

Nellai Ganesan Vs. the State

Nellai Ganesan Vs. the State

SooperKanoon Citation : sooperkanoon.com/786087

Court : Chennai

Decided On : Jul-12-1990

Reported in : 1991CriLJ2157

Judge : Janarthanam, J.

Appeal No. : Crl. M.P. No. 5326 of 1987

Appellant : Nellai Ganesan

Respondent : The State

Advocate for Def. : A.S. Chakravarthy, Govt. Adv.

Advocate for Pet/Ap. : S. Ashok Kumar, Adv.

Judgement :

ORDER

1. One Karuppan is a business man in Namakkal in Salem District. During 1984-85, he was constructing a theatre complex and was in need of huge funds for completing the construction. One Mannar Bhai is his close associate, and he knew very well about his financial commitment and dire need of fluid cash resources for completion of the theatre project.

2. Two persons by name Govindarajan (accused 2) and Easwaran (accused 3 of Salem approached Karuppan and promised to help him to complete the theatre

complex by procuring the requisite financial assistance from one Subramanian (accused 1) of Madurai. They also represented that they came to know of his financial needs through his close friend Mannar Bhai so as to induce him to believe their version. Karuppan agreed to avail of the promised financial assistance. Thereafter, accused 2 and 3 met Karuppan after sometime and represented that accused 1 was prepared to render financial assistance, provided some collateral security was offered for the amount to be advanced. Karuppan was agreeable for such a course. Consequently, accused 2 and 3 took Karuppan to Madurai and introduced him to accused 1. Accused 1 demanded delivery of the title deeds relating to the theatre project for inspection and verification and an amount of Rs. 1,85,000/- towards inspection charges. Karuppan complied with the demand of accused 1, who in turn appeared to have passed a receipt for the receipt of Rupees 1,85,000/-. Accused 1 after getting the signature of Karuppan in many a document prepared, requested him to meet him on intimation so that he could collect cash resources from various sources and pay the same to him. He also made arrangement for his being introduced to one Perumal (accused 5) staying in Hotel Tamil Nadu from whom financial accommodation is to be secured. Accordingly, accused 1 to 3 took Karuppan to Hotel Tamil Nadu. Accused 5 and one Nellai Ganesan (accused 4) were staying in a room in that Hotel. Accused 4 received accused 1 to 3 and Karuppan at the hotel and took them to the room where accused 5 was staying. Karuppan was introduced to accused 5 by accused 4. Accused 5 also inspected the documents and after a big hanky-panky, declared that the documents were in order and he could release the loan to Karuppan and directed accused 1 to contact him in a week for the money. Karuppan was sent back to Namakkal with an assurance about the loan.

3. On 2-8-1985, Karuppan received a telegram informing him to come on Sunday, i.e. on 4-8-1985 to meet accused 1 at Madurai. Accordingly Karuppan went to Madurai and contacted accused 1. Accused 1 directed him to go over to Trichy and stay at Lakshmi Lodge. Karuppan did so and stayed at Room No. 206 in Lakshmi Lodge. Accused 1 as promised went to Trichy and met Karuppan in his room, at Lakshmi Lodge and handed him over a trunk box stated to contain the requisite cash he was in need of and for which he had executed necessary documents. While they were in the room, Crime Branch C.I.D. Police, having a tip

off, entered the room and checked the contents of the box. On opening the box, it appeared that it contained bundles of 100 rupee and 20 rupee denomination notes. On verification, the 100 rupee note bundles were found arranged in such a way that the bundle at the top had one 100 rupee currency note and the papers below the size and denomination of the currency note so as to give an appearance of the bundle containing full of currency notes. The bundles of 20 rupee notes were found to contain counterfeit currency In the sense of containing only toy notes. After due investigation, a final report had been laid before Court against accused 1 to 5 for alleged offence under section 120B read with Ss. 420 and 489B, I.P.C., which having been taken on file is pending as C.C. No. 455 of 1986 on the file of the Judicial First Class Magistrate No. II, Trichirapalli. Accused 4, aggrieved by the laying of such a report, has come forward with the present petition to quash the criminal proceedings against him.

4. Learned counsel for the petitioner would, with all vehemence and force, submit that the materials available on record, if scanned with a little bit of care and caution, would point out the absence of any Prima Facie material for any offence whatever. He would further submit, in elaboration of this submission, that if at all there is any material against him that material consisted of his being found in the company of accused 5 in the Hotel Tamil Nadu which by itself is not sufficient to serve as a prima facie material for the criminal proceedings to be pushed through against him, in the sense of his undergoing the ordeal of trial. Learned Government Advocate would repel such a submission.

5. Learned counsel for the petitioner, while making such a submission, forget the fact that the charge against the petitioner and others is for the offence of conspiracy under section 120B read with the other offences namely, under Sections 420 and 489B, I.P.C. he conspiracy need not necessarily be proved by direct evidence. It is also capable of being proved by circumstances pointing out the existence of a conspiracy to commit an unlawful act. It is also to be taken into account that seldom comes direct evidence for proof of the conspiracy in the very nature of things. In almost all cases, the conspiracy is to be inferred from the presence of proved circumstances pointing out the one and only hypothesis of the existence of a conspiracy to commit any unlawful or illegal act. It cannot be stated

that in the instant case, there are no Prima Facie materials in the shape of telling circumstances pointing out the existence of a conspiracy between the petitioner and the other accused to 3 and 5 to commit the offences under Sections 420 and 489E, I.P.C. The materials in the shape of S. 161, Cr.P.C. statements of witnesses prima facie point out that each one of the accused, inclusive of the petitioner, played a different role in the melodrama of cheating Karuppan, pursuant to the meeting of minds between them, the conspirators. As already stated, accused 2 and 3 appeared to have played the part of meeting Karuppan and promised to procure the required financial assistance through the medium of a big-shot, namely, accused 1 of Madurai. They also appeared to have played the part of going to Madurai, meeting accused 1, returning back and representing Karuppan that accused 1 had agreed to oblige Karuppan. Their part did not appear to stop there. What they appeared to have done is that they also took Karuppan to accused 1 and thereafter, accused 1 to 3 took Karuppan to Hotel Tamil Nadu and introduced him to accused 5. Here comes the part played by the petitioner accused 4. Accused 4 was stated to have received accused 1 to 3 and Karuppan in the Hotel and then took them to the room of accused 5. The materials available 'prima facie' further disclose that he came along with accused 5 and took room in the Hotel. This apart he, joining with the company of accused 1 to 3, appeared to have made a big appeal to accused 5 to provide Karuppan necessary financial accommodation he required for the construction of the theatre project. Thus, the various acts of all, prima facie point out that each of them was playing his part, pursuant to the conspiracy in cheating Karuppan. As such, it cannot be stated that there are no prima facie materials as against the petitioner, as contended by his counsel and in this view of the matter, the petition deserves to be dismissed.

6. In the result, the petition is dismissed.

7. Petition dismissed.