

Vijayakumar Vs. the State

Vijayakumar Vs. the State

SooperKanoon Citation : sooperkanoon.com/923269

Court : Chennai

Decided On : Jan-09-2012

Judge : P.R.Shivakumar, J.

Acts : Indian Penal Code (IPC) - Section 420; Code of Criminal Procedure (CrPC) - Sections 227, 161(3)

Appeal No. : Crl.R.C.(MD) No.865 of 2011 and M.P.(MD) No.1 of 2011

Appellant : Vijayakumar

Respondent : The State

Advocate for Def. : Mr.P.Kandasamy, Adv.

Advocate for Pet/Ap. : Mr.T.Jeen Joseph, Adv.

Judgement :

The sole accused in C.C.No.4 of 2009, on the file of the learned Judicial Magistrate No.2, Kuzhithurai is the petitioner in the present Criminal Revision Case. A case was registered on the file of Kollencode Police Station as Crime No.216 of 2008 on the file of the said police station for the offence punishable under Section 420 I.P.C. On completion of investigation, the respondent submitted a final report alleging commission of the said offence on the part of the petitioner herein, who allegedly cheated several persons including one Shanthi, the defacto complainant, based on whose complaint the case was registered by the police.

The said final report was taken on file by the learned Judicial Magistrate No.2, Kuzhithurai in C.C.No.4 of 2009 on the file of the said Court.

2. On appearance, the sole accused, who is the petitioner herein submitted a petition seeking an order of discharge under Section 227 of the Code of Criminal Procedure. The same was taken on file as Cr.M.P.No.864 of 2009 in C.C.No.4 of 2009 on the file of the Judicial Magistrate No.2, Kuzhithurai. After enquiry, the learned Judicial Magistrate dismissed the said petition, declining the relief of discharge sought for by the accused/petitioner in the Criminal Revision Case. The impugned order came to be passed on 06.07.2011. The correctness and legality of the order is sought to be challenged by invoking the revisional powers of this Court.

3. Notice before admission was given to the learned Government Advocate (Criminal side) representing the respondent. The submissions made on both sides were heard and the Revision Petition, certified copy of the impugned order of the Court below and copies of the relevant documents produced in the form of typed set of papers and additional typed set of papers by the petitioner were also perused.

4. It seems one Smt.Shanthi W/o Rajan of Kennakadu Veedu, Kollancode preferred a petition before the Superintendent of Police, Kanyakumari District alleging cheating on the part of the petitioner herein of the above said Shanthi and several others, which was referred to the jurisdictional police, namely Kollancode Police Station by the Office of the Superintendent of Police for necessary action. In the said complaint Smt.Shanthi had made allegations against the petitioner that posing himself to be an L.I.C. Agent, he collected money from her and other persons on the pretext of investing the same with L.I.C. under certain schemes, which would bring attractive returns and also by promising to get loans sanctioned for them and cheated those persons by not investing the same as promised and misappropriated the same for his personal use. As pointed out supra, after investigation, the Investigating Officer submitted the final report to the effect that there were enough materials to prosecute the petitioner for the offence of cheating punishable under Section 420 I.P.C. As many as 25 witnesses were cited.

5. The petitioner on appearance sought an order discharging him from the above said case on the following grounds:

(i) Though several persons were alleged to be cheated, except the complaint of Shanthi, no other complaint is available. (ii) The said Shanthi has sworn an affidavit, when requested by the petitioner, stating that she did not lodge any complaint against the petitioner. (iii) One Paulraj cited as witness No.19 is said to have given statement under Section 161(3) Cr.P.C., whereas he was not in India on the date on which his statement was allegedly recorded.

(iv) Though the complaint to Police is said to have been lodged by Shanthi, who is cited as witness No.1 in the annexure to the charge sheet, the complaint was actually signed by one Srimathi in Malayalam. AND (v) After the filing of the discharge petition, the signature of Srimathi in Malayalam found in the complaint was erased and the signature purporting to be that of Shanthi has been put up, showing mutilation and even forgery.

6. It is not the case of the petitioner that the documents produced and the evidence sought to be adduced on the side of the prosecution are not enough to make out a case of cheating as alleged in the final report and hence, the petitioner is entitled to an order of discharge. In short, what the petitioner wants is an appreciation and evaluation of evidence proposed to be adduced by the prosecution to find out whether the accused could have committed the alleged offence or not. It is trite law that while considering the question of framing of charge or discharging the accused, the Court shall not attempt to evaluate or appreciate evidence and the Court has to decide whether a conviction is possible if the records produced by the prosecution are believed to be hundred per cent true and genuine.

7. In this case, as stated supra, it is not the case of the petitioner that the case shall not end in conviction even if the materials placed by the prosecution are presumed to be genuine. On the other hand, what the petitioner attempts is to seek an order of discharge based on pleas of defence that can be raised during trial in order to disprove the case of the prosecution or prove his innocence. The first contention of the petitioner is that though more than 30 persons are said to

have been cheated and all of them made complaints, except the complaint of Shanathi, the complaints of others alleged to have been cheated are not available. Normally in case of cheating of the public, a case will be registered based on the information of one of the persons, who have been allegedly cheated. The complaint that is received by the police first in point of time shall form the basis of F.I.R. and the informations received from the other persons shall be treated as their statements recorded under Section 161(3) Cr.P.C. In this case, the complaint in writing was given by Shanthi, who has been cited as witness No.1 and the same has been made the basis of F.I.R. We cannot expect any further complaint in this case to have been received from any other person. The other persons, allegedly cheated by the petitioner seems to have given their statements before the police and the same have been recorded under Section 161(3) Cr.P.C. Therefore, there is no substance in the contention raised by the petitioner that though several other persons were alleged to have been cheated, no complaint of any one of them is available and that the absence of the complaint of others will vitiate the prosecution leading to the discharge of the petitioner (accused) and the said contention deserves rejection.

8. The second contention raised by the petitioner is that the alleged defacto complainant Shanathi has sworn an affidavit at the request of the petitioner to the effect that she did not lodge any complaint with the police against the petitioner. The said material may, at the best, serve as a defence material for the proof of the defence case of the petitioner and such an evidence shall not be looked into at this point of time to decide whether the complaint is true or false. If such a contention is accepted, then every accused will try to win over the complainant and get an affidavit to the effect that no complaint was given by the defacto complainant against the accused, to get an order of discharge. Hence, the second contention also is rejected as untenable.

9. The next contention of the petitioner is that one of the victims Paulraj cited as 19th witness, could not have given any statement under Section 161(3) Cr.P.C., as he was not in India on the date on which the alleged recording of his statement by the Investigating Officer was done. In support of his contention, the petitioner wants to produce a photo copy of the Passport of the said Paulraj. In effect, the

present contention seems to be an evidence of alibi that the concerned witness was somewhere else and hence, he could not have been examined by the Investigating Officer on the date on which he was allegedly examined. Such a plea of alibi has to be raised and proved by the person making such plea of alibi. Therefore, the said ground cannot be pressed into service as a ground for seeking discharge.

10. The next contention raised by the petitioner is that though the complaint was allegedly given by one Shanthi, it was in fact signed by one Srimathi in Malayalam and when the same was brought to the notice of the Police, Police caused manipulation in the complaint after the same had been submitted to the Magistrate and while the same was in the custody of the Court. Such a far- fetched allegation cannot be accepted on its face value at this point of time. Evidence is needed to be adduced to prove such a fact of alteration and mutilation of complaint and First Information Report.

11. The learned counsel for the petitioner submits that the petitioner has also preferred a complaint against the Police Officer concerned on the allegation of effecting corrections in the complaint and the first information report. Whether there is any correction? If so, on what point of time that was made? What evidentiary value can be attached to such corrected complaint? are the questions to be considered only in trial. The said question cannot be gone into at this point of time.

12. The learned Judicial Magistrate No.2, Kuzhithural applied the correct principles of law and on proper consideration of the materials in the light of the provisions dealing with discharge of accused, for the limited purpose of deciding whether the accused can be discharged or not, has arrived at a correct conclusion that the case is not a fit one for passing an order discharging the accused/ petitioner herein and that the petition seeking discharge deserves to be dismissed. There is no defect or infirmity, much less illegality in the order passed by the learned Judicial Magistrate warranting interference by this Court by exercising of its revisional powers. The Criminal Revision Case deserves dismissal in limine.

13. Accordingly, the Criminal Revision Case is dismissed. Consequently, connected M.P.(MD) No.1 of 2011 is dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com