Reshwanth Reddy, vs Circle Inspector of Excise,

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Court : Kerala

Decided On : Aug-04-2021

Judge : Honourable Mr. Justice K.Haripal

Appeal No. : Crl.MC/8564/2019

Appellant : Reshwanth Reddy,

Respondent : Circle Inspector of Excise,

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE MR. JUSTICE K.HARIPAL WEDNESDAY, THE 4TH DAY OF AUGUST 2021 / 13TH SRAVANA, 1943 CRL.MC NO. 8564 OF 2019 CRIME AND OR No.28/2019 OF EXCISE CIRCLE OFFICE, ALUVA PETITIONERS/ACCUSED 1 TO 3:

1 RESHWANTH REDDY, AGED 32 YEARS,S/O.K.R.NARAYAN REDDY, NO.25/7, NEW NO.13, 12 MAIN DR.K.K.HEBBAR ROAD, HANUMANTHA NAGAR, BANGLORE 2 JAGADHESAN.S. AGED 23 YEARS,S/O.SENTHIL KUMAR, 60, WEAVERS COLONY STREET, NO.1, THIRUCHANGODE, NAMAKKAL, TAMIL NADU 3 BARATH AGED 23 YEARS,S/O.NACHIMUTHU N., NO.66, RM NAGAR,

THIRUVOTTIYUR, CHENNAI, TAMIL NADU BY ADVS.SRI.GEO PAUL SRI.SANU MATHEW SRI.RADHIKA RAJASEKHARAN P. SRI.C.R.PRAMOD

RESPONDENTS/STATE OF KERALA: 1 CIRCLE INSPECTOR OF EXCISE, EXCISE CIRCLE OFFICE, ALUVA, 683101 2 THE COMMISSIONER EXCISE COMMISSIONERATE, THIRUVANANTHAPURAM 695033 3 STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM PIN-682031 ADGP - SRI. GRACIOUS KURIAKOSE SR.PP - SRI. C.K.SURESH THIS CRIMINAL MISC. CASE HAVING COME UP FOR FINAL HEARING ON 19.07.2021, THE COURT ON 04.08.2021 DELIVERED THE FOLLOWING: Crl.M.C.8564/2019 2

ORDER

This is a miscellaneous case filed under Section 482 of the Code of Criminal Procedure, hereinafter referred to as the Cr.P.C., seeking to quash Annexure-A1 crime and occurrence report No.28/2019 of Excise Circle Office, Aluva, in the interest of justice.

2. The sequence of events that led to the filing of the crime can be set

out first. Petitioners, who are graduates in Automobile Engineering, were recruited as Assistant Aviation Officers and were posted in Bangalore Airport for training. Thereafter they were transferred along with twelve others, to Cochin International Airport Limited (CIAL). They underwent special training in aviation fueling and defueling at M/s. Bharat Stars Service Pvt. Ltd. (BSSPL, for short) which is a joint venture of M/s. Bharat Petroleum Corporation Ltd. (BPCL). Fifteen of them were thus transferred to CIAL and the BSSPL gave them accommodation in a place near to the Airport itself, near the SR Ladies Hostel and Canteen at Nedumbassery.

3. The allegation is that on 15.06.2019, the Excise Inspector and party found them possessing 13 grams of ganja, that is 5+4+4 grams respectively, while they were standing in front of the SR Ladies Hostel and Canteen on the

Nedumbassery-Vappalassery road; they were arrested from the place and removed to the Excise Office, Aluva and on 16.06.2019 all the three were produced before Court, but were granted bail. But unfortunately, one of the sureties did not carry proper tax receipt so that they could not be released on bail and thus were remanded in judicial custody. They were released on bail only on 17.06.2019.

4. The case of the petitioners is that they are totally innocent and it is

a clearly fabricated and false case, hitherto fueling and defueling were done by BPCL staff with the assistance of contract drivers appointed by the BSSPL for driving the dispenser from the BPCL station to the aircraft. The Airport Authority of India as a policy decided that this work which involves skill and risks has to be handled by technically qualified persons trained in the field. On the basis of such decisions, 18 drivers who were working on shifts driving the dispenser from the station to the aircraft were terminated and 15 young Engineers specially trained in this regard were appointed since it was intended for single-man operation and also for safety assurance. The BPCL staff and drivers, who were hitherto getting benefits of such employment, took up the matter with their union and their termination was the subject matter of an issue among the union, the BPCL and the BSSPL. According to the petitioners, it

was at the instance of the said union that such a false case was registered against them. On that basis, all the three petitioners jointly gave the Annexure- A2 complaint before the 2nd respondent, Excise Commissioner on 11.07.2019 which was duly received by the 2nd respondent on 15.07.2019. The 2nd respondent in turn authorised the Additional Excise Commissioner (Enforcement) to make an enquiry and to file a report. After a detailed enquiry, the Additional Excise Commissioner (Enforcement) filed Annexure- A4 report before the Excise Commissioner completely endorsing the version of the petitioners that it is a false case and thus he made recommendations for dropping the criminal proceedings and to initiate action against Excise officials who had erred. On that basis the petitioners have moved this Court under Section 482 of the Cr.P.C.

5. The learned Judge, before whom the case came for admission, in

the order dated 17.12.2019 observed that the Annexure-A4 report has not been accepted or rejected; thus, on the assumption that Annexure-A4 report stands, all further proceedings against the petitioners based on OR No.28/2019 of the Excise Circle Office, Aluva were stayed for a period of one month. Thereafter when the matter came before me on 26.03.2021, the learned Public Prosecutor submitted that but for the order of stay the investigation would have been

 completed and the final report laid by the prosecuting agency. The learned Senior Public Prosecutor also stated that in all probability it would be a refer report.

6. After hearing counsel on both sides, by my order dated 26.03.2021,

I directed the prosecution to proceed with the investigation but for laying the final report. But later, when the case was taken up on 06.07.2021, i.e. after the summer vacation, the learned Senior Public Prosecutor Sri. C.K. Suresh said that in violation of the undertaking given by him the Assistant Excise Commissioner has laid a charge sheet against the petitioners before the Judicial First Class Magistrate, Angamaly. On the basis of the submission, all further proceedings in CC No.379/2021 pending before the Judicial First Class Magistrate, Angamaly were stayed by this Court. I also directed the learned Senior Public Prosecutor to file a detailed statement as to how the order passed by this Court was negated. Accordingly, he filed a detailed statement on 15.07.2021.

7. I heard Sri. Geo Paul, the learned counsel for the petitioner, Sri. Gracious Kuriakose, the learned Additional Director General of Prosecution for the respondents and also Sri. C.K.Suresh, the learned Senior Public Prosecutor. Crl.M.C.8564/2019 6

8. It also requires to be noted that, pursuant to the order dated

17.12.2019, on behalf of the 2 nd respondent a statement was filed by the Deputy Commissioner of Excise (Law). As noticed earlier, at the time when the matter was taken up for admission, it was not sure whether Annexure-A4 report was acted upon by the 2 nd respondent. That was how this statement dated 17.01.2020 was filed. In the statement, it has been stated that the 2 nd respondent on the basis of the enquiry report of the Additional Excise Commissioner (Enforcement) found that some serious flaws have occurred in the registration of the case which needs to be investigated by another officer, since there are allegations against the staff members of the Excise Circle Office staff of Aluva. On that basis, one B. Suresh, Circle Inspector of Excise, Excise Enforcement and Anti Narcotics Special Squad, Ernakulam was appointed as the Investigating Officer. It is further stated that as part of disciplinary proceedings against the officers who booked the case, Sujith V.S., Excise Inspector was transferred to Excise Range Office, Nilambur and other officers who had accompanied the said Sujith while detecting the alleged crime were transferred to different districts. That means, there are reasons to believe that the 2nd respondent has acted upon Annexure-A4 report of the Additional Commissioner and also initiated action against the officers which indicates that

Crl.M.C.8564/2019 7 the 2nd respondent found at least prima facie reasons to think that the case was the manifestation of false implication.

9. Annexure-A4 suggests that the Additional Commissioner of Excise

Sri. Sam Christy Daniel IPS conducted a detailed enquiry. He examined independent witnesses, the petitioners who are the accused in the crime and also officials in the Excise department including the detecting officer and other staff members who had accompanied him; after perusing the records, he came to the conclusion that all the three are innocent and no ganja was seized from them. He has adverted to the contradictory versions of Excise officers itself. According to him, alleged seized ganja was not shown to any other person present at the time of raid. To quote his own words, It is evident that the three arrested persons in crime 28/19 under Section 20(b)(ii)A NDPS Act 1985 are innocent and no Ganja was seized from them. It is convinced that on 15.06.2019 at about 3.00 PM three of the arrested persons were sleeping in the paying guest building in the SR Ladies Hostel compound, Nedumbassery and Excise party led by Sujith P.S., Excise Inspector, Excise Circle Office, Aluva conducted a mock raid and secretely announced the declaration of seizure of Ganja from them and arrested them. The Ganja was planted in this case. No search memorandum or search list is prepared for the

raid in the paying guest in the SR Ladies Hostel compound. The case registered against Sri. Reshwant Reddy, Jagadeesan S., and Barath N. is fabricated and false. The crime registered against the three persons is to be referred on investigation. The entire Excise party together misused their official power and capacity to fabricate this false case. He also recommended appropriate departmental disciplinary action be initiated against the Excise Inspector, the said Sujith and party. He also stated that there are supervisory lapses on the part of the Circle Inspector Mr.Xavier Sebastian and thus disciplinary action was recommended against him as well. This is the sum and substance of Annexure-A4 report.

10. As stated earlier, the learned Senior Public Prosecutor Sri. Suresh

filed a statement as directed by this Court on 14.07.2021. According to him, immediately after passing the order dated 26.03.2021 where the court had allowed the prosecution to continue investigation but for laying the final report, was immediately conveyed to the Assistant Excise Commissioner who was the Investigating Officer. According to him, the said report was later duly communicated to the Assistant Commissioner on 31.03.2021. Specific instructions were given through his mobile phone also to conduct investigation alone. But ignoring the earlier directions he had filed a charge sheet before Court.

11. The prime consideration is whether the criminal proceedings

initiated against the petitioners has any justification. Of course, the crime was registered alleging offence under Section 20(b)(ii)(A) of the NDPS Act on the premise that they had carried 5, 4 and 4 grams of ganja respectively. But the detailed enquiry conducted by the Additional Excise Commissioner (Enforcement), Annexure-A4, clearly indicates that it was a false implication after planting so much quantity of ganja in the alleged possession of the petitioners. Even though the report is silent about the motive for such false implication, the definite case of the petitioners is that they have been made prey to the union rivalry, that it was a political gimmick, the Excise officials were dancing to the tunes of their political bosses, that, in that process the temporary staff who were engaged by the unions, wanted to be re-inducted to do the job etc. But the Additional Commissioner has quoted some witnesses who stated to him that the newly appointed Assistant Aviation Officers, in the place of the contract labourers who were terminated after the contract period, are either attacked or forced to quit the job. I do not want to delve into such matters. But Anenxure-A4 report is very clear like daylight. It is also evident from the statement of the Deputy Commissioner (Law), that the 2 nd respondent, after having convinced has acted upon the report and initiated disciplinary

Crl.M.C.8564/2019 10 action against the erring officials and as a prelude all of them were transferred to different stations. After hearing the learned Additional Director General of Prosecution, I am convinced that the 2nd respondent was also convinced that the petitioners were falsely implicated.

12. It is very unfortunate that three young officials, who had come to

Nedumbassery in search of job, were implicated in false cases. The learned counsel for the petitioners submits that even if the case is quashed, the indignation caused to them is beyond measure. According to the learned counsel, all of them belong to reputed families, the first petitioner is 32 years old and others are only 23 years old. They are young Engineers; involving in such a false prosecution their marriage prospects have been affected; at least for two days they were in custody. The agony and trauma suffered by them are immeasurable; the damage caused to their families cannot be compensated in any manner. It does not require much research to say that the case cannot stand and therefore it is liable to be quashed.

13. In the decision reported in Anand Kumar Mohatta and another

v. State (Govt. of NCT of Delhi, Department of Home) and another [AIR 2019 SC 210], the Hon'ble Supreme Court has held that there is nothing which restricts the exercise of powers of the Court to prevent the abuse of the process Crl.M.C.8564/2019 11

of court or miscarriage of justice only at the stage of the FIR. The High Court can exercise jurisdiction under Section 482 of the Cr.P.C. even when charge sheet is pending with the trial court. It would be a travesty to hold that proceedings initiated a person can be interfered with at the stage of FIR, but not if it has advanced and allegations have materialsed into a charge sheet. Here, it is true that even negating the directions of this Court the Assistant Commissioner has ventured to file the charge sheet. Still, the Annexure-A4 report is very clear about the falsity of the crime registered against them and that alone is sufficient to quash the proceedings.

14. After filing the report by the Senior Public Prosecutor Sri.C.K.

Suresh, it was submitted by the learned Additional Director General of Prosecution that the successor Assistant Excise Commissioner has moved the Court seeking leave for conducting a further investigation and that they do not intend to proceed against the petitioners. Whatever it may be, it is very clear from the words of the 2nd respondent itself that it is a case of false implication and therefore a clear case of abuse of the process has come out and the petitioners are entitled to succeed in the proceedings.

15. In the result, the Crl.M.C. is allowed and Annexure-A1 occurrence report and all further proceedings are hereby quashed. Crl.M.C.8564/2019 12

16. But the matters cannot end there. It has come out that even though

this Court had specifically directed not to lay the final report, which was duly communicated to the Assistant Excise Commissioner who is the Investigating Officer, that he can complete the investigation but shall not lay the charge sheet, ignoring the same he has filed the charge sheet, which is a clear violation of the direction of this Court and it is an act tending to interfere with the due course of justice. Therefore, a show cause notice shall be issued to the said Assistant Excise Commissioner (Enforcement), Sasikumar T.S., though he has already retired from service, asking as to why contempt of court proceedings shall not be initiated against him. Issue notice to him through the successor in office, returnable in fifteen days' time. Post the case immediately after vacation, on 25.08.2021. Sd/- K. HARIPAL JUDGE okb/2.8 //True copy// P.S. to Judge

Crl.M.C.8564/2019 13 APPENDIX OF CRL.MC 8564/2019 PETITIONER ANNEXURE ANNEXURE A1 COPY OF THE CRIME AND OCCURRENCE REPORT NO.28/2019 OF EXCISE OFFICE, ALUVA ANNEXURE A2 TRUE COPY THE REPRESENTATION DATED 11.7.2019 SUBMITTED BY PETITIONERS TO THE 2ND RESPONDENT ANNEXURE A3 TRUE COPY THE ACKNOWLEDGMENT ISSUED BY THE COMMISSIONERATE OF EXCISE, TRIVANDRUM DATED 15.7.2019 ANNEXURE A4 TRUE COPY THE ENQUIRY REPORT CONDUCTED BY THE ADDITIONAL EXCISE COMMISSIONER, DATED 25.7.2019