Ashok Kumar Vs. Mariappan

Ashok Kumar Vs. Mariappan

SooperKanoon Citation : sooperkanoon.com/783222

Court : Chennai

Decided On : Jan-11-1993

Reported in : 1993(1)ALT(Cri)655; 1993CriLJ2780

Judge : T.S. Arunachalam, J.

Appeal No. : Cril. Revision Case No. 555 of 1989

Appellant : Ashok Kumar

Respondent : Mariappan

Advocate for Def. : Mr. P.M. Sundaram, Adv.

Advocate for Pet/Ap. : Mr. T. Sudanthiram, Adv.

Judgement :
ORDER

1. Petitioner Ashok Kumar filed a private complaint against respondent Mariappan, who was formerly D.S.P., Kancheepuram and at the time of occurrence D.S.P. Chengalpet. The allegations in the complaint show, that on 23-4-1989 at or about 10.10 p.m. when the petitioner was having supper in the Dinning Hall of his house, he heard a clatter of shoes of a posse of men. When he diverted his attention, he found to his utter dismay and shock the respondent accompanied by two constables menacingly rushing towards him with lathies. Before he could utter a word the respondent beat him violently with his lathies with a metal band at its tip.

The beating landed on his left eyebrow. More blows were rained on him by the respondent, while two constables in the company of the respondent, also beat him with lathies. When appellant protested, the respondent attempted to catch hold of his neck and in so doing, the 5 sovereign gold chain, worn by him got snapped. The respondent picked up the gold chain, and gave some more lathi beatings, to the petitioner. The two constables were strangers to the petitioner, and hence he was not in a position to identify them to show them as accused in his private complaint. He was bundled up into a police van and taken to Padalam Police Station. At Padalam police station he fainted. The police took him to the Madurantakam Hospital for first aid. He was referred to the Government General Hospital, Madras, as his condition was serious. The concerned police after obtaining remand from the Judicial Magistrate, Madurantakam, on the early hours of 24-4-1989, marched him into Central Jail, Madras without taking him to the General Hospital, as a advised by the medical officer, Madurantakam. Due to beating by the respondent coupled with non-production for treatment before Government General Hospital, Madras, led to permanent impairment of petitioner has also stated, that the respondent was not acting in discharge of his official duties. The offences alleged in the complaint are punishable under sections 448, 323 Indian Penal Code.

2. On receipt of the complaint, the learned Magistrate recorded the sworn statement of the appellant on 27-6-1989. The learned Magistrate decided to conduct an enquiry under section 202 CR.P.C. Venkatesan cited in the complaint was examined as C.W. 1 on 20-7-1989 and thereafter the impugned order dismissing the complaint of the petitioner was passed on 24th August, 1989. In this revision, the petitioner challenges the sustainability of the order of dismissal of his complaint in law as well as on facts.

3. The learned Magistrate while dismissing the complaint has stated in his order, that he had perused the remand report sent by the police in Crime No. 201 of 1989, seeking to have the petitioner and his brother Ukam Chand remanded. Basing on contents of remand report, not exhibited in this proceeding, the learned Magistrate sought to doubt the case of the petitioner as though he was suppressing a part of occurrence. The learned Magistrate further noticed a

discrepancy, that before the Magistrate who had remanded the petitioner, he had stated, that his chain was removed by the constables who had accompanied the D.S.P. and not the D.S.P. himself. The main thrust of the dismissal of the complaint is based on the contents of the remand report. The learned Magistrate would further state in his order, that he was unable to accept, that before the other police constables, a person of status like the petitioner would have been assaulted by the Superintendent of police. One another snag noticed by the Inquiring Magistrate was that the identity of the chain had not been stated by the petitioner in his complaint and sworn statement. Some other discrepancies between the sworn statement and the complaint, very trivial in nature, were sought to be magnified by the Magistrate in his endeavour to dismiss the complaint. The last ground for dismissal, is the belated filing of the private complaint, 2 months after the incident.

4. In this revision Mr. T. Sudanthiram, learned Counsel appearing on behalf of the petitioner contended, that at this stage all that the learned Magistrate could have done, was to determine whether there was sufficient ground for proceeding with the complaint. Unfortunately the learned Magistrate had allowed himself to be influenced by extraneous matters not brought on record. He contended the question of delay in filling a complaint may be a circumstance to be taken into consideration in arriving at the final verdict, after an opportunity is given to the petitioner to explain the cause for delay. Though the respondent is not entitled to audience for process and not been issued to him under section 204 Cr.P.C., since he has been shown as a party. Mr. P. M. Sundaram, learned Counsel, has entered his appearance on behalf of the respondent.

5. Paul, J. in M. Jalaluddin v. Syed Ibrahim, 1978 LW (Cri) 178 : 1979 Cri LJ (NOC) 68 has observed as hereunder :

'In a revision against an order dismissing a complaint under Section 203 Cr.P.C., the accused has no locus standi to appear and seek to be heard on it. Until a process under section 204 is issued to an accused person, the accused dose not come into the picture at all. That means he cannot at that stage of the matter come into the picture either before the trial Court or even before the High Court when the

dismissal of the complaint is challenged.'

Paul, J. had taken note of the earlier law laid down on the subject. In that case Paul, J. had heard argument of the Counsel, who had entered appearance on behalf of the respondent, as amicus curiae. Similarly I have heard Mr. P. M. Sundaram, who was present in Court as Counsel for the respondent.

6. Even on as short ground, this revision is bound to be allowed. It cannot be disputed that the remand report in Crime No. 201 of 1989 was not brought in, in evidence, in the enquiry conducted under section 202 Cr.P.C. If that be so, learned Magistrate had no right to rely upon material which is extraneous to the facts placed before him. The observation of the Supreme Court in Chandra Deo v. Prakash Chandra, : [1964]1SCR639 will be very apt in this context. The Supreme Court stated :

'Since the object of an enquiry under section 202 is to ascertain whether the allegations made in the complaint are intrinsically true, the Magistrate acting under section 203 has to satisfy himself that there is sufficient ground for proceeding. In order to come to this conclusion, he is entitled to consider the evidence taken by him or recorded in an enquiry under section 202, or statement made in an investigation under that section, as the case may be, he is not entitled to rely upon any material besides this. Where there is prima facie evidence, even though an accused may have a defence that the offence is committed by some other person to persons, the matter has to be left to be decided by the appropriate forum at the appropriate stage and issue of process cannot be refused' .....

'Where the Magistrate has ordered an enquiry under section 202 buy another Magistrate it is not open to him to consider the statements recorded during investigation by the police or the evidence adduced before him during the enquiry arising out of another complaint. If the Magistrate has based his decision in dismissing the complaint on such extraneous matter, the proceedings would be vitiated.'

6A. This is not the only infirmity that strikes the eye, in the impugned order. Other grounds of dismissal have already been narrated. Paul, J. in Jalaluddin's case on

'delay aspect' has quoted the observations of the Supreme Court in Assistant Collector, Customs Bombay v. L. R. Melwani, : 1970 CriLJ885 read as follows at page 889; of Cri LJ :-

'That part, it is not the case of the accused that any period of limitation is prescribed for filing the complaint. Hence, the court before which the complaint was filed could not have thrown out the same on the sole ground that there has been delay in filing it. The question of delay in filing a complaint may be a circumstance to be a taken into consideration in arriving at the final verdict, but by itself, it affords not ground for dismissing the complaint.'

The other ground of seeking to disbelieve the evidence of the petitioner, since it was at variance with the contents of the remand report, cannot be upheld for the reasons already stated. Equally untenable will be the observation of the Magistrate, that a higher ranking police official, could not have behaved in the pattern stated by the petitioner, without affording an opportunity be him to establish his case against the respondent. Allegations in the complaint are clear and categoric. The fact remains, that the petitioner was taken initially to the Government Hospital, Madurantakam for treatment and later incarcerated at Central Jail, Madras, without him to Government General Hospital as advised by the Medical Officer, Madurantakam and the remanding Magistrate. If the petitioner is able to establish that against medical advice, he was sent to jail, that will be one more circumstance, which will be a very important link, in appreciating the case of the petitioner.

7. Paul, J. in Karumuthu S. Chokalingam v. T. Kannappan, Executive Director, Thiagaraja Mills, 1976 Law Weekly Criminal page 60 stated that a Magistrate cannot dismiss a complaint under Section 203 Cr.P.C. without considering whether there is prima facie evidence of a criminal offence, and in exercising his discretion under Section 203 Cr.P.C. the Magistrate should not allow himself to be influenced by considerations of the motive by which the complainant may have been actuated in moving in the matter; nor by any other considerations outside the facts which are adduced by the complainant in support of his complaint .... The motive and conduct of the complainant are not relevant considerations and in the

absence of any finding that the complaint is false or unsustainable on the evidence likely to be available, the passing of an order of dismissal would constitute an irregularity, with which the High Court has jurisdiction to deal.

8. There can be no doubt, that a complaint could be dismissed if the Magistrate thought that there was no 'sufficient ground' for proceeding. This 'sufficient ground' contemplated in the Section relates to the facts which the complainant places before the Court to show about the existence of a prima facie case against the accused. In exercising his discretionary power of summary dismissal of the complaint, the Magistrate should not allow himself to be swayed away by considerations which may not be germane at that stage and all that he could do would be to consider as to whether there was prima facie evidence of a criminal offence which, in his judgment would be sufficient to call upon the alleged offender to answer. It is of course true that in coming to a decision as to whether a process should be issued, the Magistrate can take into consideration inherent improbabilities appearing on the face of the complaint or in the evidence let in by the complainant in support of the allegations. But the line of demarcation is thin between the probability of a conviction of the accused and the establishment of a prima facie case against him. The thinner the demarcation, the agreater is the responsibility of the Magistrate in exercising his judicial discretion. At this stage, the standard of proof and judgment which is to be applied finally before finding the accused guilty or otherwise, need not exactly be applied at the initial stage.

9. The Supreme Court in Nagawwa v. Veeranna, : 1976 CriLJ1533 observed as follows at Page 1536; of Cri.L.J. :-

'At the stage of issuing process the Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same and he is only to be prima facie satisfied whether there are sufficient grounds for proceeding against the accused. It is not the province of the Magistrate to enter into a detailed discussion of the merits or de-merits of the case nor can the High Court go into this matter in its revisional jurisdiction, which is a very limited one ..... The scope of the inquiry under section 202 is extremely limited one to the ascertainment of the truth or falsehood of the allegations made inthe complainant -

(i) on the materials placed by the complainant before the Court; (ii) for the limited purpose of finding out whether a prima facie case for issue of process has been made out and (iii) for deciding the question purely from the point of view of the complainant without at all adverting to any defence that the accused may have. In fact, in proceedings under section 202 the accused has got absolutely no locus standi and is not entitled to be heard on the question whether the process should be issued against him or not.'

Needless to add that the very approach adopted the learned Magistrate, in disposing of the private complaint preferred by the petitioner is not in consonance with law and is basically against well established principles. I have no hesitation in setting aside the impugned order, and allowing this revision. The Chief Judicial Magistrate, Chengai-Anna District will take on the file the complaint of the petitioner nd dispose it of in accordance with law. This revision is allowed.

10. Revision allowed