

Jayaprakash and Five Others Vs. the State Rep. by Sub Inspector of Police, Chengam, (Sathanoor Police Station) and Other

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Court : Chennai

Decided On : Mar-26-1998

Reported in : 1998(2)CTC458

Judge : M. Karpagavinayagam, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) -- Sections 174, 202 and 438;
[Indian Penal Code \(IPC\), 1860](#) -- Sections 147, 148 and 302

Appeal No. : Crl.O.P.No.12934 of 1997

Appellant : Jayaprakash and Five Others

Respondent : The State Rep. by Sub Inspector of Police, Chengam, (Sathanoor Police Station) and Other

Advocate for Def. : Mr. N.R. Elango, Government Adv.

Advocate for Pet/Ap. : Mr. V. Gopinath, Senior Counsel

Disposition : Petition dismissed

Judgement :

ORDER

1. The petitioners are seeking anticipatory bail apprehending arrest in respect of the offences under Sections 147, 148 and 302, I.P.C. alleged in the private complaint filed by the Revenue Divisional Officer, Tiruvannamalai, taken on file in P.R.C.No.11 of 1995 by the Judicial Magistrate, Chengam, with reference to the custody death of the deceased.

2. The first petitioner is a Head Constable, petitioners 2, 4 and 5 are Constables, the third petitioner is working as an Armed Reserve Police Constable and the sixth petitioner is an agriculturist.

3. The case of the prosecution is this:- On 31.1.1992 one Settu, resident of Sathanoor village while he was working in his field, was taken by the Police Constable, the third petitioner and the sixth petitioner. The deceased was tied with the ropes and was beaten by them. The wife of the deceased questioned. Thereafter, the deceased was relieved.

4. Again on the next day, the petitioners 2 and 3, the Constables alongwith one Sekar took the deceased from his house to the Police Station. There he was beaten by the petitioners and others. The deceased with profuse bleeding in the mouth came back to his house in the evening. Immediately, he was taken to the Hospital at Chengam. There, the Doctor pronounced him as dead.

5. The wife of the deceased gave a complaint to the Village Administrative Officer, who in turn, sent the report to the Sathanoor Dam Police Station. Originally, the case was registered in Crime No.43 of 1992 under Section 174, Cr.P.C. Since it relates to the custody death, the R.D.O. conducted an enquiry and found that the petitioners are responsible for the death of the deceased. Therefore, he filed a private complaint before the Judicial Magistrate, Chengam, in the year 1994.

6. The learned Magistrate after taking the case on file in P.R.C.No.11 of 1995 on 18.8.1995 against the petitioners, conducted enquiry under Section 202, Cr.P.C. and examined 20 witnesses including the R.D.O. and issued non-bailable warrants directing the police to arrest the petitioners and produce them before the Court.

7. Since all the petitioners are said to be absconding, the case taken on file in 1995 is not yet proceeded with. At this stage, the petitioners have approached this Court seeking anticipatory bail by filing this petition dated 22.9.1997

8. Mr.Gopinath, learned senior counsel would submit that during the investigation, the petitioners were not arrested, that they were also not aware of the filing of the complaint before the learned Magistrate, that the learned Magistrate without issuing summons straightaway issued non-bailable warrant, that all the petitioners except the sixth petitioner are Government servants and that they may be granted anticipatory bail, as they would not abscond or evade justice.

9. Mr.Elango, the Government Advocate would vehemently object to the grant of anticipatory bail to the petitioners stating that they were mainly responsible for the death of the deceased and that the materials collected in this case including the oral dying declaration given by the deceased to one of the witnesses would show that some of the petitioners beat the deceased at the Police Station and some others poured poison in his mouth forcibly and that the post-mortem certificate also would show that the deceased died due to consumption of poison.

10. At the threshold of the discussion relating to the merits of the application, I shall indicate about the conduct of the petitioners, who have not come before this Court with clean hands. They have previously moved anticipatory bail before the Sessions Court, which has got concurrent jurisdiction and obtained order of dismissal on merits. Subsequently, they have moved two applications before this Court, one in CrI.O.P.No.4940 of 1995 and another in CrI.O.P.No.1996 of 1996 and this Court dismissed the applications.

11. In fact, in the application filed in CrI.O.P.No.1996 of 1996, the matter was argued at length and counter was filed by the prosecutor objecting to the grant of anticipatory bail and ultimately, the petitioners having failed to convince this Court requested permission to withdraw the said petition and consequently, the same was dismissed as withdrawn.

12. These factors, for the reasons best known to the petitioners, have not been brought to the notice of this Court in this application. As a matter of fact, it is stated

in this application dated 22.9.1997 that they were not aware of the pendency of the private complaint. The fact remains that the case was taken on file in P.R.C.No.11 of 1995 on 18.8.1995 itself. The previous application in CrI.O.P.No.1996 of 1996 was dismissed on 16.4.1996. Such being the case, it is ununderstandable as to why the petitioners, that too, the Government servants have given such incorrect version in this petition stating that they were not aware of the pendency of the criminal case.

13. The perusal of the case diary would disclose that there are prima facie materials in the form of circumstantial evidence to enable the learned Magistrate to take cognizance of the offences as against the petitioners and issued the non-bailable warrant.

14. It is contended by the counsel for the petitioners that without issuing summons, straightaway non-bailable warrant was issued. In the facts and circumstances of the case, in my view, there is nothing wrong on the part of the Magistrate in having issued the non-bailable warrants after taking the case on file, which contains serious allegations.

15. Moreover, it is seen from the records that they filed an application for anticipatory bail before the Sessions Court and the same was dismissed, even during the course of investigation by the police. After dismissal, the petitioners did not surrender either to police or before the Court in the above case. Furthermore, the application filed before this Court also was dismissed thereafter. Despite this, neither they were arrested by the police nor they surrendered for the judicial custody.

16. The occurrence had taken place on 31.1.1992. The motive for the occurrence as alleged by the prosecution is that the deceased Settu questioned one of the accused in this case regarding his act of eve-teasing the daughter of the brother of the deceased and that in order to take revenge upon him, the deceased was taken to the Police Station twice and he was brutally beaten there.

17. Moreover, the deceased himself told one of the witnesses that he was forcibly administered poison by some of the petitioners. Therefore, the petitioners, the

members of the law enforcing agency, instead of protecting the law, have taken the law into their own hands and are said to have committed the high-handed act of causing death of a person, who questioned the unlawful act of one of the petitioners.

18. The murky feature, which I could see in this case, is that during the course of investigation there was no attempt by the respondent-police to arrest the petitioners. Even after the issuance of non-bailable warrant, I am of the view that no genuine attempts have been made by the respondent police to arrest the petitioners, probably because the respondent would have thought that the petitioners need not be arrested, as they belong to police force.

19. This is a case where a villager, who belongs to Scheduled Caste, is alleged to have been done to death by the police. Only at the initiation of V.A.O., the case has been registered under Section 174 Cr.P.C. In the further enquiry conducted by the R.D.O., the other materials came to light, resulting in the filing of the private complaint by the said R.D.O. When the R.D.O. has taken sufficient steps to proceed against the petitioners, though they belong to the police force and the learned Magistrate also, though initially was reluctant to entertain the complaint by returning the same on several occasions and ultimately conducted enquiry under Section 202, Cr.P.C. and issued non-bailable warrant to the petitioners, the respondent-police, in my view, have given scant respect to the orders of the Magistrate issuing non-bailable warrant against the police force for the best reasons known to them.

20. If this is the attitude of the police, then there would be a situation where the public would lose confidence in the police force. In my view, the Tamil Nadu Police Force is known for its integrity, courage and efficiency. But in this case, the recalcitrant attitude shown by the police by not taking effective steps to arrest the petitioners from 1992 to 1995 pending investigation and from 1995 till date after issuance of warrant, has caused considerable concern in the mind of this Court.

21. Therefore, while dismissing the application for anticipatory bail, as the petitioners are not entitled to, I deem it fit to direct the Director General of Police to take immediate steps to execute the warrant issued by the learned Magistrate,

Chengam, in P.R.C.No.11 of 1995 by arresting the petitioners and produce them before the Court, so that the learned Magistrate may proceed with the committal proceedings as expeditiously as possible.

22. In the result, with the above direction, the petition is dismissed.

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