

Mr Mohan Kumar Vs. State Of Karnataka

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Court : Karnataka

Decided On : Nov-02-2020

Judge : K.Somashekar

Appeal No. : CRL.P 6256/2019

Appellant : Mr Mohan Kumar

Respondent : State Of Karnataka

Judgement :

1 R IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE2d DAY OF NOVEMBER, 2020 BEFORE THE HONBLE MR. JUSTICE K.SOMASHEKAR CRIMINAL PETITION No.6256/2019 BETWEEN: Mr.Mohan Kumar @ Vinaya Kumar @ Kotthi, S/o Nanjappa, Aged about 36 years, Door No.644, Nanjangud Road, T.Narasipura, T.Narasipura - 571 124. Petitioner (By Sri. Ravi Kumar G.H., Advocate for Sri. Sachin B.S., Advocate) AND:

1. State of Karnataka, The Sub Inspector of Police, Nazarabad Police Station, Mysuru. Represented by Learned State Public Prosecutor, High Court Building, Bangalore - 01.

2. Lokesh N S/o Nanjundappa N, 2 Aged about 59 years, No.250, Primary School Road, T.Narasipura, Mysore District - 571 124. ... Respondents (By Sri.K.Nageshwarappa, HCGP for R1; Sri.A.V.Gangadharappa, Advocate for R2)
This Criminal Petition is filed under Section 482 of Cr.P.C., praying to issue

direction to the Sessions Court in S.C.No.18/2016 on the file of the Court of the I-Additional District and Sessions Judge, Mysore U/S302 201, 120-B read with Section 34 of IPC, dispose of the case as expeditiously as possible. This Criminal Petition coming on for admission, through video conferencing this day, the Court made the following:

ORDER

Sri. Ravi Kumar G.H., for Sri.Sachin B.S. learned counsel for the petitioner appears through video conferencing whereas learned HCGP for the 1st respondent-State is present before the Court physically. But none appears for respondent No.2. 3

2. Though this petition is listed for admission, with consent of both the parties, the matter is taken up for final disposal.

3. This petition is filed seeking for direction to the Sessions Court in S.C.No.18/2016 on the file of Court of I Addl. District Judge, Mysore for the offences punishable under Sections 302, 201, 120(B) read with 34 of IPC.

4. Learned counsel for the petitioner has taken me through the materials relating to the case in C.C.No.330/2015 arose in Cr.No.90/2015. In this petition, the petitioner namely Mohan Kumar @ Vinay Kumar @Kotthi who is arraigned as accused No.1 and other accused persons naemely, Ashok D.S. and G.S.Sudha were also facing trial. During the course of investigation, the investigating officer has investigated the case thoroughly and laid charge sheet against the accused persons before the committal court in C.C.No.330/2015, whereas, the charge sheet consisting 4 in all 50 witnesses as C.W. 1 to 50. During the investigation, the properties were seized by the investigating officer and subjected in P.F.No.4/2015 to 9/2015 respectively and so also P.F.No.11/2015 and six properties were seized vide P.F.No.228/2015 dated 22.12.2015.

5. The case of the prosecution is that on 27.06.2015, the complainant by name Sri. N.Lokesh had filed a written complaint alleging that on 27.06.2015 in between 6.30 pm and 6.45 pm complainants brother by name Sri. Nagendra Swamy while riding

his motor cycle bearing registration No.KA- 14-K-2008, a lorry bearing registration No.KA-16-937 came in a rash and negligent manner and hit the said motor cycle from the rear side near Prakruthi Badavane in Chikkahalli Village, T.Narasipura Road towards Mysore City, due to which, the complainants brother fell down from the bike and the lorry rammed over him 5 which caused serious injury to stomach which resulted in his death. Hence, FIR was registered in Cr.No.90/2015 for the offences punishable under Sections 279, 304(A), 134(A)(B) read with 187 of IMV Act in Siddarthanagar Traffic police Station. During the investigation, the complainant appeared before the Siddarthnagar police station and filed an additional complaint suspecting that death of his brother is not occurred due to road accident but it is a preplanned murder, alleging that the wife of deceased by name J.S.Sudha was having illicit relationship with the petitioner namely Mohan Kumar. Based on the information by the informant, the case has been taken up for investigation and investigating officer has laid the charge sheet against the accused persons before the committal court.

6. In this petition, seeking for quashment of the entire criminal proceedings initiated against the 6 petitioner but there is a delay in holding trial in S.C.No.18/2016 against the accused. Though the said matter is posted for framing of charges against the petitioner, stay has been granted in CrI.P.No.514/2017 in respect of accused No.4 but nothing to do with the trial of case in S.C.NO.18/2016 in respect of this petitioner and remaining accused Nos.2 and 3. Therefore, the delay in holding trial is resulted in miscarriage of justice in respect of accused No.1. Therefore, considering the ground urged in the petition and seeking some direction to the trial Court in S.C.No.18/2016 to dispose of the case as expeditiously as possible in respect of this petitioner. These are all the grounds urged by the learned counsel for the petitioner and seeking for intervention by invoking the provision of Section 482 of Cr.P.C.

7. In support of his contention, the learned counsel for the petitioner has placed reliance of the 7 judgment of Supreme Court in the case of KATAR SINGH V VS. STATE OF PUNJAB and number of other cases held that speedy trial is essential part of fundamental right to life and liberty. Therefore considering the reliance of this judgment and seeking certain direction to the trial Court in S.C.No.18/2016 for

disposal of the case as expeditiously as possible.

8. Learned HCGP for 1st respondent has contended that this petitioner being accused No.1 in S.C.NO.18/2016 required to face trial for the offences punishable under sections 302, 201, 120(B) read with 34 of IPC. The investigating officer after investigated the matter thoroughly, recorded the statement of witnesses who are cited as C.W.1 to 50 and laid the charge sheet against the accused persons in C.C.No.330/2015 arose in Cr.No.90/2015. During investigation, the investigating officer has seized several articles subjected in P.F.No.4/2015 to 9/2015 respectively and so also 8 P.F.No.11/2015 and six properties were seized vide P.F.No.228/2015 dated 22.12.2015. The case in respect of accused Nos.1 to 3 in S.C.No.18/2016 has been halted due to granting of stay in respect of accused No.4 in CrI.P.No.514/2017 and accused No.4 is not inclination to persuade the petition and seeking for dismissal of the petition as not pressed. Therefore, the way has been cleared by way of stay in respect of accused No.4 but accused No.1 along with accused Nos.2 and 3 are required to face trial in respect of serious offences and also the motive behind the murder of the deceased which is reflected in the charge sheet and the same is required to be proved by the prosecution by examining the witnesses. Once the charge sheet has been laid by the investigating officer, it is the duty cast upon the prosecution to facilitate the evidence subjected to examination of the witnesses cited in the charge sheet and also marking of certain documents. But in this petition seeking for direction to 9 the trial court in S.C.No.18/2016 to dispose of the case as expeditiously as possibly in respect of this petitioner who is arraigned as accused No.1 along with remaining accused persons. Learned HCGP further contended that the complainant has filed an additional complaint suspecting that death of his brother is preplanned murder and not due to road traffic accident alleging that wife of deceased Nagendra Swamy by name J.S.Sudha was having illicit relationship with Mohan Kumar. Hence, all the witnesses including material objects collected by the investigating officer during investigation have to be tested before the trial Court to prove the guilt of the accused persons. Hence, learned HCGP seeking for dismissal of the petition.

9. Having regard to the contention taken by the learned counsel for the petitioner and so also the counter made by the learned HCGP for the State, it is relevant to refer to Section 173(2) of Cr.P.C. 10 Section 173(2) of the Cr.P.C. relates to submission of report of the Police Officer on completion of investigation. This provision empowers the Investigating Agency to complete the investigation without unnecessary delay by following all requisite criteria which have been stated in detail in the aforesaid provision. But it is necessary to state the nature of information, the offences which appear to have been committed by the accused on the basis of which the accused were apprehended and such other requisite conditions, which is specifically stated in this provision has to be maintained by the Investigating Agency, in order to lay the charge-sheet against the accused. Thus, the Investigating Officer shall collect all relevant documents on which the prosecution proposes to rely on the material facts and also the allegation made against the accused. Such report in respect of a case registered against the accused to which Section 170 of the Cr.P.C. applies, shall be submitted. Subsequent to 11 compliance of all requisite conditions in the aforesaid provision of law, the Investigating Officer shall forward the same to the concerned Judicial Magistrate along with the final report, in order to proceed against the accused. During investigation, even the I.O. has recorded the statements of the witnesses as contemplated under Section 161 of Cr.P.C. and also cited in the charge-sheet as to whom the prosecution proposes to examine as witnesses on the part of the prosecution to prove the guilt of the accused. But in the instant case, the Investigating Agency has applied all the requirements under this provision in order to investigate and to lay the charge-sheet against the accused. Therefore, the material evidence has been collected by the I.O. during the course of investigation in order to proceed further by the concerned competent court to prove the guilt of the accused. 12 Therefore, at this stage, it cannot arise in detail to distinguish the facts or otherwise to dispute the material evidence which were collected by the I.O. But it is a domain vested with the prosecution to facilitate worthwhile evidence in order to prove the guilt of the accused. Therefore, it requires for refraining from dwelling in detail of the materials collected by the I.O. during the course of investigation. But in the instant case, almost all requirements as contemplated under Section 173(2) of the Cr.P.C. have been complied with. Therefore, it does

not require any detailed discussion relating to the materials collected by the I.O. and so also the contention which has been taken by the learned counsel for the petitioner for seeking the relief so as to exercise the power under Section 482 of Cr.P.C. But under this provision of Section 482 Cr.P.C., the power has to be exercised judicially, judiciously, cautiously and sparingly. It is in respect of the scope and object of this provision. If not, certainly it would result in a miscarriage of justice and abuse of process of law. It is not only for the accused, it is equally for the victim / complainant as well. Balance has to be maintained while exercising the power under Section 482 Cr.P.C. This observation is made in this petition, keeping in view the strenuous contention taken by the learned counsel for the petitioner and so also the counter made by the learned HCGP for the State.

10. Section 154 of Cr.P.C. is relating to recording of FIR by the investigating officer. But in the instant case, the case in Cr.No.90/2015 came to be registered, thereafter, the investigating officer investigated the matter thoroughly and laid the charge sheet against the accused in C.C.No.330/2015. However, it is made it clear that the case in S.C.No.18/2016, accused No.1 along with accused Nos.2 to 4 are required to face trial. Whereas, the 14 investigating officer has collected the materials during the course of investigation and also recorded the statement of witnesses cited as CW1 to 50 and seized several material objects subjected to P.F. and the same has been find place in the charge sheet laid by the investigating officer. But this petitioner/accused No.1 along with accused Nos.2 and 3 were required to face trial to expedite the case for disposal and for speedy trial. Article 21 of the constitution of India relating to personal life and liberty, but the personal life and liberty shall be protected in accordance with law. But in the instant case, the petitioner requires to be facing trial and the duty cast upon the prosecution to facilitate the evidence subjected to examination of the witnesses cited in the charge sheet and also marking of certain documents. But in the instant case, the trial requires to be proceeded in respect of accused Nos. 1 to 4 in S.C.No.18/2016 for the aforesaid offences. But the murder of Nagendra Swamy is required to be proved by 15 the prosecution as it is alleged that wife of the deceased was having illicit relationship with the petitioner. However, this petitioner along with remaining accused are required to face trial. Therefore, at this stage detailed discussion does not require for consideration.

11. But in this petition, the petitioner has sought for a direction to the trial Court in S.C.No.18/2016 to dispose of the case as expeditiously as possible.

12. In the circumstances of the case, as already stated above personal life and liberty enshrined in Article 21 of the Constitution of India, shall be protected. Consequently the petition deserves to be allowed to the extent of directing the trial court to expedite the case in accordance with law 13. Accordingly, the petition is allowed directing the Sessions Court to dispose of the case within an outer limit of six months from the date of receipt of this order in accordance with law, since case is of the year 2015.

14. It is made clear that whatever the observations made in the order; the same shall not influence the mind of Court below in S.C.No.18/2016 in respect of this petitioner as well as remaining accused persons. Ordered accordingly. All contentions shall be kept open for the prosecution and the defence counsel. Sd/-
JUDGE JS/-

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