

Gangadhar Marar Vs. the State

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Court : Kerala

Decided On : Sep-20-1971

Reported in : 1972CriLJ954

Judge : K. Sadasivan, J.

Appellant : Gangadhar Marar

Respondent : The State

Judgement :

ORDER

K. Sadasivan, J.

1. The petitioner. Ganga-dhara Marar is the accused in S.C. 25/71 on the file of the Sessions Judge. Tellicherry. He is charged with having attempted to murder Sri C. H. Mohammed Koya, the honourable Home Minister of Kerala by throwing an acid bulb at him while he was camping in the Inspection bungalow, Tellicherry on 4-1-70. The accused was immediately arrested and the case was registered as crime No. 2/70. The trial in the sessions court commenced on 9-8-71. The trial went on till 16-8-71. in the course of which almost all the material witnesses were examined. On 16-8-71 the doctor who treated the accused was examined; but before her examination could be completed the accused filed Cr. M. P. 174/71 expressing his intention to move 'higher court' for withdrawal of the case from the file of the learned Sessions Judge as he apprehended that it was not possible for

him to get a free, fair and impartial trial. On that petition the learned Judge ordered:

If the accused entertains any such apprehension, he can move the High Court for a transfer.

Even after that the learned Judge proceeded with the trial and seeing that the accused submitted another petition Cr. M. P. 175/71. expressing his intention to move the High Court for transfer and stating further that his advocate is also not available to proceed with the case, the court ordered:

Trial of the case adjourned to 19-8-1971. The question of granting further time if necessary will be considered on 19-8-1971. Call on 19-8-71.

(Both the Cr. M. Ps. were filed on 17-8-71). On 18-8-1971 the present petition (Cr. M. P. 564/71) was filed in this court praying for transfer of the case to some other court of competent jurisdiction, The grounds alleged are:

(1) On 9-8-1971 when the honourable Minister was examined as a witness 'there was excessive show of police force in and near the court hall and Premises which has gone to the extent of creating fear to the accused as well as others. Then a petition was filed before the Sessions Judge. The sessions Judge on receipt of the petition got wild and said 'that it is necessary on security grounds and I cannot do anything in the matter:

(2) The Minister refused to answer relevant questions put by the accused's advocate. when request was made by the advocate to the court to compel the Minister to answer, the court's response was, 'since the Minister is not answering the question I shall record the deposition in question and answer form.' The Judge on that day conducted himself in such a way as to create reasonable apprehension in the mind of the accused that he would not get a fair and impartial trial.

(3) At every stage of the examination of the witnesses by the defence counsel, the Special Prosecutor was unnecessarily intervening which in spite of protest of the defence counsel was being tolerated by the court:

(4) The answer elicited by the defence counsel which were favourable to the accused were not taken down as such. The Judge very often was seen to explain the consequences of such answers so as to enable the witnesses to understand the same and explain or give a different version:

(5) The Lady doctor (Pw 11) had to admit in cross-examination that she could not admit the accused as an inpatient in the hospital due to police threat. This witness was declared hostile at the instance of the Prosecutor without just ground or excuse.

(6) Inadmissible evidence has been admitted in spite of objections by the defence counsel:

(7) Witnesses not cited in the charge sheet were ordered to be summoned; and lastly.

(8) The very behaviour of the Judge towards the defence counsel when he raised objections was unbecoming of a Judge.

2. Even before the trial started the accused had the apprehension that he would not get a fair trial and so a petition for transfer was moved before the Supreme Court of India (Transfer Petition 22/70) praying for the transfer of the case to some court outside Kerala; but that petition was dismissed with the direction that appropriate reliefs could be had from this High Court in case the accused apprehended that he would not get fair trial from the particular sessions court.

3. It was strenuously contended before me by the accused's learned Counsel that the attitude of the learned Sessions Judge was biased and one-sided from the very beginning answers elicited from witnesses favourable to the accused were not being taken down in full; there was intervention by the Judge at critical stages of the examination to give clue to the witnesses prejudicial and detrimental to the interests of the accused; inadmissible questions were admitted and a particular prosecution witness was declared hostile merely on the request of the Special Prosecutor. without any justification are some of the grounds urged to show that the Judge is prejudiced in favour of the prosecution and against the accused. To

elucidate these points, Sri M. K. Damodaran, learned Counsel who was appearing for the accused in the sessions court has cited instances in the affidavit filed by him before this court. The instances are:

(a) According to the prosecution a ball like object fell near the chair where the Minister was sitting and that It Was thrown by the accused. In cross-examination the Minister stated.

Meaning thereby that the object fell on the ground near the accused. At this stage the court intervened with the observation. 'it rolled a little distance after it fell on the ground.' This was recorded as a statement made by the court:

(b) To another question the Minister answered that he had signed the C. D. statement. Then the court asked the witness 'did you sign, do you remember?'. taking the clue the witness stated 'I remember to have signed in the statement I gave to the police.'

(c) P. W. 4 stated in answer to a question that himself and his superior officers including the P. A. to the Minister had talked about the accused for about 10 to 20 minutes, immediately the court intervened and asked, 'is it so was it like that?'

4. I have carefully considered these points and it is difficult for me to see that the court's intervention, if at all, was calculated to harm the accused in his defence or to confer a benefit on the prosecution. It is too much to say that from the court questions extracted above the apprehension has entered the mind of the accused that he would not get justice from that court. Apprehension must be reasonable and not fanciful merely. Considerable emphasis was placed by the learned Counsel on the fact that in and around the court armed sentries were posted on the day of the examination of the witness. It is argued that the presence of the police force in such large numbers in the premises of the courthouse that day had instilled fear in the mind of the accused that he would not get a free trial there and that the atmosphere that prevailed was that of a police military court. All these are baseless. In the affidavit filed on behalf of the prosecution the Sub Inspector. has pointed out that special bandobust arrangements had to be made that day as a tense situation had prevailed there. Members of the Marxist Party on the one side

and those of the Muslim League on the other had assembled in large numbers and it was the look-out of the police to see that nothing untoward happened and that a peaceful atmosphere was maintained in the precincts of the court. I see, therefore, no force in the contention that the presence of the extra police force was injurious to the interests of the accused in the trial. I see also no basis for the allegation that important answers elicited from witnesses were omitted to be taken down and that the lady doctor was declared hostile on insufficient grounds.

5. The most important ground on which attention was focussed by the learned Counsel was that even after intimation was given to the court of the accused's intention to move for a transfer the trial was proceeded with. It has often been pointed out by this court that 'the court is bound to grant an adjournment on intimation at the proper time of an intention to apply to the High Court for transfer. The intimation operates as if it were a statutory stay. The Court cannot thereafter proceed with the case or record any evidence.' (Vide *Velappan v. State* 1963 Ker LT 360). In the present instance, however, I do not think the learned Judge was obstinate enough to proceed with the trial even after he was told of the accused's intention to move the High Court for transfer. No doubt, after the presentation of Cr. M. P. 174/71 the witness's examination was continued for a few minutes. The learned State Prosecutor points out that the learned Judge thought that the case would fall under Sub-section (9) of Section 526 Cr. P.C. as the accused had several opportunities before to move for transfer and that right was not exercised by him. The Sessions Judge need not adjourn the trial if he is of opinion that the person notifying his intention has had a reasonable opportunity of making the application; but did not do so. In the Cr. M. P. itself the accused had stated that the court had consistently been taking a hostile attitude towards him from the beginning of the trial. In such circumstances if the learned Judge had thought that Sub-section (9) of Section 526 is applicable, he cannot be blamed for that. Anyhow within a few minutes of that, the necessary orders were passed adjourning the case so as to enable the accused to move this court for transfer. I do not think, in the circumstances, the court has acted mala fide or without jurisdiction. The fact cannot be lost sight of that even though the apprehension had entered the accused's mind on 9-8-1971 itself when the Minister was examined, no motion was made by him for transfer of the case. Thereafter a number of

witnesses were examined and only on 17-8-71 when the court was in the midst of the examination of P. W. 11 the doctor that the idea struck the accused of moving for a transfer. The instances of unfair conduct on the part of the Judge cited by Mr. Damodaran in his affidavit are mostly instances that took place on days prior to 17-8-71. In this background it is difficult to see any bona fides in the present move for transfer of the case. The trial is nearing completion and. I am told, that the witnesses that remain to be examined are mostly departmental witnesses.

6. My conclusion, therefore, is that this petition is ill-advised and lacking in bona fides. The petition is hence dismissed.

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