The acqusition amount of Rs.12,508/- is due to be payable to Raman and his brother vasudevan, who is the complainant herein.) the amount is payable to Raman and production of Lr and conedrn , as such, thereis no posisbility fo sanctioning or disbur without satisfying the above sttement.

Niether the l AO nro the petitioner/asisstn would be in a position to process the file and pass favaourbale odeRs.The award was passed for payment of amount subject to procution of LR certificate as the land belonging to the grand father of Raman and vasudevan.

Unless Lr certificate is produced, no amutn ould be disburded to the awardees.

As sanctioning autority si th special officr and as the petitioenr is only assistant, he is no autority to disbuRs.and sanction the amount and he has no role to play eithr in sanctining or disburing the award amount.

In view of such factual background, the vigilance commissioner as seen form his confidential report enclosed at pages 1 and 2 of the typed set dated 1.2.32002, was of the view that the plea of the accused officer that vasudevn request him to engage a lawyer at cheng for gtting LR cannot be brushed aside as an after though and fuhte view that this is nto fit case to laun proccutionagaint the officer.

This fitcase to be tried by the tribunal were liberty is givne to the officer to plac ehis defence etc.only in this factual background,t the finding fo te enquiry officer on the charges framed agaisnt the accused are consdiered.

t is admitted case that Vasudevan approached the petitioner and it is who alleged to have paid money to the petitioner near Tea shop.

It is not in dispute that the conversation betwene the petitioner and vasudevan was not overheard by any one including the person accompanying vasudevan.

It is the case wherein what is requird to be seen that whether the staement of vasudevan or accused person is convincing and inspiring.

As already refererd to, the vigilance ocmisisoner was of the view that the plea raised by the petitioenr cannot be brusedh aside as as after though.

The LAO and IO have also categorically stated in their deposition that the deliqneunt has raised the plea immediately after seizure of the amount from him.

The deliqneut has also examined DW1 the one of the avocates from Chengalpet who categorically dpeosed that the petitioner approached him in conneiton with obtaining succession certificate etc.whereas this material aspect which is likelyt ot have tilted the finding in favour of the petitioner is overlooked by the Enquiry Officer as well as by the disciplinary authority.

Neither the Enquiry Officer nor the disciplinary authority adverted to this aspect which is sufficient enough to raise suspicion about the complainant case.

Failure to do so has in my view, rendered the finding fo the EO perveRs.as well as the final order passed by the disciplinary authority to be perverse.

Had the disciplinary authority considered this apsect and considered the explanation offered by the petitioner, he is likely t to have decide.

In view of the same, both the orders unsustainable in law and is liable to be set aside.

In the result, the writ petition is allowed and the roder of the second respondent stands quashed.

The respondent tis directed with service and monetary beneits.

The EO has nto adverted to this part of the evidence in his rperot.

34931 .....