

Somashekarappa Vs. State of Karnataka and Another

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Court : Karnataka

Decided On : Aug-08-1990

Reported in : AIR1992Kant206; 1992CriLJ1318; 1991(1)KarLJ207

Judge : M.M. Mirdhe, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 482; Electricity (Supply) Act, 1948 - Sections 82; [Indian Penal Code \(IPC\), 1860](#) - Sections 337

Appeal No. : Crl. Petition No. 1645 of 1988

Appellant : Somashekarappa

Respondent : State of Karnataka and Another

Advocate for Def. : Sri C.H. Jadhav, H.C.G.P. and ;Sri G. Abdul Wazid Khan, Adv.

Advocate for Pet/Ap. : Sri B.G. Naik, Adv.

Judgement :

ORDER

1. This criminal petition is filed under Section 482, Cr.P.C. praying to quash the proceedings initiated by the II Addl. C.M.M. Bangalore City in C.C. No. 9126/88 and now pending in C.C. No. 464/88, on the file of M.M. IV Court, Bangalore. The notice of the petition was given to the State and the learned Government Pleader

appeared on behalf of the State.

2. I have heard the learned Counsel on both sides fully and perused the records of the case.

3. The learned Counsel for the petitioner argued as follows:

That the learned Magistrate has issued process against the petitioner when there is no case made out against him. The petitioner was not entrusted with the duties of checking of feeder box and therefore he cannot be said to be a person liable to be summoned for an offence punishable under Section 337 of I.P.C. due to the burn injuries caused to the child witness by the hanging wire of a feeder box. Under Section 82 of Electricity (Supply) Act 1948 no prosecution can be launched for anything which is in good faith done or intended to be done under the Act. Therefore, the order of the learned Magistrate issuing process against the petitioner is a clear case of the abuse of the process of the Court and the same is required to be set-aside. On the basis of these arguments, he prayed for allowing this petition and to quash the proceedings initiated by the learned Magistrate against the petitioner.

4. The learned Government Pleader argued as follows :

That by the impugned order, the learned Magistrate has issued process against the petitioner. When the petitioner is having an opportunity to put forth his contentions before the learned Magistrate, this is not a fit case to exercise the powers by this Court under Section 482, Cr.P.C. On the basis of these arguments, he prayed for dismissing this criminal petition.

5. The points that arise for my consideration are as follows :

1) Whether the proceedings initiated by the learned Magistrate are sustainable in law?

2) What order?

6. My findings on the above points are as following ;

Point No. 1 No

Point No. 2 See below.

7. Point No. 1: This petition is filed by the petitioner under S. 482, Cr.P.C. against the order of the learned Magistrate issuing N.B.W., to the accused for his appearance. The case of the prosecution, in brief, is as follows :

That the complainant's son Raju, aged about 3 years, was returning from Play Ground on 20-11-1987 at about 11-00 A.M. and on his way home near Saraswathi Maternity Home, he touched a wire hanging in a feeder box and sustained electric shock resulting in burn injuries to his hand, chest, right hand, back etc., and had fallen to the ground near the Feeder Box and an unknown coolie working nearby had taken the boy to the complainant house after giving him water and thereafter the complainant shifted him to Victoria Hospital for treatment. It is also the grievance of the complainant that the shutters' of the feeder box were kept open because of the negligence on the part of the K.E.B. authorities. The police, after investigation into the matter, filed a charge-sheet against the petitioner and thereafter the impugned order came to be passed. The case of the prosecution is that as the shutters of feeder box were kept open, this incident took place due to the negligence on the part of K.E.B. authorities. In the booklet of Karnataka Electricity Board, the definitions of Jobs (Duties) (Executives) of the various Officials and Officers are enumerated on page 64 of the Act. The duty of Inspection of Feeder Pillar boxes, is mentioned at Sl. No. 2 and that is said to be the duty of Junior Engineer/Supervisor, Works Unit. The duties of Assistant Executive Engineer are mentioned on Page 69. No such duties of taking care of the feeder box is mentioned and when it has no legal duty cast on the petitioner to check the feeder box and keep it in proper condition, he cannot be called upon to answer for the injuries caused to the Boy Raju on account of touching of the hanging wire in an Electric Feeder Pillar Box. Even if the case of the prosecution is taken as admitted, still the petitioner cannot be held liable for the said offence under Section 82 of the Electricity (Supply) Act, 1948. There is a bar for prosecuting any person under that Act for anything which is in good faith done or intended to be done under the said Act. Therefore, weighing from any angle, the

petition cannot be held liable to be prosecuted for an offence under Section 337. I.P.C. for the offence that is alleged to have been taken place on 20-11-1987 at about 11-00 A.M.

8. I am aware that the powers under Section 482, Cr. P.C. are to be exercised by the Court in exceptional circumstances and very sparingly. I am also aware that the court is not expected to embark upon an enquiry about the guilt or otherwise of the case in a petition under Section 482 of Cr.P.C. But if on the face of the record itself, it appears that the accused cannot be called upon to answer any criminal liability. I think it will be just and proper for this Court to exercise its power under Section 482 of Cr.P.C. to prevent the abuse of the process of the Court. In *Nagawwa v. Veerannu*, : 1976 CriLJ1533 , their Lordships of the Supreme Court have enumerated the cases, wherein the Court's interference for quashing can be justified :

(1) Where the allegations made in the complaint or the statement of the witnesses recorded in support of the case taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused.

(2) Where the allegations made in the complaint are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused.

(3) Where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on material which is wholly irrelevant or inadmissible; and

(4) Where the complaint suffers from fundamental legal defects, such as, want of sanction, or absence of a complaint by legally competent authority and the like.'

In this instant case also, the complaint does not speak that the accused was responsible for the safe maintenance of that feeder box. On the other hand the official Booklet of Definitions of Jobs (Duties) (Executive) by the Karnataka Electricity Board goes to show that looking after the feeder box is the duty of the

Junior Engineer and not the petitioner, who is an Assistant Executive Engineer. Therefore, to permit the prosecution to continue against him will not only be an harassment to a person, who is not responsible for that act but it will also amount to abuse of the process of the Court. Point No. 1 is answered accordingly.

9. For the reasons discussed above, I proceed to pass the following order :

i) The Criminal petition is allowed.

ii) The proceedings initiated by the learned Magistrate against the petitioner are hereby quashed.

This Criminal Petition coming on for 'being spoken to 'as directed, on 26-11-90 the Court made the following :

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