

G.A. Ethiraj Vs. the State

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Court : Chennai

Decided On : Jun-22-2001

Reported in : 2001CriLJ4139

Judge : M. Karpagavinayagam, J.

Acts : [Prevention of Corruption Act 1988](#) - Sections 7, 13(1)-(2) and 17; Code of Criminal Procedure (CrPC) - Sections 156(3)

Appeal No. : Crl. Original, Petn. No. 15497 of 1998 and Cri. M.P. No. 7148 of 1998

Appellant : G.A. Ethiraj

Respondent : The State

Advocate for Def. : V.R. Balasubramaniam, Govt. Adv.

Advocate for Pet/Ap. : C.S. Krishnamurthy, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

M. Karpagavinayagam, J.

1. A Deputy Superintendent of Police, Law and Order, having caught in a web of trap in corruption case organised by an Inspector of Police, Vigilance and Anti-Corruption, has been for a long number of years trying to wriggle out of the same by raising the ground that the investigation done by the subordinate officer, is illegal, as it is unauthorised.

2. Mr. G.A. Ethiraj, the petitioner herein was the Deputy Superintendent of Police, Aranthangi, Pudukottai District in the year 1994-95. One Syed Ibrahim of Edayankadu gave a complaint to one Jayapaul, the Inspector of Police, Vigilance and Anti-Corruption, Aranthangi, on 27-5-1995 alleging that the Deputy Superintendent of Police the petitioner herein demanded a bribe of Rs. 10.000/- for taking effective action against some persons mentioned in the complaint given by the said Syed Ibrahim which was earlier registered in Crime No. 105/95 for the offence of theft. T his complaint was registered in Crime No. 2/95 for the offence under Section 7 of the Prevention of Corruption Act and a trap was organised. Accordingly, on 27-5-1995 at about 2.45 pm. the petitioner at his residence at Aranthangi accepted the bribe amount from the said Syed Ibrahim. After receiving the pre-arranged signal, the Inspector of Police with his party conducted the test on the petitioner's hands which proved positive. Thereafter, the amount also was recovered from the pocket of the petitioner's shirt. After his arrest, he was released on bail. After completion of the investigation and after obtaining sanction from the Government, the charge sheet was filed against the petitioner on 10-4-1996 before the Court of Special Judge, Pudukottai for the offences under Sections 7 and 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'the Act'). This was taken on file by the Special Court on 15-4-1996 in Special Case No. 3 of 1996 for the above offences. On receipt of summons, the petitioner has approached both the trial Court and this Court and also the State Appellate Tribunal by filing various applications seeking for cancellation of the proceedings only on the ground that the investigation conducted by the Inspector of Police, who is subordinate officer, against the Deputy Superintendent of Police, is not authorised. The present petition is one of those applications seeking for quashing of the proceedings in C.C.No. 3 of 1996 on the file of the Special Judge, Pudukottai.

3. The grounds urged in this petition are as follows :

(1) Admittedly, the petitioner was a Deputy Superintendent of Police, a Group B Officer. Under Section 17 of the Act, only Deputy Superintendent of Police or his equivalent rank shall investigate any offence punishable under the Act, provided Inspector of Police can investigate only when he is authorised by the State Government or by the order from a Magistrate of First Class. In the present case, the investigation has been done by the Inspector of Police without authorisation from the State Government or permission from the Magistrate of First Class. Therefore, the entire investigation is illegal.

(2) G.O.Ms. No. D.1 dated 28-1-1992 would provide that trap cases against Government servants falling under Groups 'A' and 'B' shall be registered only with the prior permission from the Vigilance Commissioner and the same is not necessary only when there is an order from a Magistrate for investigation under Section 156(3), Cr. P.C. The trap cases shall be organised on the orders of the Director of Vigilance and Anti-Corruption. Since this has not been followed in the present case, the proceedings which arise out of the said unauthorised investigation are not valid in law.

4. In reply to the above grounds, the following contentions have been urged :

(1) As per G.O.Ms. No. 269 of P & A.R. (Per-N) dated 4-6-1990, all the Inspectors of Police of the Directorate of Vigilance and Anti-Corruption have been authorised to exercise the powers of investigation and arrest mentioned in that proviso but excluding the power to arrest without a warrant, any officer belonging to Group 'A' or 'B'. Since the petitioner is a Group 'B' Officer, Mr. Jayapaul, the Inspector of Police, Vigilance Anti-Corruption conducted investigation by laying a trap. He was arrested by the Deputy Superintendent of Police, Trichy, who was present in the trap and later released on bail. As such, there is no illegality either in the laying of the trap or in the arrest of the petitioner. The G.O. (D) No. 1 P & A.R. (Per. N) Department dated 28-1-1992 would not apply to the present case as the said G.O. would relate to the regular cases other than trap cases. Therefore, the investigation and filing of the charge-sheet on the basis of the materials collected are perfectly justified.

5. In elaboration of the respective contentions mentioned above, Mr. C.S. Krishnamurthy, appearing for the petitioner and Mr. V.R. Balasubramaniam, the learned Government Advocate appearing for the respondent would argue at length by citing several authorities.

6. Before dealing with the said question, it may be better, at the outset, to notice some of the important events which led to the filing of the present petition for quashing.

(a) The petitioner was trapped on 27-5-1995. Ultimately, after obtaining sanction, charge-sheet was filed and the same was taken on file on 15-4-1996. After appearance before the trial Court, the petitioner filed an application in Crl. O.P. No. 7517 of 1995 before this Court raising the very same objection. However, the same was dismissed as withdrawn on 7-11-1995.

(b) Again, he filed another application before this Court in Crl. O.P. No. 1721 of 1996. The said application also was ultimately dismissed as withdrawn on 27-3-1996. The trial Court questioned the accused after framing charges on 18-7-1996. Thereafter, he filed another application in Crl. O.P. No. 7889 of 1996 before this Court to quash the charges on the very same ground. The counsel for both parties were heard. Ultimately, the said petition was dismissed on 16-12-1996 by this Court allowing the petitioner to raise this point in the main case before the trial Court.

(c) In the same year, he filed an application in O.A. No. 5725 of 1996 before the Tamil Nadu Administrative Tribunal, Chennai, questioning the sanction for prosecution granted in this case raising the very same ground, namely unauthorised investigation. This was dismissed by the Tribunal on 11-10-1996. Challenging this order, the petitioner filed an application before the Supreme Court in S.L.P. No. 3137 of 1997 and the same was dismissed on 19-2-1997 confirming the order of the Tamil Nadu Administrative Tribunal.

(d) Again, he filed an application before the Special Court itself in C.M.P. No. 182 of 1998 requesting the Court to quash the charges already framed on the ground that the investigation was unauthorised. This petition was dismissed by the trial

Court on 17-4-1998. Challenging the said order, the petitioner filed an application to quash the said order as well as the proceedings in CrI. O.P. No. 5910 of 1998 before this Court raising the same ground. Ultimately, this was also dismissed by this Court on 15-6-1998 as withdrawn.

(e) Without facing the proceedings before the trial Court, the petitioner again filed a similar application before this Court seeking for quashing of the proceedings contending that the investigation was unauthorised and the order of the Special Court rejecting his preliminary objection requesting for quashing of the charges is not valid on 24-8-1998 and obtained stay of the proceedings. This petition also was dismissed by this Court on 20-10-2000 as there was no representation on behalf of the petitioner. But it was restored on the application filed by the petitioner by the order dated 22-12-2000. After the same was restored, the matter was taken up for final disposal.

7. The above chronological events would indicate that the point which has been taken in the present petition has earlier been taken in the previous applications and the same was rejected by the trial Court and this Court. However, this Court in the earlier application allowed the petitioner to raise this point before the trial Court when the main case is taken up.

8. Instead of raising the said point during the course of trial, the petitioner filed application even before commencement of the trial before the trial Court requesting to quash the charges already framed. The same was correctly dismissed by the trial Court mainly on the ground that the application is not maintainable, inasmuch as the petitioner cannot be discharged orice the charge has been framed.

9. It is pertinent to point out that the very same point had been taken beefore the Tamil Nadu Administrative Tribunal, while challenging the sanction for prosecution. While dismissing the said petition, it is the specific observation by Hon'ble Justice Pratap Singh, as the Chairman of the Tribunal that 'so, prima facie I am not able to persuade myself to accept the submission that without any authority the case has been investigated and that without taking into account that fact, this sanction of prosecution was granted.

10. It is also observed in the said order, while referring the G.O.D. No. 1 dated 28-1-1991 wherein it has been stated that trap cases against Government servants failing under Groups A and B shall be organised on the orders of the Director of Vigilance and Anti-corruption, that the prosecution cannot be said to be vitiated as the administrative instruction given in the said G.O. would not override the provision of law, and provisions of the Prevention of Corruption Act or the provisions contained in the Code of Criminal Procedure do not enjoin such a procedure.

11. On the basis of the said observation, it was found that the sanction for prosecution cannot be said to be illegal, as it cannot be said that the investigation was unauthorised. This order dated 11-10-1996 in O.A. No. 5725 of 1996 passed by Hon'ble Justice Pratap Singh (as he then was) was confirmed by the Supreme Court in S.L.P. No. 3137 of 1997 by the order dated 19-2-1997.

12. In the light of the above fact situation, this Court has again been asked to consider the very same question.

13. Let us now deal with the question posed in this case.

14. According to the petitioner, as per Section 17 of the Act, the Inspector of Police, Vigilance and Anti-Corruption cannot investigate the offences under the Act unless he is authorised by the general or special order of the State Government or by the order of the Magistrate and in this case, there is no such order.

15. According to the learned Government Advocate appearing for the respondent, as per G.O.Ms. No. 269 dated 4-6-1996, all the Inspectors of Police are empowered to exercise the powers of investigation and arrest any officer belonging to Groups A and B.

16. Section 17 of the Act would provide thus :

17. Persons authorised to investigate. Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no Police Officer below the rank,-

(a) and (b)....

(c) elsewhere, of a Deputy Superintendent of Police or a police officer of equivalent rank,

shall investigate any offence punishable under this Act without the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make any arrest therefore without a warrant:

Provided that if a police officer not below the rank of an Inspector of Police is authorised by the State Government in this behalf by general or special order, he may also investigate any such offence without, the order of a Metropolitan Magistrate or a Magistrate of the first class, as the case may be, or make arrest therefore without a warrant.

17. In the present case, it is the case of the prosecution that the investigation which has been conducted by the Inspector of Police has been authorised by the general order, namely G.O.Ms. No. 269 dated 4-6-1990. But, the perusal of the G.O. would indicate that though the general authorisation has been given to all the Inspectors of Police, Directorate of Vigilance and Anti-Corruption, but would exclude power to arrest any officer belonging to Groups 'A' and 'B'.

18. Admittedly, the petitioner was working as a Deputy Superintendent of Police, while the offence was committed and he belongs to Group 'B.' Therefore, though the investigation by the Inspector of Police was authorised, the power to arrest was excluded.

19. According to the counsel for the petitioner, since he was arrested by the Inspector of Police, the entire investigation becomes illegal, as arrest would include the investigation.

20. On the other hand, it is the contention of the learned Government Advocate 2001 that though the investigation was conducted by the Inspector of Police by organising and laying the trap, the arrest was effected only by the Deputy Superintendent of Police, Trichy. This is the specific stand taken by the respondent through the counter filed before this Court.

21. It is pointed out by the counsel for the petitioner that before the trial Court this stand was not taken by the respondent. It is also vehemently contended by the counsel for the petitioner that the G.O. (D) No. 1 dated 28-1-1992 would only apply to the present facts of the case and as such, the violation of Cls. (iv) and (vi) of the said G.O. would invalidate the investigation.

22. The reading of Cl, (iv) would indicate that the prior permission by Vigilance Commissioner is necessary only with regard to the regular cases other than the trap cases. Therefore, Clause (iv) would not apply. However, it is stated in Clause (vi) that trap cases against the Government servants falling under Groups A and B shall be organised on the orders of the Director of Vigilance and Anti-Corruption.

23. The question which arises for consideration is whether this is a mandatory violation, which would affect the validity of the prosecution.

24. As indicated above, the very same ground was urged before Hon'ble Pratap Singh, J., the Chairman of the Tamil Nadu Administrative Tribunal, while challenging the sanction for prosecution. Justice Pratap Singh would hold, while dealing with the said question, that it is only an administrative instruction which will not override the provisions of law as contemplated in the Prevention of Corruption Act or Cr. P.C. The following is the relevant, extract:

The learned Counsel for the appellant would point out that in this case, from the copy of the FIR, it is seen that FIR was received at 8.45 hours and registered in Pudukkottai V and AC Police Station Cr. No. 2/95 under Section 7 of the P.C. Act and thus the complaint was immediately registered and taken up for investigation and no orders were obtained, as enjoined under the aforesaid Rule (iv) and hence the prosecution is vitiated. I am clear that this administrative instruction cannot override the provision of law. The provisions of Prevention of Corruption Act or the provisions contained in Code of Criminal Procedure do not enjoin such a procedure. On the other hand, investigation is expected to be proceeded with expeditiously. Whilesso, an executive order by virtue of a G.O. cannot curtail the power to deal with the investigation so as to make, obtaining the order of a higher authority, a pre-requisite for investigating the case. Hence, I am unable to accept either this submission made by the learned Counsel for the application, I do not

find any ground to fault the impugned order.

25. The above order has been confirmed, as noted above, by the Supreme Court. Though this point was not considered in the quashing application for quashing the prosecution, the said observation given by Hon'ble Pratap Singh, J., while dealing with the question of sanction for prosecution would apply to the validity of the prosecution also, since the ground that there was unauthorised investigation is common in both these forums.

26. In this context, it is quite relevant to point out an important observation made by the Supreme Court in the decision reported in (State of Haryana v. Bhajan Lal) :

The investigation conducted in violation thereof bears the stamp of illegality. But, illegality committed in the course of an investigation does not affect the competence and the jurisdiction of the Court for trial. Where the cognizance of the case has in fact been taken and the case is proceeded to termination, the invalidity of the proceeding investigation does not vitiate the result unless miscarriage of justice has been caused thereby.

27. Under those circumstances, my conclusion is this :

The instruction given in G.O. (D) No. 1 dated 28-1-1992 is only an administrative instruction. But, as per proviso to Section 17 of the Act, all the Inspectors of Police, Vigilance and Anti-Corruption have been authorised to make investigation of the offences under the Act and take action against any officer falling under the Groups A and B. So, under the said G.O., the Inspector of Police, who filed the charge-sheet, has been validly authorised to conduct investigation. Though through this G.O., the power of arrest has been excluded, the powers of investigation such as organising, laying trap, examination of witnesses, obtaining sanction and filing of charge-sheet by the Inspector of Police, have not been curtailed. In the instant case, it is the case of the prosecution that the arrest has been effected by the Deputy Superintendent of Police. Even assuming that the arrest has been effected by the Inspector of Police, that would not affect the other investigation which was validly conducted by the Inspector of Police as per the general authorisation. Hence, I find no illegality as such in the investigation. Even if there is an illegality in

regard to the arrest, that would not affect the cognizance validly taken in this case.

28. In view of the above conclusion, the petition which is devoid of merit, is liable to be dismissed and accordingly, the same is dismissed. Consequently, Cri. M.P. No. 7148 of 1998 is closed.

29. Before parting with this case, I shall point out that the conduct of the petitioner by dragging on the proceedings by filing several applications before several forums is not proper. One day or the other, he shall face the proceedings and avail of the opportunity given to him as an accused to contest the case of prosecution and to face the result of the same. this Court hopes that at least in the future, the petitioner would not put any more hurdles to stall the proceedings. The trial Court is directed to go on with the trial and dispose of the, matter as expeditiously as possible.

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