

Pappachan Vs. Muthu

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Court : Kerala

Decided On : Nov-15-2004

Reported in : 2005(2)KLT76

Judge : K. Hema, J.

Acts : Schedule Caste and Schedule Tribe (Prevention of Atrocities) Act - Sections 3(1); Code of Criminal Procedure (CrPC) - Sections 156(3), 436 to 439 and 482; Indian Penal Code (IPC) - Sections 34, 406 and 420

Appeal No. : CrI. M.C. No. 2692 of 2001

Appellant : Pappachan

Respondent : Muthu

Advocate for Def. : Johnson Manayani, Adv. and; K.J. George, Public Prosecutor

Advocate for Pet/Ap. : Joseph Markose and; A. Kumar, Advs.

Disposition : Petition dismissed

Judgement :

ORDER

K. Hema, J.

1. This Court is called upon to issue a direction to the lower Court that in case the petitioner files a bail application, it shall be disposed of on the same day of filing of the same. Can this Court issue such a direction, under Section 482 of the Criminal Procedure Code in a non-existent petition? If such a direction is issued, will it secure ends of justice or frustrate the same? These in short, are the questions arising for consideration in this case.

2. Brief facts, as narrated in the petition are as follows: The petitioner is second accused in Crime No. 75 of 2001 of the Erattupetta Police Station. The said crime was registered based on a private complaint instituted by the first respondent before the Judicial Magistrate of First Class, Erattupetta which was forwarded under Section 156(3) Cr.P.C. The alleged offences are under Sections 406, 420 and 34 Indian Penal Code and Section 3(1)(x) of the Schedule Caste and Schedule Tribe (Prevention of Atrocities) Act. A copy of the complaint is Annexure-A and that of the F.I.R. is Annexure-B.

3. According to the petitioner, the complaint is a false and fabricated one and the registration of the crime and the investigation is an abuse of process, since the ingredients of the offence are not made out in the complaint. It is also stated that no allegation is made in the complaint to indicate that the complainant was called by the caste name with an intention to insult him by using the caste name. Hence, the petitioner seeks a direction to be given to the Judicial First Class Magistrate Court, Erattupetta to consider and dispose of the bail application 'to be filed' on the same day on which it is moved. This is the limited prayer in the petition.

4. Before dealing with the facts in this case, let me try to understand first, the scope and ambit of Section 482 of Cr.P.C. Section 482 of Cr.P.C. reads as follows:

'Section 482: Saving of inherent powers of High Court - 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.'

5. A reading of Section 482 Cr.P.C. would go to show that the section mainly refers to inherent powers of the High Court. What is an inherent power? Going by the dictionary-meaning, the word 'inherent' means 'existing in something, especially as a permanent or characteristic attribute' (vide The Concise Oxford Dictionary). The meaning of 'Inherent powers' is dealt with in Black's Law Dictionary with pronunciations 5th Edition, as follows: 'An authority possessed without its being derived from another. A right, ability, or faculty of doing a thing, without receiving that right, ability, or faculty from another. Powers originating from the nature of government or sovereignty, i.e., powers over and beyond those explicitly granted in the Constitution or reasonably to be implied from express grants.' That would mean that High Court, by the very existence as a Court, has powers which are vested in it, which are of a permanent nature. Those are powers which may not, and need not necessarily be expressly granted by any of the provisions or enactments, because such powers exist by the very existence of a Court.

6. But it appears from Section 482 Cr.P.C., that inherent powers of High Court are saved by the said section only to certain extent. Let me now proceed to consider, under what circumstances and to what extent inherent powers of High Court are saved by Section 482 of the Code of Criminal Procedure. A close reading of the section discloses that it contains an unambiguous declaration that nothing which is stated in the Code shall be deemed to affect or limit inherent powers of the High Court to make such orders as may be necessary for the three purposes stated in the section. Those purposes are viz., (1) to give effect to an order under the Code (2) to prevent abuse of the process of any Court (3) to secure the ends of justice. So, it can be concluded that inherent powers of High Court are saved only to the above extent.

7. From the above discussions, it will be also possible to logically draw a corollary that in any other circumstance, i.e., when there is a specific provision in the Code, such provision in the Code will have to be deemed to affect, limit or control the powers of the High Court. When there is a provision in the Code governing certain powers of the Court--whether it be the High Court or other Court--such Court, while exercising such powers will be controlled by and be subject to the provision

contained in the Code. The Courts including the High Court, while acting under a particular provision in the Code, can perform only in accordance with that provision in the Code. While doing so, such provision will be deemed to affect or limit inherent powers of High Court. In any situation other than those are dealt with by the provisions of the Code, if High Court is called upon to exercise its inherent powers, High Court can exercise such powers, but it shall be subject to the limitation contained in Section 482 Cr.P.C., i.e., those powers can be invoked only for making such orders as may be necessary for the three purposes stated in Section 482 Cr.P.C.

8. So, when a bail application is filed before a Subordinate Court, it follows that such Court will automatically be governed by the provisions relating to bail which are contained mainly in Sections 436 to 439 of the Code, as the case may be. When there are specific provisions in the Code governing the lower Courts' powers in the matter of bail, the Courts will have to act subject to such provisions. Lower Court has to deal with the petition in the manner as stated in the Code and High Court will not have any authority to interfere, unless such interference is permitted by the Code. In cases in which it is mandatory that notice has to go to the Prosecutor and hear him, the Court is bound to comply with such requirements. And, if for that purpose, the case has to be posted to the next day, the Court will have to act accordingly.

9. This is mainly due to two reasons. Firstly, issuance of notice and hearing of Prosecutor is an unavoidable legal formality in such cases and secondly, there is no provision which mandates that a bail application has to be disposed of on the same day of filing. High Court therefore cannot issue any direction which will interfere with the lawful powers exercised by the lower Court. It cannot, even indirectly prevent the lower Court from complying with the legal formalities which the Court is bound to adhere to, on first hearing date. It cannot pass any order which is likely to curtail the discretion conferred on the lower Court by the Code. It cannot then direct that the case shall be disposed of on the same day, and that the case shall not be adjourned etc. If a direction is issued by the High Court or the Sessions Court much in advance, even before the petition itself has come into existence, that the petition shall be disposed of on the same day of filing, without

taking care of the various circumstances which are likely to arise in the case on the date of first hearing, such direction may make it impossible for the lower Court to exercise its powers conferred by the Code.

10. No provision in the Code authorises the High Court or the Sessions Court to issue any directions to the lower Court which will interfere with the lawful exercise of its powers. Even Section 482 Cr.P.C. will not justify issuance of any such direction because that may not (i) give effect to any order under the Code (ii) prevent abuse of process of Court or (iii) secure ends of justice. If one can visualise situations which may arise on the date of filing of a bail application before a lower Court, there will be no difficulty to find out that passing of such direction to the lower Court will, not only not secure ends of justice, but it may even frustrate the course of justice. The prime object of Section 482 Cr.P.C. is to secure ends of justice, but such object will be defeated, if a direction as prayed for is issued in a non-existent petition.

11. Citing a few examples will make the position clearer. It is of common experience that in some cases, it would be mandatory for the Court to issue notice to the Prosecutor and also hear him before disposing of a bail application. This mandatory legal formality may require more than a day's time in some cases. In some other cases, perusal of case diary will be absolutely necessary to take a just decision. But the records may not be readily available in Court due to genuine reasons. Court will be forced to post the case to the next day. In some other cases, records which are already made available may not be sufficient for a proper disposal of the petition. So, necessarily, a direction will have to be issued to produce some other relevant document also, without which a just decision cannot be taken. In such event, a disposal on the same day will be most impracticable.

12. It can also so happen that due to reasons contributed by the petitioner himself a disposal on the date of filing of the petition may become impossible. There may be some discrepancy in the details shown in the petition in respect of the name of the petitioner or his father or even the address. This may be because the petitioner or father will be known by more than one name etc. In such cases, the details in the petition and those in the prosecution records may not tally. A verification may

be required even to confirm whether the petitioner is the actual accused or not. All these defects will be revealed only when the case comes up for hearing and necessarily, sufficient time may be required for verification. In such circumstances, a disposal on the date of institution of the petition may not be feasible.

13. In some cases, an inadvertent clerical error may creep in. Even the crime number or the details of the Police Station would be wrongly shown in the petition. So, the instruction received by the Prosecutor would be in a totally irrelevant case. The mistake would have come to the notice of Court and all concerned only at the time of hearing. The Court will be persuaded to give time to both sides for verification and correction. In such a situation also a disposal of the petition on the same date may be out of question. There are also cases in which Prosecutor and even the petitioner himself may seek time for a day or two, for hearing or production of records for genuine reasons. It will be well within the powers of the Court to grant it. Thus, there are innumerable situations which can arise on the date of first hearing of the case and the Court will be forced to post the case to another nearest possible date since it will be impossible to dispose of the petition on the very same day of filing of the application.

14. Let me examine another situation. Both sides will report that there are chances for settlement of the dispute between the parties. The petitioner may request for adjournment for a day or two or even one week because that may help the parties to settle the entire issues amicably out of Court, once for all. A disposal of the bail application either way, may in the facts of the case impede a final settlement. It may be a family dispute or a matrimonial one. It can be one between the father and son. It can be one which can be squared up at the threshold in a day or two. The Court will also be satisfied that an adjournment, rather than a dismissal or even grant of bail alone will meet ends of justice. In such a situation, none of the provisions in the Code would bar the lower Court from granting an adjournment, which the Court will be satisfied is for the ultimate benefit of both the parties and even for a quicker finality of litigation.

15. So, when the petitioner alerts the Court of the seriousness of the matter at the first hearing and seeks an adjournment, can the Court mechanically, and without a

touch of conscience, refuse an adjournment? Where the Court finds that an adjournment alone can meet ends of justice, will not the Court be forced to fold up its hands, cross the lips and helplessly dispose of the petition on the same day, since the direction of the High Court interferes with its powers and discretion and even embarrasses the same? If a Subordinate Court were to act in such fairness as the situation may demand and grant an adjournment, can the High Court even indirectly discourage such sense of justice and pin it down to an order passed under Section 482 Cr. P.C. to dispose of the case on the same day, in obvious ignorance of the naked realities narrated above

16. When the lower Court is satisfied that justice can be, and should be extended to the parties, by granting an adjournment for a few days, that too without offending any of the provisions relating to bail which do not prescribe any time-limit for disposal, will it be legal and proper for the High Court, purporting to act under Section 482 Cr.P.C. to hinder such course of justice, even circuitously? Can an order passed by this Court to dispose of a non-existent petition for bail on the same day on Which it comes into existence, without taking care of any of such unforeseen future events that may arise in a case in essence, secure ends of justice or frustrate the same

17. Will it be unwise for the Court to remember, at least in this context that the accused alone is not the part of justice delivery system? Can the system conveniently forget or ignore the victim who is also an inseparable part, though he or she may not be before the Court at the time of hearing of a bail application? If the matter is likely to be settled finally by the grant of an adjournment for a day or even a week, that too at the instance of the petitioner himself, will not the victim also be benefited by it? If then, should the Court deny at least to the victim, such an advantage? Can the Court be cold, frozen or rigid in such situations and be meek and hesitant to act?

18. Of course, it is quite easy to justify and explain that the accused/petitioner himself in his folly, was responsible for getting such a direction from this Court for disposal. But, can such folly be a defence, excuse or even an apology for this Court to shirk off its responsibility which the Legislature so preciously and carefully

saddled onto it? Is there anything sinful or in appropriate for this Court to ventilate its thoughts in all these directions, if substantial justice is the ultimate aim and goal? Or, should any Court lament and wail upon the huge pendency of the bail applications on its rolls and refuse or deny a little act of kindness of an adjournment, in thoughtless, mechanical haste for the sake of a mere quantitative disposal? Or, can the Court take shelter in an excuse that the personal liberty of a citizen is a precious right which the Court is bound to preserve, to justify the hurry

19. I have no doubt, my answers are all, emphatically 'no'. I must also hasten to add that the instances cited above are only a few, still those are not merely fanciful. The various lower Courts in the State which deal with bail applications day-to-day will have much more impressive instances to quote. One cannot afford to forget that the Code gives unlimited discretion to the bail-Courts in the time for disposal of a bail application. Legislature has not imposed any restrictions on the discretion of the Subordinate Courts in respect of the time to be taken for disposal of a bail application which is pending, may be foreseeing much more compelling situations than narrated above and to take care of several befitting situations. Legislature did not sensibly fix any time limit for disposal of a bail application, not because Legislature was unaware of the need to protect and preserve the golden right of personal liberty of a citizen. There must be solid, inestimable and costlier reasons for not imposing any such restrictions in the matter of disposal of bail applications. The framers of the Code would have felt and read in more details, the pulses of the society.

20. So, what Legislature in its wisdom has not restricted, High Court cannot curb, limit or cripple. High Court cannot legislate, much less under any hue and shade of inherent powers. What is vested in the High Court under Section 482 Cr.P.C. is not any royal, sovereign prerogative. It cannot prescribe any time limit (which the Code has not prescribed) that too in relation to a non-existent, hypothetical bail application, even before it has come into existence. The Code does not confer any such power on the High Court by any of the provisions in the Code. Section 482 Cr. P.C. also does not empower High Court to issue any such directions to the lower Courts in respect of a non-existent bail petition, contrary to the provisions governing bail.

21. Inherent powers are not meant to be invoked to issue directions which are likely to run counter to the scheme, scope and spirit of the provisions relating to bail and even what is stated in Section 482 Cr.P.C. It does not authorise any transgression or invasion of the specific powers conferred on the lower Courts by the Code, which are carefully designed by the Legislature. It does not also approve any intrusion or interference with the discretion to be lawfully exercised by the lower Courts. High Court can act only in consonance with the legislative intent, to secure ends of justice. Even the continued supervisory jurisdiction of the High Court over the lower Courts in the matter of expeditious disposal of cases will not take within its sweep, a power to issue direction in a non-existent petition.

22. A bail-Court is empowered to take a reasonable time for disposal of a bail application and such reasonable time will be the minimum possible time required, depending upon the nature, seriousness of the crime, the circumstances of the petitioner, stage of the case and various other relevant factors. Reasonable time will be such time as may be found absolutely necessary, depending on the facts and circumstances of each case in consonance with the urgency, need and demand of the situation. This can vary from case to case, but not from Court to Court. A Court has to act with admirable prudence to determine how much time will be reasonably required for disposal of a bail application. Courts must be doubly cautious in assessing such time, especially since no time-limit is prescribed for disposal of a bail application and the entire responsibility is thrust upon the respective Court by the Code. I am confident that the Subordinate Courts in this State, generally and ordinarily act in tone and spirit of the legislative intent, being fully conscious of the valuable rights of a citizen.

23. Still, I am not for a moment ignoring the oft-repeated complaints of the Bar as in this case, in the matter of delay in disposal of bail applications. There are allegations that bail applications are, as a matter of routine adjourned to an unduly long date at the will and pleasure of the certain Courts and thereby accused will have to remain in jail for a long time. There can be no doubt that any such type of functioning of a Court will have to be deprecated with all the contempt that it deserves. Personal liberty of a citizen cannot be trodden down and meddled up at the portals of a temple of justice. If the lower Court fails to exercise its discretion,

as it is expected of in a particular situation, especially in relation to the time taken for disposal of a bail application before the lower Court, High Court cannot be meant to be powerless. There will be no bar for the High Court to invoke powers under Section 482 Cr.P.C. and pass appropriate orders as may be necessary in appropriate cases, without offending any of the provisions in the Code, if it is satisfied that such powers are sought to be exercised for any of the three purposes stated in the said section.

24. Now, coming to the facts of this case, I find that this petition is filed as early as on 17.4.2001. More than three and half years have elapsed now. The case has been successfully dragged on even without appearance of the accused. The prayer in this case is to issue a direction in a non-existent bail application, to dispose of the same on the date of filing itself. The petitioner has also not established any ground to get an order as prayed for, under Section 482 Cr. P.C. I find no reason to believe that the lower Court will not exercise its jurisdiction, the way it is expected of it, as and when the bail application is filed before it. At any rate, I am not inclined to interfere with the lawful exercise of the powers and discretion of the lower Court, even before filing of the petition.

This petition is dismissed.