

Rukmani Vs. State Represented by Inspector of Police Prohibition Enforcement Wing

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Court : Chennai

Decided On : Jan-22-2004

Reported in : 2004(1)CTC605

Judge : S. Ashok Kumar, J.

Acts : Tamil Nadu Prohibition Act, 1937 - Sections 4(1A); [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 328, 420 and 471

Appeal No. : Crl.R.C. No. 1939 of 2003 and Crl. M.P. No. 12762 of 2003

Appellant : Rukmani

Respondent : State Represented by Inspector of Police Prohibition Enforcement Wing

Advocate for Def. : M.K. Subramanian, Government Adv.

Advocate for Pet/Ap. : B. Karthikeyan, Adv.

Disposition : Revision allowed

Judgement :

ORDER

S. Ashok Kumar, J.

1. This Revision has been filed against the order of the learned District Munisif-cum-Judicial Magistrate, Thiruvottiyur in CrI.M.P.No. 7290 of 2003 by which the learned Magistrate has issued an order of proclamation.

2. The brief facts of the case are as follows:

The respondent police registered a case in Thiruvottiyur P.E.W. Cr.No. 768/2002 under Sections 4(1-A) (aaa) TNP Act (Transport) and s. 328, 465, 471 and 420, IPC read with 34 IPC against one Ruban @ Rubanraj and 16 others for transporting 81,050 sachets of I.D. arrack (Poisonous) in Drum, Gunny bags and Card Boxes which were said to have been supplied by the revision petitioner in a Van bearing Registration No. TN 29 W 3232 from Maloor in Karnataka State. The accused were found in possession of forged documents, receipts and used the same as genuine and thereby cheated the check post authorities with forged documents as valuable security and thus committed the offences noted above. The case is under investigation. On 3.12.2003, the Inspector of Police who is investigating the case has filed an affidavit before the learned District Munisf-cum-Judicial Magistrate, Thiruvottiyur with a prayer to declare the revision petitioner as a proclaimed offender as envisaged under Section 82, Cr.P.C. On 8.12.2003, the learned Magistrate has passed the impugned order. Aggrieved over the said order, the petitioner has filed this revision.

3. Mr. R. Karthikeyan, learned counsel appearing for the revision petitioner would contend that the case in Crime No. 768 of 2002 on the file of the respondent is still pending investigation and no charge sheet has been filed and therefore no proclamation can be made under Section 82, Cr.P.C. Before passing the order of proclamation, no warrant was issued by the Magistrate and therefore the proceedings initiated under Section 82, Cr.P.C. are illegal and the learned Magistrate has also passed a mechanical order and has signed the proceedings without even going through it as the proceedings do not contain the name of the petitioner and on a plain reading of the order, it would appear that the proclamation was made against the respondent, Inspector of Police, PEW, Washermenpet.

4. Mr. M.K. Subramanian, learned Government Advocate (Cri.Side), would contend that as against this revision petitioner, there are nearly dozen cases of similar nature are pending and in some cases, the petitioner has obtained anticipatory bail, but in two cases, the petitioner made arrangements to surrender some other lady to impersonate on her behalf. Of course, learned Government Advocate would concede that this case is still under investigation and no final report is filed and no non-bailable warrant was issued for execution against the revision petitioner and also would admit that proclamation issued by the learned Magistrate is defective in the sense that the name of the petitioner does not appear, but in the place of the accused the Inspector, PEW, Washermenpet, is mentioned as an absconder.

5. Normally the police can arrest a person in a case of this nature without warrant and no non-bailable warrant is issued still charge sheet is filed. Once charge sheet is filed and the accused is shown as absconding person, then the Magistrate can issue a non-bailable warrant. If the warrant could not be executed within the reasonable time, then at the request of the police, after ascertaining the fact that the accused is not residing in the house in which he normally resides, the Magistrate can issue a proclamation under Section 82, Cr.P.C. As far as this case is concerned, it is pending investigation only, no charge sheet is filed and no non-bailable warrant has been issued so far. Therefore, at this stage, the Investigating officer cannot file an application before the Magistrate to pass an order to declare the accused as an absconding person, in pursuance of which, the proclamation can be made.

6. Therefore, technically the proclamation order issued is not sustainable and hence the same has to be set aside. Another important aspect is that the perusal of the proclamation order would show that the absconding person is the Inspector of Police, PEW, Washermenpet who has been ordered as a proclaimed offender and the learned Magistrate has simply signed the order without proper application of mind.

7. For the reasons mentioned above, the order dated 8.12.2003 in Crl.M.P.No. 7290 of 2003 in Crime No. 768 of 2002, PEW Washermenpet is set aside. The

revision is allowed. Consequently, Crl.M.P.No. 12762 of 2003 is closed.

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