

A. Varghese and Another Vs. Chellappan

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Court : Chennai

Decided On : Dec-08-1997

Reported in : 1998CriLJ1328

Judge : M. Karpagavinayagam, J.

Appeal No. : Crl.O.P. No. 1480 of 1997 and Crl.M.O. Nos. 600 and 6432 of 1997

Appellant : A. Varghese and Another

Respondent : Chellappan

Advocate for Def. : C. Godwin, Adv.

Advocate for Pet/Ap. : Ms. S. Hemalatha, Adv.

Judgement :

ORDER

1. The first petitioner Verghese, retired Sub-Inspector of Police and the second petitioner Muthukrishnan, Inspector of Police are accused 9 and 10 respectively in C.C. No. 1711 of 1996 on the file of the Judicial Magistrate No. 1, Nagercoil. They are being prosecuted along with eight others in a private complaint instituted by the respondent for the offences punishable under Sections 147, 148, 323, 324 and 506(ii), 167, 217 and 218 of the Indian Penal Code.

2. The case was taken on file as against the petitioners A9 and A10 in respect of offences punishable under Sections 167, 217 and 218 of the Indian Penal code and for the others in respect of other offences. The petitioner after entering appearance before the lower Court, on receipt of summons and the copy of the complaint, have approached this Court to quash the proceedings as against them.

3. The brief facts are summarised as follows : The respondent herein/complainant Chellappan and the accused 1 to 8 are the permanent residents of Keelamavilai village situated within the Rajakkamangalam police limits and during the relevant time the petitioners A9 and A10 were the Sub-Inspector of Police and the Inspector of Police of the said station respectively. The complainant is the temple trustee and the President of the village.

4. On 2-1-1994, A1 to A8 waylaid one Jayanthi who was married to one Ramalingam staying in a different village and questioned her as to why she had come to their village and attempted to assault her. She immediately rushed to the complainant and reported about this incident. The complainant and others went to the place of the accused and enquired about the report made by the said Jayanthi. All of the accused armed with weapons attacked the complainant and others who accompanied the complainant and caused several injuries. Therefore, the complainant and other injured persons came to Rajakkamangalam Police Station at about 3.45 p.m. The first petitioner (A9) the Sub-Inspector of Police was available then. The complainant gave a written report to him about the incident. A9 sent the complainant to the Government Hospital along with a memo at about 6.00 p.m. In the hospital A10 the second petitioner, Inspector of Police was present. He questioned the complainant as to how dare he beat one Appanseyal (A3) and he asked the doctor not to write any details about the place and time of occurrence in the accident register. At about 9.00 p.m. A10 came to the hospital and obtained a signature in the paper in which already something was written.

5. Subsequently, he came to know that his complaint was registered in Crime No. 20 of 1994 under Sections 147 and 323 of the Indian Penal Code. In the said complaint A10 has written something as if the complainant has given such a statement. Further A10 registered a false case on the complaint of the said

Appanseyal, against the complainant and others in Crime No. 21 of 1994. On 27-7-1996 the constable from Rajakkamangalam police station served a referred notice of his complainant on the complainant. Therefore, the complainant filed the above private complaint as against A1 to A8 for the offences punishable under Sections 147, 148, 323, 324 and 506(ii) of the Indian Penal Code and as against A9 and A10 for the offences punishable under Sections 167, 217 and 218 of the Indian Penal Code. As against this proceeding, the petitioners (A9 and A10) have filed this quashing application.

6. Heard Counsel for both. The above proceedings, in my view is liable to be quashed under the following circumstances. The entire averments in the complaint relate to different incidents which had occurred at different times and at two different places and so both could not be clubbed into one complainant. The misjoinder of persons as well as the offence under single complaint which are patent would not make the complaint valid in law.

7. The allegation against A1 to A8 is that they attacked the complainant and others at 2.50 p.m. in their village. The allegations made against the petitioners (A9 and A10) are that the police station, the complaint which was given by the complainant was ignored and some other complaint has been prepared as if the said complaint was given by the complainant and the same has been registered and moreover, A10 has got another false complaint from A3 in this case against the complainant.

8. These instances not only relate to different transactions, but also relate to distinct and different offences against different persons. Admittedly, there is a complete absence of any allegations that the petitioners are in any way connected with the commission of assault on the complainant and others by A1 to A8 or conspired to commit such a crime.

9. The only allegation against the second petitioner is that he is alleged to have threatened the complainant at the hospital and asked the doctor not to write anything about the place and time of occurrence in the accident register. This could not be linked into the alleged attack made by A1 to A8 at their place. Moreover, the averments in the complaint would indicate that the petitioners have fabricated false documents as if the said document is the complaint given by one

Appanseyal who is A3 in this case.

10. As stated earlier the petitioners were the accused in a case registered for the offences punishable under Sections 167, 217 and 218 of the Indian Penal Code. These offences relate to the act of a public servant framing an incorrect document, the act of a public servant disobeying the direction of law with an intent to save persons and the act of framing an incorrect record with an intent to save persons. To put it in brief, the allegation is that the documents in both the crimes, one is the complaint given by the complainants to the police and the other complaint given by A-3 are false record.

11. Admittedly, these complaints and the final reports, after completion of investigation, have been filed before the Court. The offences relating to the documents filed in the Court may also invoke the offences punishable under Sections 193, 211 and 218 of the Indian Penal Code. If it is so, under Section 195 of the Code of Criminal Procedure, there is a legal bar. The reading of Section 195 of the Code of Criminal Procedure would show that as far as the offences punishable under Sections 193 and 211 of the Indian Penal Code are concerned, the Magistrate cannot take cognizance, except on the complaint in writing of that Court, or of some other Courts to which that Court is subordinate.

12. Therefore, it is for the concerned Court in which those false documents have been filed, to enquire about the said offence and then make a complaint. This could be made possible only after the trial is over as against A1 to A8 and the trial against the complainant and others in a counter case. As per the principles laid down in an earlier case in the similar circumstances by Justice Arunachalam, as he then was, in Ponnuchamy, Inspector of Police, Trichy Airport v. Suyambanandam, 1989 MLW (Cri) 411, at this stage, it is apparent that to circumvent the provision of Section 195 of the Code of Criminal Procedure, this private complaint has been filed, implicating the petitioners for the offences punishable under Sections 167, 217 and 218 of the Indian Penal Code. The attitude of the prosecution to circumvent Section 195 of the Code of Criminal Procedure, by resorting to prosecute for other offences, without attempting to move the Court for taking action under Section 195 of the Code of Criminal

Procedure cannot be allowed to stand. Once it is clear that circumvention of the provisions of Section 195 of the Code of Criminal Procedure has been attempted by the respondent coupled with the fact that there is a misjoinder of persons of the offence in a single complaint, the proceedings as against the petitioners will have to be quashed.

12A. In the light of the aforesaid reasonings, the proceedings in C.C. No. 171 of 1996 on the file of the Judicial Magistrate No. I, Nagercoil, is quashed, as far as the petitioners alone are concerned. However, the learned trial Magistrate can proceed with the proceedings in respect of others and dispose of the same as expeditiously as possible.

13. In the result, this petition is allowed. Consequently, Crl. M.P. Nos. 600 and 6432 of 1997 are closed.

14. Petition allowed.

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