

In Re: Santhanam

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Court : Chennai

Decided On : Aug-04-1972

Reported in : 1973CriLJ1316

Judge : Gokulakrishnan, J.

Appellant : In Re: Santhanam

Judgement :

ORDER

Gokulakrishnan, J.

1. This criminal miscellaneous petition has been filed for expunging the remarks made by the trial Magistrate (Additional First Class Magistrate No. 2, Madurai) in paragraph 27 of his judgment dated 9-1-1968 in C. C- No. 87 of 1967. on his file, and also by lower appellatp court (Court of Session Madurai) in Paragraph 7 of his iudement made in C. A. Nos. 8, 9 and 30 of 1968, dated 30-8-1968. against the petitioner herein. The petitioner has extracted the portions sought to be expunged, in paragraphs 4 and 5 of his affidavit in support of this petition.

2. The facts are simple. Four persons were charged by the Inspector of Police, BX North, Madurai, for offences under Section 120-B read with Section 379 IPC on the allegation that they had entered into a conspiracy at about 1 d. m. on 19-5-67 to commit theft of pig-iron from the open yard belonging to the Raw Material Depot. Industrial Estate Madurai, and Pursuant to the said conspiracy, on the

samp night, at 2 a. m. (20-5-1967) they committed theft of pig-iron slabs belonging to the said Depot worth Rs. 3,000/- and transported the samp in the lorry MDR 3619 to Coimbatore. The Additional First Class Magistrate No. 2 Madurai. convicted A-1 to A-4 under Sections 120-B and 379 IPC and sentenced each to undergo rigorous imprisonment for one year on each count and ordered the sentences on each of the accused to run concurrently. On appeal, the Sessions Judge, Madurai, acquitted A-1 of both the offences and also acquitted A-2 to A-4 of the offence under Section 120-B I. P. C, but convicted A-2 to A-4 for the offence under Section 379 I. P. C retaining the sentence of one year's rigorous imprisonment thereunder. During the course of the judgment, both the Additional First Class Magistrate, No- 2, Madurai. and also the Sessions Judge Madurai. have made the remarks which are now sought to be expunged.

3. The petitioner is P. W. 13 in the criminal case and he was an A. C T-O. in the Sales Tax Department. The prosecution has let in P. W. 13 to Drove that while he was in the checkpoint at Singanallur at the particular point of time the theft was committed by taking the lorry with the foods stolen from the Depot in the Industrial Estate No doubt, from the judgments it is clear that P. W. 13 was not helpful to the prosecution. But the prosecution could have treated P. W. 13 as hostile and cross-examined him with the permission of the Court. The prosecution has not done so; and P- W- 13 was only treated as a witness for the prosecution.

4. Thiru C. K. Venkatanarasimhan. learned Counsel for the petitioner-.submits that the remarks extracted in the affidavit clearly charge the petitioner herein with an offence of receiving illegal gratification and that there was absolutely no opportunity for the Detitioner to cross-examine those witnesses who spoke to the petitioner having received a sum of Rs. 300/- as illegal gratification. He also submits that the remarks made by the courts below have absolutely no relevance to the facts of the case and that the samp are unwarranted for the purpose of disposing of the case on hand. According to learned Counsel, the case was not against P. W. 13 for receiving any illegal gratification but it was against A-1 to A-4 in the criminal case for offences under Sections 120-B and 379 I. P. C He further submits that such kind of remarks are opposed to all principles of natural -justice and that if the said remarks are left to stand on record they would affect the career

of the petitioner very much, he being a Government Official.

5. Thiru Kolandaivelu the learned Public Prosecutor, submits that courts have ample power to pass remarks regarding the witnesses before them and their hands should not be fettered by means of such type of petition for expunging remarks. He cited the two decisions reported in *In re. Public Prosecutor* (1944) 1 MLJ 153 : (1944) Cri LJ 763 and *Raehubir Saran v. State of Bihar* 1965 Mad WN (Cri) 185. *In re Public Prosecutor* (1944) 1 MLJ 153 : 1944 Cri LJ 763 deals with a case where the Sessions Judge made observations regarding the prosecution of a merchant hoarding certain commodity without obtaining a licence. The High Court held on the facts of that case that there were no grounds to expunge the remarks except for observing that it would have been better if the Sessions Judge had confined himself to the case before him and had omitted the observations complained of. That was a case in which there were no personal remarks against any particular witness except for a general observation as to the policy to be pursued with respect to any breach of the term or terms of a newly ushered in legislation. 1965 Mad WN (Cri) 185 is a decision rendered by the Supreme Court on an application under Article 136 of the Constitution to set aside the order passed by the High Court- That was a case where a doctor sent to the court a report without attaching his clinical report pertaining to the accused. On the facts and circumstances of that case, the Magistrate made a remark that the failure on the part of the doctor to send his report along with the clinical report showed that he was 'careless' in his duties. Both the Magistrate and the High Court held that there was nothing in such an observation made by the Court to expunge the same from the record- The Supreme Court after discussing the matter and observing that, under Article 136 it cannot go into such matters, dismissed the appeal by special leave. The decisions in both the above cases cannot be applicable to the facts of the case on hand.

6. As far as the present case is concerned, P. W. 13 who was examined was never treated as hostile nor was it suggested to him that he received illegal gratification. There was absolutely no opportunity for the petitioner to cross-examine such of those witnesses who deposed that P. W. 13 received a sum of Rs. 300/- in order to release goods. P. W. 13 has been dubbed as a person

receiving illegal gratification, behind his back, without giving him an opportunity to refute such an allegation. The courts below have definitely held that P. W. 13 has received illegal gratification and released the goods by creating false records- The observations of the courts below have been brought out in Paragraphs 4 and 5 of the affidavit of the petitioner filed in support of the petition: and they are clearly apt to cause irrevocable harm to the witness, i. e., P. W. 13. I am of the view that such remarks made against P. W. 13 are not germane to the case with which the courts below were concerned. Nor are they absolutely necessary to convict the accused who had been charged with conspiracy and theft. Such kind of remarks, in my opinion will definitely prejudice and cause irreparable injury to the petitioner and as such such remarks have to be expunged from the record, viz.. from the judgments of the courts below.

7. Taking all these aspects into consideration I direct the expunction from the record the remarks in paragraph 27 of the judgment in C. C No. 87 of 1967 on the file of the Court of the Additional First Class Magistrate, No. 2. Madurai (more fully set out in paragraph 4 of the affidavit filed in support of this petition) and also the remarks in paragraph 7 of the judgment in C. A. Nos. 8, 9 and 30 of 1968, on the file of the Court of Session, Madurai (more fully set out in paragraph 5 of the affidavit filed in support of this petition).

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