Vijayakumar Vs. State of Karnataka and Others

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Court : Karnataka

Decided On : Apr-16-1998

Reported in : 1998CriLJ3396; 1998(4)KarLJ16

Judge : M.P. Chinnappa, J.

Acts : Code of Criminal Procedure (CrPC) , 1973 - Sections 4(2), 5, 432, 433-A and 482; Licencing and Controlling of Places of Public Amusement (Bangalore City) Order, 1989; Karnataka Police Act - Sections 31, 103 and 105; Foreign Exchange Regulation Act, 1973 - Sections 19-A; Mysore Police Act, 1963 - Sections 31 and 39; Constitution of India - Article 21, 226 and 227

Appeal No. : Criminal Petition Nos. 146 and 180 of 1998

Appellant : Vijayakumar

Respondent : State of Karnataka and Others

Advocate for Def. : Sri S.S. Koti, Additional State Public Prosecutor

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

Judgement :
ORDER

1. The brief facts leading to these two petitions are that the petitioners are running their video parlour in places mentioned in the petitions since several years. There

video games are considered to be amusement show or business of amusement being run under the licence obtained from the Police Department. Even last year, they had made applications for renewal of their licence after a lapse of the time their licence was not renewed. Therefore, they had continued their business under the deemed licence as provided under sub-clause (8) of Clause 4 of the Licencing Order. It is further contended that they have installed costly machines and also engaged 8 to 10 workers at their shops. They also claim that video games business is their only source of income. Such business of video games are being carried on throughout the State and more particularly in Bangalore City. This Court also granted deemed orders in favour of Amruth A. Idnani. Therefore, they apprehend that the respondents/Police Officers are misusing their powers vested in them as Police Officers and they are interfering with the business of video games and preventing them from carrying on business of video games. On occasions, they have held threats to detain the petitioners, their workers and the customers in custody. This is a high-handed and illegal act. They also contend that the respondents are causing seizure of machines and are detaining all the workers of the petitioners and their customers without registering any case. Therefore, they are seeking reliefs as sought in the petitions.

2. A copy of the petition is served on the respondents and the learned State Public Prosecutor has filed objections.

3. Heard the learned Advocates Sri Ravi B. Naik and Sri Chandrachur appearing for the petitioners and the learned Additional State Public Prosecutor Sri S.S. Koti for the respondents.

4. At the very outset the learned State Public Prosecutor contended that the application as brought is not maintainable on three grounds:

(1) The prayer is in the nature of a blanket order which cannot be granted by this Court under Section 482, Cr. P.C.;

(2) The action contemplated is under the relevant provisions of the Police Act under which the licence should be granted. Therefore, the Criminal Procedure Code cannot be invoked, as such no relief could be granted under Section 482,

Cr. P.C.; and

(3) The petitions do not satisfy any one of the requirements of Section 482, Cr. P.C.

5. However, the learned Counsel for the petitioner while repelling this argument submitted that the High Courts as well as Supreme Court have granted interim orders in favour of the various petitioners restraining the Police Officers from interfering with the affairs of the petitioners therein. Therefore, it is clear that the petitions are maintainable. He also submitted that since the action to be taken by the Police is under the relevant provisions of the Criminal Procedure Code, Section 482, Cr. P.C. can be invoked. In addition to that, he also submitted that to prevent the abuse of the process of the Court, this Court can exercise inherent jurisdiction which has a wide scope to grant such relief in the interest of the parties.

6. Before going into the merits of the case, it is now necessary to mention the admitted facts. The petitioners have been running video parlors in their respective schedule premises and it is also not in dispute that they have installed machines and other equipments necessary for the purpose of running the video parlors and they have also engaged workers in the premises. But the applications made by the petitioners came to be rejected by the 2nd respondent who is the competent authority to grant licence. It is also not in dispute that the petitioners are running the video parlors under the deemed provisions as provided under sub-clause (8) of Clause 4 of the Licencing Order.

7. It is an admitted fact that subsequently the applications of the petitioners came to be rejected. Therefore, according to these petitioners they filed writ petitions and those writ petitions are said to be under consideration by this Court. In view of the pendency of the writ petition and also the fact that they had rightly asked for issue of licence, I need not go into that question at this hour.

8. The question that arises for consideration is as to whether this Court has jurisdiction to grant the relief as sought for by the petitioner.

9. To substantiate their contention the petitioners produced copy of the interim order passed by this Court in Cr. P. No. 75 of 1998. Subsequently, the application filed by the respondent for vacating the same came to be rejected. Similarly, in Cr. P. No. 906 of 1998 also this Court granted interim order. In both the cases, the interim order has been granted directing the respondents not to take any action of search, seizure or removal of video machines from their respective premises, etc. It appears that this petition is also pending consideration. The petitioners also produced copy of the Cr. M.P. No. 2857 of 1988, Cr. M.P. No. 9804 of 1987 filed before the Hon'ble High Court of Judicature at Madras. In Cr. M.P. 9804 of 1987 an interim order was passed by the Madras High Court and the copy is produced. But copy of the order passed in Cr. M.P. No. 2857 of 1988 is not produced. However, the petitioners produced copy of the common order passed in Cr. M.P. Nos. 4757 to 4765 of 1988 to show that the interim order came to be passed by the High Court. It is not known as to whether any final order was passed in any of these petitions. The petitioner also produced copy of the interim order passed by the Apex Court wherein their Lordships issued an interim order restraining the respondents from interfering with the video game business. That special leave petition was filed against the order passed by this Court in W.A. Nos. 404 to 417 of 1994, dated 29-3-1994. It is also not known as to whether the Special Leave petition is still pending or disposed off. However, it may be mentioned that the said order was not passed in a petition filed under Section 482, Cr. P.C. With this background, it is now necessary to find out as to whether the prayer of the petitioners can be granted. The prayer of the petitioners reads as follows:

'Wherefore, the petitioners most humbly pray that this Hon'ble Court may be pleased to allow this petition and issue direction to the respondent-Police Officers and the sub-ordinates of the second respondent not to misuse their police powers and interfere in the business of the petitioners in video games being carried on in the respective schedule premises, with a further direction not to take any action for search, seizure or removal of video game machines from the respective schedule premises of the petitioners.

(b) Grant such other reliefs as this Hon'ble Court deems fit in the circumstances of the case and in the interest of justice and equity'.

From a reading of this prayer, it is abundantly clear that the petitioners have sought for a blanket order. According to the petitioners, the respondents have posted surveillance. They have also arrested and detained the petitioners and workers and released them later. They have also seized the video machines used for playing video games. As far as this part of the allegations in the petitions are concerned, they are very vague. They have not specifically stated the person whom the police have taken into custody, the date and time of the detention, etc. They have also not mentioned from which premises the machines were taken into custody. They have not given any particulars in regard to the surveillance posted by the Police Department. Even accepting for the sake of arguments that such a thing had happened, the question is whether the petitioners had come to the Courts with clean hands. It is contended by the petitioners that they made applications to the 2nd respondent to renew the licence but since he did not do it within one month from the date of the presentation of the applications, they are running the parlors under the deemed licence. Subsequently, the applications of all the petitioners came to be rejected by specific order with several reasons. It is not known as to whether they have filed writ petitions questioning the order passed by the competent authority, the 2nd respondent. They have not produced the copy of the writ petition if at all they filed in this case. Therefore, it can be gathered under the circumstances that they have not filed the writ petition. Even if it is filed, there is no interim order in favour of the petitioners. Therefore, the learned State Public Prosecutor is right in his submission that if they are running the video parlors, it is contrary to the very provisions of law. The deemed licence could be operative only till the application is considered. In this case all the applications came to be rejected giving detailed reasons and copy of those orders are produced in this case. Thus, it is clear that if they are running the video parlors as claimed by them, it is contrary to the provisions of law. Under those circumstances, the police have power to investigate into the matter and take action. Such act cannot be prevented by the Court even acting under Section 482, Cr. P.C.

10. The learned State Public Prosecutor also submitted even if they have valid licence still this Court cannot grant any relief acting under Section 482, Cr. P.C. in a case of this nature. Section 482, Cr. P.C. readsthus;

'Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice'.

From a bare reading of the above section it is clear that the words used in Section 482, Cr. P.C. is to prevent abuse of process of 'Court' and not of 'law' or otherwise secure the ends of justice and not seek justice. It is incumbent on the petitioners to establish that the relief sought could be granted by this Court under Section 482, Cr. P.C. by bringing their cause within any of the three requirements. Admittedly, it cannot be said that this petition is filed to prevent the abuse of the process of Court and to quash the proceedings pending before any Court as there is no proceedings pending before any subordinate Courts in this case. Further, the apprehension of the petitioners that the police would take action against them does not come under the Code of Criminal Procedure. The petitioners made a faint attempt to bring it within the purview of the Criminal Procedure Code and by contending in para 3 of their petition that the provisions of the Procedure Code are almost similar to the one contained in the Licencing order of 1989 and the provisions under the Code and the Amusement order are enforcing provisions, in the event of breach of public peace or in the event of breach of any of the conditions of the Licencing order, resulting in breach of public peace and tranquility. The 1st respondent Commissioner of Police is the head of police force and under his supervision and guidance the provisions as contained in the Licencing and Controlling of Places of Public Amusement Order, 1989 are enforced. Thus every action initiated under the said provisions are purely within the ambit of the Criminal Procedure Code and as such the petitioners invoke inherent powers of this Hon'ble Court as contemplated in Section 482, Cr. P.C. for the purposes of the orders as are necessary and to give effect to the orders passed by the 2nd respondent under the Code, and also to prevent abuse of process of law and to seek justice.

11. The Karnataka Police Act and also the Licencing Order are self-contained. If any violation is made under Section 31 of the Karnataka Police Act or the Licencing Order, the accused may be convicted under Sections 103 or 105 of the

Karnataka Police Act. They need not approach the Court under the Indian Penal Code invoking the relevant provisions of the Cr. P.C. If that is the case, Section 4 of the Cr. P.C. cannot be invoked. Therefore, the offences under the Police Act need not be investigated, enquired or tried under the Criminal Procedure Code. In support of this argument, the learned State Public Prosecutor has placed reliance on a decision in The State v Abdul Rasheed, wherein this Court has held that Section 5, Cr. P.C. (old) makes a distinction between the offences under the Penal Code and offences under any other law. In the case of latter offences, the procedure to be followed is one provided by the Cr. P.C. subject to the provisions of any other law. This is clear from the expression 'otherwise dealing with such offences' in Section 5(2) Cr. P.C. which bring into action the machinery under the Code subject to the provisions of any other law. Section 517, therefore, merely enumerates various powers which may be exercised by the Court. If the Legislature intended that any other authority may exercise the power of forfeiture and provided for it in the statute, the power of forfeiture shall be exercised by that authority. Thus the power of forfeiture or confiscation is derived by the Courts or any other authority from the various statutes creating the offences.

12. Section 5 referred to in this decision is pari materia same under Section 4 of the Cr. P.C., 1973. From this it is clear that if the offences are referred to any other law, it has to be tried only under that Act and Cr. P.C. unless made applicable cannot be made use of. In this case, as stated earlier, Karnataka Police Act is a self-contained Act and the Police will have to take action only under that Act. Therefore, Section 482, Cr. P.C. cannot be invoked.

13. It is also held by their Lordships of the Supreme Court in Nilratan Sircar v Lakshmi Narayan Ram Niwas, that Section 5, Cr. P.C. provides that all offences under any law other than the Indian Penal Code shall be investigated, inquired into, tried and otherwise dealt with according to the provisions contained in the Code of Criminal Procedure, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences. 'The Foreign Exchange Regulation Act is a Special Act and it provides under Section 19-A for the necessary investigation into the alleged suspected commission of an offence under the Act, by the Director of

Enforcement. The provisions of the Code of Criminal Procedure therefore will not apply to such investigation by him.

14. In Maru Ram Bhiwana Ram v Union of India and Others, theirLordships have considered the scope of Section 433-A and Section 5 ofthe Cr. P.C. (2 of 1974) and held:

'The anatomy of this savings section i.e., Section 5 is simple, yet subtle. Broadly speaking, there are three components to be separated. Firstly, the Procedure Code generally governs matters covered by it. Secondly, if a special or local law exists covering the same area, this latter law will be saved and will prevail. The short-sentencing measures and remission schemes promulgated by the Various States are special and local laws and must override. But the third component is clinching. If there is a specific provision to the contrary, then that will override the special or local law. Section 433-A being such a specific law that will be the last word and will hold even against the special or local law. The remission rules are special laws but Section 433A is a specific, explicit, definite provision dealing with a particular situation or narrow class of cases, as distinguished from the general run of cases covered by Section 432, Cr. P.C. Section 433-A picks out of a mass of imprisonment cases a specific class of life imprisonment cases and subjects it explicitly to a particularised treatment. It follows that Section 433A applies in preference to any special or local law because Section 5 expressly declares that specific provisions, if any, to the contrary will prevail over any special or local law'.

The Madras High Court also has held while discussing Section 6E of the Essential Commodities Act in a decision in P. Sivaputhiran v The State and Another, that the petition under Section 482, Cr. P.C. cannot be invoked for return of goods seized under the Act. The learned State Public Prosecutor also placed reliance on a decision reported in Mosst Simrikhia v Smt. Dolley Mukherjee alias Chabbi Mukherjee and Another , wherein their Lordships have held that the scope of Section 482, does not extend to what is expressly barred under the Code. In this case, the contemplated action does not come within the purview of the Cr. P.C. Under those circumstances, the inherent power of the Court cannot be exercised. The Division Bench of this Court in Y. Krishnamurthy v Sharanappa, has held that

the inherent power can be exercised only for the purposes specified in this section and cannot be invoked in respect of any matter examined by any other specific provisions of the Code. From these decisions, it is abundantly clear that if the action contemplated does not come within the purview of Section 4 of the Cr. P.C., the inherent power cannot be invoked by the Court. On the other hand, it has to be under the specific provisions of law under which the action was taken.

15. The learned Counsel for the petitioners however, contended that in W.P. No. 30742 of 1996 in the case of Amruth A. Idnani v State of Karnataka, this Court has permitted Amruth A. Idnani to run the video games under the deemed provisions of law. This Court has held that the petitioner would be deemed to have the licence for carrying on the business in video games at the premises in question and subsequently in contempt proceedings in CCC No. 917 of 1997 which was disposed off on 1-8-1997, the respondents therein have undertaken that they will abide by the directions dated 15-11-1996 strictly complied within letter and in spirit unless such directions are modified or set aside by the competent Court of jurisdiction. The petitioners want the benefit extended by this Court in the said writ petitions, to be extended to all the petitioners herein. It is a well-settled law that the order passed by the Court clearly is confined to the persons who are the petitioners before Court. Even accepting that such benefits could be accepted in view of the deemed provisions of law, the question is as to how long they can continue to operate the video games under the deemed provisions of law. At this stage, it is not for this Court to decide these issues in these petitions. It is left open.

16. The learned Counsel for the petitioners further argued that the video game is considered to be a game of skill and not a game of chance and in support of it, he has placed reliance on a decision in M.J. Sivani, and Others v State of Karnataka and Others, wherein it is held that Sections 31 and 39 of the Mysore Police Act, 1963, applies to places where video games are played. It is also held that the restrictions imposed in the licence prohibited from admitting school or college going students during school or college hours are the restrictions which are in public interest of the education of students. It is neither unreasonable nor capricious nor violative of Article 21. It is also held that regulation of video games

or prohibition of some of the video games of pure chance or mixed chance and skill is not violative of Article 21 nor is the procedure unreasonable, unfair or unjust.

17. Similarly, in M. Radhakrishna v State of Karnataka, this Court has held that video game parlour is a place of public amusement covered by Section 31. It is also further held that places of public resort to be known to Licensing Authority to maintain public order and enforce Police Act -- requirement to obtain licence under order not arbitrary or unjustified or violative of Fundamental Rights and Regulatory powers are reasonable restrictions and are sustainable.

18. Further, the Janata Dal v H.S. Chowdhary and Others, is relied on by the appellant. From a perusal of the entire judgment, it is clear that the observations made by their Lordships are in favour of the respondent rather than the petitioners as rightly pointed out by the learned State Public Prosecutor with reference to various decisions quoted in the Judgment cited above.

19. The learned Counsel for the petitioners further placed reliance on a decision in R.P. Kapur v State of Punjab, wherein their Lordships have held:

'In exercising its jurisdiction under Section 561-A, the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not. That is the function of the Trial Magistrate and ordinarily it would not be open to any party to invoke the High Court's inherent jurisdiction and contend that on a reasonable appreciation of the evidence, the accusation made against the accused would not be sustained'.

20. The learned Counsel for the petitioners want this Court to decide the case only on the presumption that there is a deemed licence in favour of the petitioners and therefore, they are entitled for protection without even referring to the order passed by the 2nd respondent rejecting the application. Though it cannot go into all the details, but prima facie it is clear that there is no valid licence issued in favour of the petitioners. The deemed provision also is applicable only for a certain period and not a permanent one. Under those circumstances, it is not open to the petitioners to claim that they are entitled to run the parlour permanently without

obtaining licence. Be that as it may, the fact remains that the petitioners have sought the relief as if it is an injunctive order which is normally granted by the Civil Court but when the petitioners seek such reliefs, they must come to the Courts with clean hands. At the very outset, the petitioners have not placed any material to show that they are running video parlour under the deemed provisions of law and that there is no violation of any provisions of law. There is no interim order granted by this Court even if any writ petition is filed. Therefore, they are violating the provisions by running the parlour without the licence. Further, they have not placed any material to show that the respondents have apprehended any of the petitioners and seized any articles except making a bald allegation in the petition as stated above. Even if they have taken any action illegally, it is always open to the petitioners to approach the Court, but the Court cannot grant a blanket order in favour of the petitioners which would lead to disastrous consequences. To mention even if such order is passed, even if illegal or immoral activities are carried on in the premises because of such orders being passed by the Court, the respondents would be prevented from entering into the premises and also to ascertain the fact as to whether video parlour is being run in a proper manner and in accordance with the terms and conditions of the licence issued or deemed to have been issued.

21. The learned Counsel for the petitioners further drew my attention to the decision in State of Himachal Pradesh v Pirthi Chand and Another , wherein their Lordships have held that when an efficacious remedy under Section 482, Cr. P.C. is available, the High Court should not exercise its extraordinary jurisdiction under Article 226. That was a case in which the order of discharge passed by the Sessions Judge was confirmed by the High Court in revisional jurisdiction. The High Court's inherent jurisdiction to quash the criminal proceedings was not an issue. Even otherwise, the proceedings pending before the Court was questioned. But in this case, as stated earlier, no proceeding is pending before any Court. On the other hand, the petitioners sought for certain relief as against the action contemplated by the respondents. Under those circumstances, for the reasons stated above Section 482, Cr. P.C. is not applicable. As far as rejection application for grant of licence or to issue necessary directions to the executive authority may only be done under Articles 226 and 227 of the Constitution. It also may be

mentioned here that the petitioners have not mentioned the order passed by the Respondent 2 rejecting the application. Under those circumstances, the actions to be taken by the respondents in these cases would come only under the Karnataka Police Act or the Licencing Order. It will not come within the purview of the Cr. P.C. Therefore, as rightly pointed out by the learned State Public Prosecutor Section 482, Cr, P.C. cannot be invoked in the peculiar circumstances of this case.

22. The learned Counsel for the petitioners placed reliance on a decision in M/s. Pepsi Foods Limited and Another v Special Judicial Magistrate and Others. In that case their Lordships have held that revisional jurisdiction under Section 482, Cr. P.C. can be invoked for judicial review in criminal matters. Nomenclature under which petition is filed is not quite relevant and that does not debar the Court from exercising its jurisdiction which otherwise it possesses unless there is special procedure prescribed which procedure is mandatory. If, in a given case, the Court finds that the appellants could not invoke its jurisdiction under Article 226, the Court can certainly treat the petition one under Article 227 or Section 482 of the Code. As far as the principles of law enunciated by their Lordships, they are not applicable to the facts of this case, as the petitioners claim that they have already filed writ petitions. It is for them to take necessary orders in those writ petitions. It is not their case that the writ petitions are not maintainable invoking the writ jurisdiction of this Court under Section 482, Cr. P.C.

23. The learned Counsel for the petitioners however argued that the 2nd respondent who is a competent authority has not passed the order but the same was passed by Sri K.S. Suresh Babu, Additional Police Commissioner, Bangalore. Therefore, the order of rejection is invalid. As stated earlier, this question need not be gone into by this Court while acting under Section 482, Cr. P.C. and moreso, it is a matter to be decided by the Court which is dealing with the writ petition filed by the petitioners. Even otherwise, the respondents have produced the order dated 18-10-1997 passed by the Director General and Inspector General, Karnataka State, placing in-charge the Commissioner of Police. That order came to be passed as he was placed in charge of the Commissioner of Police, Bangalore, being the Divisional Commissioner.

24. The learned State Public Prosecutor also submitted that if they run the video parlour in accordance with the terms and conditions of the policy and the relevant provisions of law, the respondents would not in any way interfere with them. It is also made clear that if any action is taken by the respondents, it is for the petitioners to take appropriate action as provided under the Act. However, they are not entitled for a blanket order prohibiting the respondents from interfering or investigating the matter and taking such other actions deemed fit under the circumstances of the case. On the other hand, in para 16 of the objections, the respondent has totally denied the allegations made by the petitioners that the respondents are putting surveillance over the shops of the petitioners and passing threats to the petitioners, their workers and customers preventing them from carrying on business in video games. The learned State Public Prosecutor also submitted that the Division Bench has passed an order in W.P. No. 29696 of 1997 (GM-PIL) dated 20th day of March, 1998, directing the respondent State and its officers that if respondent No. 6 or any other person is carrying on video game parlors without obtaining licence as required under law or without authority of law, appropriate action be taken against such defaulting persons.

25. Taking all this into consideration, I am of the considered view that these petitions are not maintainable for the reasons stated above. Accordingly, the petitions stand dismissed.