

Sunil Menon and Others Vs. Ramesh Chelliah and Another

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Court : Karnataka

Decided On : Mar-15-2017

Judge : John Michael Cunha

Appeal No. : Criminal Petition No. 8361 of 2016

Appellant : Sunil Menon and Others

Respondent : Ramesh Chelliah and Another

Judgement :

(Prayer: This Criminal Petition is filed u/s.482 Cr.P.C praying to quash the proceedings initiated against the Petitioners under PCR.No.44/2016 on the file of II Addl. City Civil and S.J., Bangalore Vide Annexure-A.)

1. This petition is filed under section 482 of Cr.P.C. seeking to quash the proceedings initiated against the petitioners in PCR.No.44/2016 pending on the file of the II Addl. City Civil and Sessions Judge, Bengaluru.

2. In the petition it is stated that petitioner No.1 is the Vice President of the Ensemble Engineering Department in a Company named Adva IT solutions Pvt. Ltd., (hereinafter referred to as "The Company"). He is the senior most employee of the Company. In terms of salary, he is the highly paid employee of the Company. Petitioner No.2 is the Senior Manager, Engineering Department. Petitioner No.3 is the Director of the Site Operations Department of the same Company.

3. It is further averred that respondent No.1 currently earns a pay of Rs.62,08,119/- p.a. The salary earned by respondent No.1 clearly depicts that respondent No.1 is being given fair treatment in the Company. It is stated that, on 12.7.2016, three women employees of the Company filed written complaints, alleging sexual harassment by respondent No.1. Pursuant to the said complaints, in terms of the mandate of the Company's Prevention of Sexual Harassment (POSH) Policy, Independent Committee was set up for resolution of the complaints.

4. On 11.8.2016, after a lapse of considerable time since the initiation of the enquiry proceedings, the respondent No.1 got issued a legal notice to the petitioners alleging discrimination and unfair treatment on account of his caste. But, according to the petitioners, the first respondent's own review and appraisal of the work by petitioner No.2 would establish the contrary. It is further stated that, at no point of time has the Company enquired about the caste of respondent No.1 or any other employees. But, based on the allegations made in the legal notice, respondent No.1 instituted a private complaint before the learned II Addl. City Civil and Sessions Judge, Bengaluru and the same is numbered as PCR No.44/2016. Learned Sessions Judge, without recording any reasons and contrary to the several rulings of this Court, directed enquiry in complete disregard to the fact that even an enquiry under the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "SC and ST (POA) Act, 1989") may in all probability have draconian consequences as far as the petitioners are concerned.

5. It is further contended that the above mentioned facts prima facie establish that respondent No.1 has instituted the complaint with the sole objective to avoid any consequences which may have been due in the light of the allegations made against him. The respondent No.1 has instituted the proceedings with an intention to harass the petitioners. The allegations made in the complaint, even if accepted on their face value, do not prima facie constitute any case against the petitioners. The uncontroverted allegations made in the complaint do not attract sections 3 and 4 of the SC and ST (POA) Act, 1989. Without prejudice to the above, it is stated that, no such statements are made in public and hence the ingredients of

the above mentioned sections are not made out. The allegations made in the private complaint are highly absurd and inherently improbable. The proceedings are instituted with a malafide intention and ulterior motive for wrecking vengeance on the petitioners and to avoid the liability that may be imposed on the respondent No.1. On these grounds, the petitioners have sought to quash the proceedings initiated against them in PCR.No.44/2016.

6. On entertaining the petition, by order dated 16.11.2016, the further proceedings in PCR.No.44/2016 were stayed. On service of notice, respondent No.1 filed an application for vacating the stay order inter alia denying the averments made in the complaint and further contending that there are sufficient grounds for proceeding against the accused and the learned Sessions Judge has directed investigation after proper application of mind and therefore, the interim order granted by this Court is liable to be recalled.

7. Though the matter was posted for hearing on I.A.No.2/2016, with the consent of both the parties, I have heard the learned counsel for the petitioners and the respondent No.1 and learned Addl. SPP for respondent No.2 for final disposal of the petition.

8. Learned counsel for the petitioners has reiterated the grounds urged in the petition and by referring to the relevant portion of the legal notice issued by the respondent No.1 at Annexure-'E' would submit that in the legal notice issued by the respondent No.1 dated 11.08.2016 there were no allegations whatsoever that the petitioners herein either ill-treated or abused the respondent No.1 on account of his caste. Learned counsel pointed out that respondent No.1 was appointed on 24.2.2014 as Director of Engineering on a salary of Rs.46,80,000/- per annum. On 12.7.2016, three complaints were received from the women employees of the Company alleging sexual harassment by the respondent No.1. An independent committee was constituted as per the policy of the Company to enquire into the said allegations and the enquiry is completed and the report is awaited. Anticipating disciplinary action, the respondent No.1 issued the aforesaid legal notice dated 11.8.2016. Learned counsel has taken me through the said legal notice and has laid emphasis on the material allegations made therein, which are

extracted as under:-

"That first, second and third of you treated our client unfairly since two years and he was de-motivated. ... First of you purposefully evaded providing new assignment and that our client was neglected and sidelined for the reasons known to first of you. (underlining supplied)

Our client further states that he was heading a team of about 14 employees and his performance was always rated good through out the years. Initially it was normal for the first six months and then you have come across to know that our client belonged to Scheduled Caste community and first, second and third of you being upper caste kept distance from our client in all activities. Our client does have strong reasons to believe that ill-treatment, boycott and harassment are because our client belongs to the Scheduled Caste and you have highlighted our client's caste among other staff in office and instigated others for social boycott. (underlining supplied)

That our client further states that there was clear discrimination and constant interference from second and third of you with the instigation of first of you. Over and above that you have been instigating other subordinates to propagate and act against our client with clear intention to set differences in his team and all of you have conspired to get our client to be expelled from the Company.

... however, our client strived to excel in his performance inspite of your harassment.

... That our client has been denied crucial access to company information on new technologies and project developments thereby preventing his chances of success and growth.

... This all has been done by you to expel our client just because he belonged to Scheduled Caste and his presence in office annoyed you.

... second of you used to pass those critical information to certain persons to create ruckus in the team and disrupt the harmony in the team and instigate the lower rated or underperformed team mates to turn against our client and to hatch

out plans to make false complaints on our client with ulterior motive and instigate them to come out of the leadership of a Scheduled Caste.

That second of you even denied parking lot for our client just because he belonged to Scheduled Caste ...

... Further third of you went ahead and stated that he along with the first and second of you have hatched out some plans to throw the Scheduled Caste person out and soon third of you will occupy the post of our client.

... That our client has strong evidence and belief in this regard that he is being targeted as he belongs to Scheduled Caste.

In the above circumstances we call upon you to refrain from all illegal activities including boycotting him, interfering with his team and assignments, and refrain from false allegations made with vested interest and ulterior motive and make good the loss incurred by our client on his career, reputation and goodwill and issue an undertaking in writing to this effect and also to tender unconditional apology within seven days from receipt of this notice, failing which our client shall be forced to initiate legal action against you. This notice is issued without prejudice to our client's right to initiate criminal case against you before the concerned law enforcing agency/forum/ court of law. (underlining supplied)

9. It is significant to note that in the legal notice issued by the respondent No.1 on 11.8.2016, there were no allegations attracting any of the provisions of the SC and ST (POA) Act, 1989, much less any allegations to the effect that the respondent No.1 was insulted or abused by calling out his caste in public view. A thorough reading of the entire legal notice manifests that the grievance of the respondent No.1 related to the work environment in the Company. The tenor of this notice reflects that he was not provided with opportunity to excel in the Company and that he was sidelined and the Management had conspired against him so that he does not come up in the Company. Even the relief claimed by the respondent No.1 suggests that he wanted petitioners No.1 to 3 to refrain from their illegal activities including boycotting or interfering with his team and assignments, and refrain from false allegations made with vested interest and ulterior motive. There were

absolutely no allegations at this point of time, that petitioner Nos.1 to 3 or other petitioners insulted him or abused him in public view on account of his caste.

10. In the backdrop of the above legal notice, if the allegations made in the private complaint are perused, it is relevant to note that for the first time, the respondent No.1 has alleged that he was abused and insulted by invoking the name of his caste. It may be relevant to refer to the relevant extracts from this private complaint wherein the respondent No.1 has alleged that,

"accused person are upper caste and non SC/ST. That the accused persons treated this complainant unfairly since two years. ... Accused No.1 purposefully evaded providing new assignment and that this complainant was neglected and sidelined by accused persons 1 to 6 just because he belongs to Scheduled Caste.

This complainant further states that it was normal for the first 5 months and then the accused persons came across to know that this complainant belonged to Scheduled Caste community. ... However this complainant was unaware that the said accused No.2 had been annoyed knowing this complainant belonged to Scheduled Caste and seemed to be always conscious of the same. ... That then onwards accused No.2 highlighted this complainant's caste among other staff in the office. This has pained this complainant and had caused mental, psychological and emotional stress on this complainant.

... Accused No.1, 2 and 3 always disregarded this complainant's decisions and created hurdles by not supporting to deliver his duties, that accused No.1, 2 and 3 started harassing and intimidating this complainant at work by creating a hostile work environment. That during one of the days when this complainant was having lunch with accused No.2 and 3 (Mr.Ashok and Mr.Prashanth) accused No.2 stated with an intention to hurt me that "... These days all high posts in the society were filled by Dalit fellows. These fellows who were once upon a time cleaning drains have come up in life only because of the reservation and they show their stinking nature even after reaching high posts." He then added that "even IT industry is not spared..." ... Complainant thought of ignoring the incident assuming their ignorance and apathy to members of the SC/ST community.

... Subsequently, another day when this complainant went to accused No.3 Mr.Prashant's cabin to discuss some HR matter, and when casually mentioning about mutual hobbies and interests, this complainant stated that astrology is his interest and passion, then immediately accused No.3 asked in a sarcastic way "...What!! Nimmantha valayuru kooda jothishya shuru madithira..." ...

That accused No.1 and 3 used to constantly over-ride and neglect this complainant's assessment and his directions to his subordinates and make ridicule of his position and sidelined him in group meetings and even excluded him from important trainings/management meetings in Ensemble Software in spite of repeated requests. ...

... Further accused No.3 also instigated such low performers in complainant's team to raise false complaints against him with the management. ... He even denied parking lot to this complainant. ... Accused No.3 Mr.Prashanth is continuing to insult and intimidate this complainant by sending offensive jokes on SC/ST community in the Company's Whatsapp group, one such message forwarded by accused No.3 to this complainant is attached herewith as Document No.4. ...

... Accused No.1 Mr.Sunil Menon used to simply ignore this complainant's recommendations and inputs and disregard this complainant's decisions and thereby undermine his role in the Company. ...

Accused No.1 and 3 deliberately instigated the HR and IT Department not to support this complainant on various day to day functions. Further accused No.1 avoided this complainant even during scheduled one to one meetings and also stopped assigning this complainant any new project responsibilities, but at the same time setting high goals, thereby to ensure failure on this complainant. ...

That when all efforts of the accused persons failed to expel this complainant all the accused persons collectively instigated other female employees to initiate false sexual harassment complaints with an intention to humiliate and defame this complainant and thereby expel this complainant from the Company and to tarnish his image and goodwill in the industry. ...

Finally, the complainant has sought for the following prayers:-

WHEREFORE this Hon'ble Court may be pleased to

(a) To take cognizance of the offence punishable under sections 3 and 4 of the Scheduled Caste and the Scheduled Tribe (Prevention of Atrocities) Act, 1989 and sections 500, 503, 506(b) and 120(b) of the I.P.C. against accused person and refer the matter for investigation to police;

(b) To summon the accused persons and punish them in accordance with law; and

(c) To take necessary action under the Code of Criminal Procedure and pass any other order as it may deem fit in the interest of justice.

11. It is the submission of the learned counsel for the petitioners that the allegations attracting the ingredients of the provisions of sections 3 and 4 of the SC and ST (POA) Act, 1989 are made with an intention to harass the petitioners. The allegations made in the complaint, even if accepted at its face value, do not make out any of the offences under the provisions of the SC and ST (POA) Act, 1989. There are absolutely no materials to show that the petitioners, at any point of time, abused the complainant either calling out his caste or insulted or abused him in public view. In the absence of any such evidence, learned Sessions Judge ought not to have referred the private complaint for investigation to the ACP. It is the submission of the learned counsel that the learned Sessions Judge has acted mechanically without applying his mind to the allegations made in the complaint as it is evident from the very order made by the learned Sessions Judge which on the face of it discloses that the learned Sessions Judge has not looked into the complaint nor has he adverted his mind to the documents produced by the parties and therefore, solely on this ground, the action initiated against the petitioners is liable to be quashed. In support of this argument, learned counsel for the petitioners has placed reliance on the decision rendered by the Hon'ble Supreme Court of India in the case of PRIYANKA SRIVASTAVA and Others VS. STATE OF U.P. and Others reported in (2015) 6 SCC 287 and AVULAPALLI GIRIJAMMA, w/o. Chandra Sekhar vs. Dr.J.RAMACHANDRA, s/o. Lakshmana, State of A.P., rep. by P.P., High Court of A.P. as well as the decision in the case of GORIGE

PENTIAH vs. STATE OF A.P. and Others reported in (2008) 12 SCC 531.

12. Refuting the above argument, learned counsel for respondent No.1 would submit that the legal notice issued to the petitioners is not relevant in determining the offences alleged to have been committed under the provisions of SC and ST (POA) Act, 1989. It is the submission of the learned counsel that the allegations made in the private complaint squarely attract the provisions of section 2(r) and 2(p) of the SC and ST (POA) Act, 1989. More over, allegations made against the petitioners require to be investigated and therefore, the investigation ordered by the learned Sessions Judge cannot be foreclosed on the purported contention of the petitioners that the accusations made against them do not make out the offences alleged against the petitioners under the provisions of SC and ST (POA) Act, 1989. Learned counsel emphasized that the trouble started when the petitioners came to know about the caste of the respondent No.1. In the private complaint, he has narrated the sequence of events which have resulted in the discrimination of respondent No.1 on account of his caste. All these facts are require to be investigated. Respondent No.1 has been treated unfairly and the employees working under him have been set up against him by instigating them to file false complaints of sexual harassment. Learned counsel has pointed out that it is not a sheer coincidence that three employees have resorted to file complaint alleging sexual harassment by the respondent No.1 on the same day. That apart, the committee members appointed by the Company to enquire into the allegations made by the female employees are none other than the sub-ordinates of the petitioner No.1. All these circumstances, therefore, clearly indicate that the petitioners are vindictively pitted against the respondent No.1 and have committed the offences alleged against them and therefore, without these allegations being investigated into, this court cannot exercise the jurisdiction at this stage and stifle the prosecution as sought for by the petitioners.

13. I have bestowed my thought to the submissions made at the Bar and have carefully scrutinized the private complaint as well as the documents produced by he petitioners along with the petition. Before advertng to the merits of the rival contentions, it is necessary to note that the scope and ambit of the power of the High Court under Section 482 of Cr.P.C. has been laid down in number of cases. It

is now well settled that the inherent power under section 482 of Cr.P.C., can be exercised to give effect to an order under the Code to prevent abuse of process of the court and to otherwise secure the ends of justice. At the same time, it is also well settled that the inherent powers under this provision should not be exercised to stifle a legitimate prosecution. The High Court should normally refrain from giving a prima facie decision in a case where all the facts are incomplete and hazy; more so, when the evidence has not been collected and produced before the court and the issues involved, whether factual or legal, are of such magnitude that they cannot be seen in their true perspective without sufficient material. It is also a settled proposition that the wholesome power under section 482 of Cr.P.C. entitles the High Court to quash a proceeding when it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed.

14. In *STATE OF KARNATAKA vs. L.MUNISWAMY and Others* reported in 1977 Cri.L.J. 1125 it is observed as under:

"The High Courts have been invested with inherent powers, both in civil and criminal matters, to achieve a salutary public purpose. A court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution."

In the said case, it has been further observed,

"ends of justice are higher than the ends of mere law though justice must be administered according to laws made by the Legislature."

15. In *MACHAVRAO JIWAJIRAO SCINDIA and Others vs. SAMBHAJIRAO CHANDROJIRAO ANGRE and Others* reported in 1988 Cri.L.J. 853, it is held that:

"The legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made prima facie establish the offence. It is also for the court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue."

16. The powers of the High Court to look into the documents produced by the accused while deciding the matter under section 482 of Cr.P.C. is also well settled in the case of RAJIV THAPAR and Others vs. MADAN LAL KAPOOR reported in (2013) 3 SCC 330.

17. In the backdrop of the above propositions, if the allegations made in the private complaint are analyzed, it is pertinent to note that this private complaint came to be filed by respondent No.1 on 7.10.2016. The material allegations made in the said complaint are extracted above. What is relevant to be noted is that on the very date of the presentation of the said complaint, the learned Sessions Judge has directed investigation into the said complaint by the Asst. Commissioner of Police, Airport Sub-Division (HAL Police). It is a cryptic order which reads as under:

"Complainant is present. Office to register the complaint in P.C. Register. This Complaint is referred to ACP, Airport Sub-Division (HAL Police) for investigation and report u/s.156(3) of the Cr.P.C. Await report. Call on 30/12/2016.

Sd/- (07/10/2016)

II Addl. City Civil and Sessions Judge,

Bengaluru.

18. The above order does not reflect that the learned Sessions Judge has applied his mind to the allegations made in the complaint or that the learned Sessions Judge has looked into any of the documents produced along with the complaint. It is evident from the above order that though the complaint is lodged against six accused persons, there are hardly any allegations against accused No.4 to 6. All the allegations made in the PCR are directed against petitioner Nos.1 to 3, that too in relation to the employment of respondent No.1 with the Company. Even though omnibus allegations are made in the said private complaint alleging that petitioner Nos.1 and 2 insulted and abused him calling out his caste, the complainant has not furnished any date or time of the alleged incident. There is nothing on record to show that during these two years, respondent No.1 has resorted to any action

against the petitioners until the complaints were filed against him by the lady employees alleging sexual harassment at the work place. This itself is sufficient to hold that the private complaint lodged against the petitioners is an afterthought and ulteriorly motivated.

19. It is also important to note that no material was placed along with the private complaint in support of the allegations made therein except three e-mails said to have been forwarded by respondent No.1 to the second petitioner. Even in respect of these e-mails, no follow up action is forthcoming which only leads to suspect the veracity and authenticity of the said e-mails. More importantly, respondent No.1 has not cited any witnesses to the alleged incidents which again suggest that the allegations leveled against the petitioners are sought to be substantiated solely on the basis of the self-serving statements of respondent No.1. Learned Sessions Judge was, therefore, required to look into all these aspects before directing investigation into the complaint by the jurisdictional police. In the absence of reliable and acceptable material in support of the allegations, the learned Sessions Judge without satisfying himself as to whether the allegations made against the petitioners made out the offences alleged against them, ought not to have referred the complaint for investigation under section 156(3) of Cr.P.C.

20. In this context, the observations made by the Hon'ble Supreme Court in the case of PRIYANKA SRIVASTAVA and Others vs. STATE OF U.P. and Others reported in (2015)6 SCC 287 are apt to be extracted. The Hon'ble Apex Court and has reiterated that,

"the learned Magistrate has to remain vigilant with regard to the allegations made and the nature of allegations and not to issue directions without proper application of mind."

In para 24 of the said judgment, the Hon'ble Supreme Court has observed that;

"He has also to bear in mind that sending the matter would be conducive to justice and then he may pass the requisite order."

In para 26, it is held as under:

"At this stage it is seemly to state that power under Section 156(3) warrants application of judicial mind. A court of law is involved. It is not the police taking steps at the stage of section 154 of the code. A litigant at his own whim cannot invoke the authority of the Magistrate. A principled and really grieved citizen with clean hands must have free access to invoke the said power. It protects the citizens but when pervert litigations takes this route to harass their fellow citizens, efforts are to be made to scuttle and curb the same."

21. In the instant case, even though respondent No.1 has come up with the allegation that ever since two years, he was subjected to humiliation and harassment by the petitioners at the work place and that he was insulted and boycotted, there is no material to show that at any point of time he approached the jurisdictional police under section 154 of the Code or took up the issue with the Management. On the other hand, the records placed before this Court and the facts discussed above clearly indicate that only after the initiation of the enquiry into the allegations of sexual harassment, respondent No.1 has resorted to criminal action against petitioners apparently to force the petitioners to agree to the terms of respondent No.1. His demand is explicit in the legal notice referred to above wherein he has called upon the petitioners to make good the loss incurred on his career, reputation and goodwill. But surprisingly in the private complaint, allegations of violations of the provisions of the SC and ST (POA) Act, 1989 are leveled against the petitioners. Under the said circumstances, learned Sessions Judge ought to have looked into the entire allegations and ought to have satisfied himself that sending the matter for investigation would be conducive to justice. The learned Sessions Judge ought to have noted that in the absence of any witnesses being cited, it was futile to direct investigation as no independent evidence would be available to prove any of the accusations made in the complaint. As a result, the proceedings would degenerate into a weapon of harassment and persecution.

22. Furthermore, learned Sessions Judge has failed to take into consideration that the entire allegations leveled against the petitioners pertained to the discharge of the functions of the respondent No.1 arising out of his employment with the Company. There are absolutely no allegations that any of the alleged incidents had taken place in public view so as to attract any of the provisions of the SC and

ST (POA) Act, 1989. No doubt it is true that copious references have been made to the caste of the respondent No.1, but in the absence of any specific incident with reference to date and place where the alleged incident had taken place and without citing any independent witnesses in proof thereof, in my opinion, it would be a futile exercise to embark upon the investigation into the alleged incident. That apart, the allegations made in the complaint are so inherently improbable, on the basis of the said allegations, no prudent person can ever reach a just conclusion that there is sufficient ground for proceedings against the petitioners.

23. A reading of the complaint reveals that the allegations therein are drafted in such a way so as to fit them into the requirements of the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015. But the said Act came into force only with effect from 1.1.2016, whereas the alleged incidents are stated to have taken place between 2014 and 2016 that is five months after the respondent No.1 was appointed as Director of Engineering in the Company. Therefore, the allegations made in the complaint, even if uncontroverted, do not attract any of the provisions of the Amendment Act of 2015. As a result, continuance of the proceedings against the petitioners based on the allegations made in the private complaint would be nothing but an abuse of the process of the Court leading to injustice to the petitioners. Thus, on overall consideration of the various aspects of the case, I am of the view that the complaint lodged by respondent No.1 before the learned Sessions Judge is false, malafide and ulteriorly motivated and does not make out any offences alleged against the petitioners. Hence, the proceedings in PCR.No.44/2016 and the consequent order dated 7.10.2016 passed by the learned II Addl. City Civil and Sessions Judge, Bengaluru directing investigation into the said complaint by the Asst. Commissioner of Police, Airport Sub-Division (HAL Police) and report under section 156(3) of the Cr.P.C. are liable to be quashed.

Accordingly, the criminal petition is allowed. The proceedings initiated against the petitioners in PCR.No.44/2016 and the consequent order dated 7.10.2016 passed by the learned II Addl. City Civil and Sessions Judge, Bengaluru are quashed.

I.A.No.2/2016 does not survive for consideration and accordingly, it is rejected.

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