

Govindaraj Shetty Vs. State of Karnataka

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Court : Karnataka

Decided On : Dec-13-1979

Reported in : 1980CriLJ879

Judge : M. Nagappa, J.

Appellant : Govindaraj Shetty

Respondent : State of Karnataka

Advocate for Pet/Ap. : Sri. B.V. Ueshpande

Judgement :

ORDER

M. Nagappa, J.

1. This petition is by the Investigating Officer, C. W. 12 in C. C. No. 7602 of 1976 on the file of the Chief Judicial Magistrate Mysore under Section 482 of Criminal Procedure Code praying for expunging certain remarks made against him during the course of judgment dated 22-2-1979 passed by the said Magistrate in the said case.

2. The few facts of the case are that the petitioner who was the Circle Inspector of Police, D-Division, Traffic Branch, Mysore City, filed a charge-sheet against one Abdul Rahaman alleging that on 4-7-1976 at about 2-30 p. m. he was driving a K.

S. R. T. C. bus bearing No. MYM 6261 on Mysore-Bangalore road in a rash and negligent manner and ran over the cyclist by name Nissar Ahamed while proceeding on the road near the toll gate, as a result of which he sustained serious injuries and succumbed to the same thereafter. On the aforesaid allegations, a crime was registered in crime No. 64 of 1976 against the accused for offences punishable under Sections 304(A) and 279 I.P.C. and after completion of the investigation, a charge-sheet was filed by the petitioner against the accused for the said offences in C. C. No. 7602 of 1976. The prosecution examined two witnesses in support of its case and it is seen from the order-sheet that the petitioner who was cited as C. W. 12, could not be examined. Thereafter, the learned Magistrate closed the case of the prosecution and after assessing the evidence, acquitted the accused of the said charges. But, however, during the course of the judgment, the learned Magistrate passed certain remarks against the Investigation Officer censuring about the conduct of the case. The petitioner aggrieved by those remarks approached this Court for expunging of the same on several grounds

2. The relevant observations of the Magistrate, which the petitioner wants to be expunged from the Judgment, are:

(i) In spite of issue of summons to the witnesses the Police have taken no interest in getting the said summons served on the said witnesses;

(ii) Absolutely no interest was taken by the concerned persons taken by the police in getting the witnesses being examined in this case.

(iii) Even the investigating officer has preferred to go on bundobust duty in connection with the visit of the Minister rather than appear before Court to give evidence in this case. Even sub-sequently, the Inspector of Police D-Division, Traffic Police has not eared to give evidence in this case. This attitude of the Police Officer namely, the higher Police Officer compel me to come to the conclusion that the said higher Police Officer in Mysore City are not at all interested in the trial of the criminal cases before Court. it is not the only case where such indifference has been shown by the Police in the conduct of the trial of the case before this Court. In almost every case which have come up before me

for trial, I am constrained to hold that the Police have shown absolute indifference to the conduct of the trial of the said cases. This only discloses that the Police Officers in Mysore City are not much interested in the conduct of the trial of the cases filed before the Court. The only impression I could gather from this type of indifference shown by the City Police is that the Police Officers lose their interest immediately after the charge-sheet was filed before the Court. What happened, thereafter is look out of the Court and the Prosecutor. No help of any sort is extended by the Police having taken trial in the cases, filed before this Court.

As such, I am constrained to hold that the prosecution by want of negligence on the part of the concerned Police has miserably failed to prove the guilt of the accused.

3. Sri B.V. Ueshpande, learned Counsel for the petitioner, contended that the remarks made against the petitioner, more fully detailed above, are not justified in as much as there was no material before the Magistrate to pass such remarks. Elaborating his contention, he submitted that there was no material before the Magistrate to conclude that the petitioner had deliberately avoided to be present in the Court to give evidence and that he was interested in the alleged bundobust duty in connection with the visit of the Minister. He stated that the order-sheet dated 22-11-1978 makes it abundantly clear that he was not aware that the case has been set down for recording his evidence and in fact, no summons was served on him directing him to be present on 22-11-1978 to give evidence. He also submitted that the note in the order-sheet indicates that summons to C. W. 12 (petitioner) was not served and the Court did not issue further summons to him to appear on any sub-sequent date of hearing and if that is so, the remarks of the learned Magistrate that he deliberately kept himself absent from the Court and on the other hand, he was interested in bundobust duty in connection with the visit of the Minister, was not justified. He also contended that if really the Court wanted to make remarks about his conduct in the discharge of duties as Investigating Officer, in all fairness, the Court ought to have issued him notice and thereafter, if satisfied, could have passed such remarks as the Court deemed fit in the circumstances of the case. In the absence of following procedure of principles of natural justice, any remarks passed by the Court are not justified.

4. On the other hand, Sri Devaraj, learned State Public Prosecutor, contended that the petitioner being the Investigating Officer in the case was expected to be present when the case was taken up for trial and he could not expect summons to be issued to him again by the Court and it was his duty to be present till the closure of the case. He further submitted that the very fact that he absented himself on the relevant date on which he ought to have given evidence in the case shows that he was not interested in the case and his interest was somewhere else and the Court having felt the indifference on the part of the Investigating Officer, was justified in passing the remarks and, if that is so, the petitioner has not made out a case for expunging the remarks.

5. Any remark passed by the Court against a person whether he is a party to the proceedings or not, should be passed only after giving the said party an opportunity to meet the same. In other words, the principles of natural justice demand that a party should be heard before any remarks are made against him. This is much more so, in case, where disparaging remarks are made by the Court, that too, against a responsible officer like an Investigating Officer. The Court should be fully satisfied that such remarks are called for and on the other hand that the conduct of the Investigating Officer was such that the Court was compelled to make such remarks in the interest of justice. Therefore, the Court has to be slow before passing any remarks and has to arm itself with all the available materials and with sufficient background including one of hearing the party against whom the Court wants to pass remarks. This procedure is not followed. In my view, the Court would not be justified in passing remarks at random behind the back of the person which would prejudice him. This appears to be the cardinal principle that has to be followed by a Court of law. The aforesaid ratio is reiterated by a series of cases and in the case of *State of Uttar Pradesh v. Mohd. Nairn* : [1964]2SCR363 it is laid down by the Supreme Court that the Court must satisfy firstly, whether the party whose conduct in question is before the court or had an opportunity of explaining or defending himself; secondly, whether there is evidence on record bearing on that conduct justifying the remarks; and thirdly, whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct. Further, it has been laid down that such remarks must be judicial in nature and should not normally depart from sobriety, moderation and

reserve.

6. Applying the aforesaid principles to the facts of the case, the order-sheet dated 22-11-1978 makes it abundantly clear that the summons to the petitioner (CW-12) was not served and for the sake of convenience, the entire order of the said date may be reproduced which reads hereunder:

22-11-1978. State by APP.

Accused-

Evidence

SS to CW 9 S/p

SS to CW 12 not served.

SS to CWs 1 and 8 also unserved.

SS of CW 12 retd. unserved stating that he is engaged spl. duty. P. C. further states that he is in spl. duty regarding the visit of a Minister. This is no ground to return the SS without service. Hence, no fresh SS shall be issued to him. SS of CW 1 returned stating that his new address is not known. Hence APP gives up this list.

Issue fresh SS to CWs 8 and 9.

Call on 18/12.

22/11.

It is, therefore, clear that on the basis of this submission made by the learned Assistant Public Prosecutor on the instructions of the police constable that the Circle Inspector (Petitioner) was on special duty in connection with the visit of a Minister and on the said submission, the Court observed that, that was not a ground to return the summons without service. Further, no fresh summons was also ordered to be issued to him, and thereafter proceeded with further examination of the witnesses. What appears to me, from the aforesaid

observations are, that there was no material before the Court to show that the petitioner deliberately absented himself to appear before the Court to give evidence in the said case for the reason that he was in bundobust duty in connection with the visit of a Minister or otherwise. that, apart one thing is clear, that the notice of the date of the case was not given to the petitioner and therefore he was not aware of the same. But, further, the Magistrate, as seen from the order-sheet itself, has opined that no fresh summons shall be issued to the petitioner. What follows therefrom is that the petitioner was kept in complete ignorance of the proceedings of the Court and the Court proceeded with the case and passed the judgment incorporating certain remarks which are fully detailed above. But, however, Sri M.V. Devaraj contended that the Court is not bound to issue summons to the Investigating Officer time and again directing him to be present before the Court, all the more, he being the Investigating Officer in the case and it is his bounden duty to be present in Court on all the days of hearing and to see the proper conduct of the prosecution of the case. It is true that in the normal circumstances, this procedure ought to be adopted by all the Investigating Officers. But this would appear physically impossible, taking into consideration the complex social life of the Society where the presence of the Police Officers are required at the same time in more then one place for maintaining law and order. It is, therefore, the Courts after having visualised the aforesaid contingency time and again would issue summons to the Investigating Officer to be present in Court on a particular date so that he could make available freely on that date and to see the proper conduct of the case. In the instant case, the Magistrate without issuing further summons to the petitioner, proceeded to pass certain remarks against the Investigating Officer. As already stated, there may be good reasons for the Court to pass certain remarks as can be seen from the genera] observations made by the Court on that behalf. But, all the while, it is necessary to see whether the Court, before passing such remarks has followed the principles of natural justice enunciated by the Supreme Court in the decision referred to above. Any remark passed behind the back of any Officer would lead to hazardous consequences with regard to, not only his character but also regard to his tenure, promotion-service etc. This is not to say that the Courts should not pass such remarks as it deems fit in the circumstances of the case but only the rider imposed is the one of

issuing notice to show cause before passing such remarks. On 22-11-1978, the Investigating Officer (petitioner) asserted that further summons was not issued to him. All the while the Magistrate has passed certain remarks which in my opinion could not have been made without notice to him.

7. Some of the general observations made by the Court which the petitioner prays for being expunged forms an integral part of the judgment and the Presiding Officer is at liberty to make such remarks as he deems fit in the circumstances of the case which is the result of his own experience, and conclusions and therefore, I am of the opinion that such general remarks need not be expunged. It could be seen that such remarks are guidance of the authorities concerned to see that the Officers concerned would be diligent and attend to their work and discharge their duties properly. If that so, such remarks need not be expunged. But remarks made against the petitioner as slated above, have not been made after giving him an opportunity to explain and defend himself and therefore, the said remarks cannot be justified on that account and they deserve to be expunged.

8. In the result, this petition is partly allowed and the following observations of the Court are directed to be expunged from the body of the judgment:

Even the Investigating Officer has preferred to go on bundobust duty in connection with the visit of the Minister rather than appear before Court to give evidence in this case. Even sub-sequently, the Inspector of Police-D Division, Traffic Police has not eared to give evidence in this case.