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A. Pandian Vs. the Inspector of Police, Central Crime Branch, Egmore

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Court : Chennai

Decided On : Nov-21-2012

Judge : B. Rajendran

Appeal No. : Criminal Revision Case Nos. 356, 357, 358 & 360 of 2012

Appellant : A. Pandian

Respondent : The Inspector of Police, Central Crime Branch, Egmore

Advocate for Pet/Ap. : For the Petitioners: C. Ramesh, Senior Counsel for J. Selvaraja, Advocate. For the Respondent: Shanmuga Velayutham, Public Prosecutor.

Judgement :

(Prayer: Criminal Revision Cases filed under Section 397 and 401 of Cr.P.C. against the common Order dated 19.12.2011 passed in Crl.M.P. No. 4984, of 2011 in C.C. No. 1402 of 2006, Crl.M.P. No. 4986 of 2011 in C.C. No. 19386 of 2007, Crl.MP No. 4982 of 2011 in C.C. No. 21792 of 2005 and M.P. No. 4983 of 2011 in C.C. No. 3198 of 2007 on the file of the learned Chief Metropolitan Magistrate, Egmore, Chennai.)

COMMON ORDER:

1. These four criminal revision cases have been filed by the petitioner/accused aggrieved by the common order dated 19.12.2011 passed by the learned Chief

Metropolitan Magistrate, Egmore, Chennai, by which the petitions filed by him under Section 239 of Cr.P.C. for discharge have been dismissed.

2. The petitioner was arrayed as A-4 in Crime No. 373 of 2005 for the offence punishable under Section 406, 420 and 506 (ii) IPC read with Section 120 (b) IPC. After investigation a charge sheet was filed which was taken on file as C.C. No. 1402 of 2006. Pending trial, the petitioner has filed M.P. No. 4984 of 2011 in C.C. No. 1402 of 2006 for discharge which was dismissed by the Court below. As against the same, Crl.R.C. No. 356 of 2012 has been filed.

3. The petitioner was arrayed as A-4 in Crime No. 369 of 2005 registered for the offence punishable under Section 406, 420 read with 34 and 419 IPC. After investigation a charge sheet was filed which was taken on file as C.C. No. 19386 of 2007. Pending trial, the petitioner has filed MP No. 4986 of 2011 in C.C. No. 19386 of 2007 for discharge which was dismissed by the Court below. As against the same, Crl.R.C. No. 357 of 2012 has been filed.

4. The petitioner was arrayed as A-4 in Crime No. 374 of 2005 registered for the offence punishable under Section 406, 420 and 506 (ii) IPC read with Section 34 of IPC. After investigation a charge sheet was filed which was taken on file as C.C. No. 21792 of 2005. Pending trial, the petitioner has filed M.P. No. 4982 of 2011 in C.C. No. 21792 of 2005 for discharge which was dismissed by the Court below. As against the same, Crl.R.C. No. 358 of 2012 has been filed.

5. The petitioner was arrayed as A-5 in Crime No. 315 of 2005 registered on 29.04.2005 for the offence punishable under Section 406, 420 read with 109 IPC. After investigation a charge sheet was filed which was taken on file as C.C. No. 3198 of 2007. Pending trial, the petitioner has filed M.P. No. 4983 of 2011 in C.C. No. 3198 of 2007 for discharge which was dismissed by the Court below. As against the same, Crl.R.C. No. 360 of 2012 has been filed.

6. The court below, after hearing the submissions made on behalf of both sides held that the Court has to see whether the materials on record, if un-rebutted, makes a conviction reasonably possible and if the 161 statement of the witnesses is perused, it is clear that there are some nexus between Adikesavan and the

petitioner in the commission of the offence. Further, in the confession of Adikesavan recorded on 02.05.2005, he has specifically stated about the involvement of the petitioner and another accused and therefore, the Court below held that the petitioner has to face the trial and implication of the petitioner as an accused is proper.

7. The learned senior counsel for the petitioner would vehemently contend that the petitioner himself is a victim at the hands of the original accused namely Adikesavalu, who has cheated several persons, including the petitioner. The petitioner came to be implicated only on the basis of confession statement given by the first accused and except the confession statement of the first accused, allegedly given to the respondent police, there is no other material available to connect the petitioner to the offence complained of. Even in the complaint, based on which the cases have been registered by the respondent police, the complainant named only the first accused and the petitioner's name did not find place. This is evident that the petitioner has no role in the commission of the offence. There is no allegation that this petitioner gave false promises and assurances for arranging loans and as such the provisions of Section 406 or 420 cannot be invoked against the petitioner. In support of his contention, the learned senior counsel for the petitioner relied on the decision of the Honourable Supreme Court reported in (K.S. Narayanan and others vs. S. Gopinathan) 1982 Criminal Law Journal 1611 to contend that merely levelling a charge of conspiracy, without mentioning how, where, when and which of the conspirators hatched the conspiracy and for what purpose, or circumstances warranting an inference of existence of a conspiracy, is not enough to make the petitioner to face the trial. A complaint should make out a prima facie case against the accused person and one cannot have the construction of a fine superstructure without a foundation.

8. On the other hand, the learned Public Prosecutor appearing for the respondent/State, relying on the counter affidavit filed by the respondent in each of the cases, would contend that the petitioner is charged with the offences of cheating the public to the tune of several crores of rupees along with the original accused. The original accused has given promises for return of the money with attractive returns and the petitioner is an associate of the original accused. The

petitioner was all along present with the original accused and in fact threatened one of the persons who paid money to the accused persons. Therefore, on the basis of the confession of the main accused, the petitioner was implicated as one of the accused. Further, at this stage, the petitioner cannot be discharged inasmuch as there are enough materials available to prove the offences alleged against the petitioner. Therefore, the court below is right in dismissing the petitions filed for discharge and he prayed for dismissal of the Criminal Revision Cases.

9. In support of his contention, the learned Public Prosecutor relied on the decision of the Honourable Supreme Court reported in (State of Madhya Pradesh vs. S.B. Johari and others) (2000) 2 Supreme Court Cases 57 to contend that the Court has to only see whether prima facie there was sufficient ground made available for proceeding against the accused and it cannot appreciate the evidence to arrive at a conclusion in the matter at the preliminary stage. It was further held in the aforesaid decision that the Court is not required to appreciate the evidence and arrive at the conclusion that the materials produced are sufficient enough or not for convicting the accused. If the Court is satisfied that a prima facie case is made out for proceeding further, then a charge has to be framed.

10. I heard the counsel for both sides and perused the materials available on record. The point for consideration in these Criminal Revision Cases is whether there are materials available on record warranting the implication of the petitioner as an accused in the calander cases.

11. The main argument of the learned Senior counsel for the petitioner is that the statements recorded from the witness do not show the involvement of the petitioner in the commission of offence and therefore, implicating the petitioner as an accused is not in accordance with law. Even assuming that the petitioner was present along with the first accused Adikesavan during the relevant period, mere presence of the petitioner will not be a ground for roping him as an accused. In the absence of any specific allegation to show the involvement of the petitioner in the commission of the offence, the petitioner ought not to have been arrayed as an accused. In fact, the petitioner himself gave money to the first accused and he was also cheated by the first accused.

12. In order to see whether there are any nexus between the petitioner and the offence complained of, it is necessary to refer the statements recorded under Section 161 of Cr.P.C. in the above cases. In C.C. No. 1402 of 2006 (Crime No. 373 of 2005) one S.R. Ramachandran was examined as a witness, who, in his statement under Section 161 of Cr.P.C. would depose as follows:-

“TAMIL”

13. Similarly, one Ponnan was examined as a witness in the above case, who, in his statement under Section 161 of Cr.P.C. would depose as follows:-

“TAMIL”

14. In C.C. No. 19386 of 2007 (Crime No. 369 of 2005) one Iyyamperumal was examined as a witness, who, in his statement under Section 161 of Cr.P.C. would depose as follows:-

“TAMIL”

15. Similarly one Ganapathy examined in the above case, in his statement under Section 161 of Cr.P.C., would depose as follows:-

“TAMIL”

16. In C.C. No. 21792 of 2005 (Crime No. 374 of 2005), one Killai Nathan was examined as a witness, who, in his statement under Sec.161 of Cr.P.C. would depose as follows:-

“TAMIL”

17. The statement recorded from the witnesses under Section 161 of Cr.P.C. on various dates in connection with the above said cases, two things are clear. Atleast in one case, the witness depose that money was directly paid i.e., Rs.1,50,000/- to the petitioner herein and in another case, he has even threatened the witnesses who have come to the residence of Adikesavan to get back their money. In another case, it was clearly stated by the witnesses as to the presence of the petitioner in the scene of occurrence. No doubt, mere presence of the

petitioner cannot be a ground to implicate him as an accused. But in this case, the statement of the witnesses not only indicate the presence of the petitioner but his role in receiving money or threatening the witnesses at the time when they demanded return of money. However, at this stage, this Court cannot express any opinion as to the involvement of the petitioner in the offence complained of, but this Court can prima facie infer the presence of the petitioner in the scene of occurrence and his overtact, based on the statement given by the witnesses. Therefore, this Court is of the view that there are some element of involvement of the petitioner in the case besides that there are prima facie evidence available to connect him to the offence complained of. Further, the learned Public Prosecutor would submit that during the course of investigation, the investigating agency had seized certain documents from the house of the petitioner and those documents refer to the transactions the petitioner had with Adikesavan and there is no explanation forthcoming from the petitioner as to how the petitioner came into possession of some documents relating to the transaction with Adikesavan. Here again, this Court cannot express any opinion as to the involvement of the petitioner in the offence, but this Court can only hold that there are materials made available to show that there is a prima facie case made out by the prosecution to implicate the petitioner as an accused in the calander cases. In fact, the Court below also has taken note of the documents recovered from the petitioner's house which are covered by a mahazar prepared on 05.05.2005 namely 14 documents and cash of Rs.50,000/-. It was also pointed out by the court below that the documents i.e., Serial Nos. 8, 9, 10 and 11 reveal that the petitioner himself has given some amount to Adikesavan for getting a loan of Rs.1 crore and therefore, there are nexus between the petitioner and the said Adikesavan. The court below also pointed out that in the confession given by the first accused Adikesavan on 02.5.2005 he had categorically stated about the involvement of the petitioner and also one Sarathy. Therefore, the Court below found that implication of the petitioner as an accused, based on the confession of the co-accused is proper. This Court do not find any reason to interfere with such a factual finding rendered by the Court below, which is based on legal evidence. Merely because it was stated by the petitioner that he himself is a victim at the hands of the said Adikesavan, at this stage, it will not be a ground for the petitioner to get discharged

from the criminal proceedings.

18. In the decision relied on by the counsel for the petitioner reported in (K.S. Narayanan and others vs. S. Gopinathan) 1982 Criminal Law Journal 1611 it was held in para-12 as follows:-

"12. .....Merely levelling a charge of conspiracy, without mentioning how, where, when and which of the conspirators hatched the conspiracy and for what purpose, or circumstances warranting an inference of existence of a conspiracy, is not enough to bring persons like A-8, retired Reserve Bank of India Governor and A-9, retired I.C.S. Officer to face the trial in a Criminal court. It should not be forgotten that the Company Law Board after examining in detail the affairs of India Cements Limited in relation to the Agricultural Farms Limited., found no irregularities committed and the Company Law Board even allowed the continuance of contracts entered into between those companies. I am of the view the allegations in the complaints refer to the administration of the affairs of the company, which is within the purview of the Board of Directors and the General Body of the company. Nothing has been suggested to show that any transaction was done in secrecy. Whatever is applicable to the Directors who have been made as accused equally applies to those who escaped being accused. The contention of the learned counsel for the respondent that it is the complainant's liberty to pick and choose persons from the Board of Directors as accused is unacceptable for I am not prepared to hold what is sauce for the goose is not sauce for the gander. His contention that he has got materials to place before the court later on is neither here nor there. A complaint should make out a prima facie case against the accused persons. One cannot have the construction of a fine superstructure without a foundation."

19. In the above decision, the Honourable Supreme Court held that even the complaint is bereft of any material particulars and it was not stated where, how and when the offence has taken place. In the present case, the petitioner came to be implicated as an accused on the confession statement of the co-accused even though his name was not mentioned in the complaint. Further, there are statements given by the witnesses under Section 161 of Cr.P.C. implicating the

involvement of the petitioner to the offence. Therefore, there is a prima facie case available to implicate the petitioner, while so, the decision relied on by the counsel for the petitioner cannot be made applicable to the present case on hand.

20. The learned senior counsel for the petitioner also relied on the decision of the Honourable Supreme Court reported in (Harmanpreet Singh Ahluwalia and others vs. State of Punjab and others) (2009) 7 Supreme Court Cases 712 to contend that when criminal proceedings have been initiated to harass a person, the Court can interfere. The facts of the case on hand cannot be made applicable with the decision of the Honourable Supreme Court. In that case, the Honourable Supreme Court dealt with a matrimonial dispute relating to criminal breach of trust or cheating wherein the Honourable Supreme Court laid parameters required for consideration by the High Courts in exercising its jurisdiction under Section 482 of Cr.P.C. Therefore, this decision do not lend support to the case of the petitioner.

21. The learned Public Prosecutor relied on the decision of the Honourable Supreme Court reported in (State of Madhya Pradesh vs. S.B. Johari and others) (2000) 2 Supreme Court Cases 57 wherein in para-4 it was held as follows:-

"4.....The Court is not required to appreciate the evidence and arrive at the conclusion that the materials produced are sufficient or not for convicting the accused. If the court is satisfied that a prima facie case is made out for proceeding further then a charge has to be framed. The charge can be quashed if the evidence which the prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged by cross-examination or rebutted by defence evidence, if any, cannot show that the accused committed the particular offence. "

22. Similarly, in the decision reported in (Om Wati (Smt) and another vs. State, through Delhi Admn., and others) (2001) 4 Supreme Court Cases 333 wherein it was held as follows:-

"7. Section 227 of the Code provides that if upon consideration of record of the case and the documents submitted herewith, the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the

accused for which he is required to record his reasons for so doing. No reasons are required to be recorded when the charges are framed against the accused persons.....

8. At the stage of passing the orders in terms of Section 227 of the Code, the Court has merely to peruse the evidence in order to find out whether or not there is sufficient ground for proceeding against the accused. If upon consideration the Court is satisfied that a prima facie case is made out against the accused, the Judge must proceed to frame charge in terms of Section 228 of the Code. Only in a case where it is shown that the evidence which the prosecution proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged in the cross-examination or rebutted by defence evidence cannot show that the accused committed the crime, then and then alone the court can discharge the accused. The court is not required to enter into meticulous consideration of evidence and material placed before it at this stage.....

10. A three Judge bench of this Court in Supdt. & Remembrancer of Legal Affairs, W.B. vs. Anil Kumar Bhunjai reminded the Courts that at the initial stage of framing of charges, the prosecution evidence does not commence. The court has, therefore, to consider the question of framing the charges on general considerations of the material placed before it by the investigating agency. At this stage, the truth, veracity and effect of the judgment which the prosecution proposes to adduce are not to be meticulously judged. The standard of test, proof and judgment which is to be applied finally before finding an accused guilty or otherwise is not exactly to be applied at the stage of framing the charge. Even on the basis of a strong suspicion founded on materials before it, the court can form a presumptive opinion regarding the existence of factual ingredients constituting the offence alleged and in that event be justified in framing the charges against the accused in respect of the commission of the offence alleged to have been committed by them....."

23. If the case on hand is considered in the light of the above decisions of the Honourable Supreme Court, it is clear that there is a strong suspicion about the involvement of the petitioner in the offence complained of, which could be inferred

from the statements made available by the investigating agency, collected under Section 161 of Cr.P.C. Therefore, this is not the stage where the petitioner could be discharged from the offence complained and he must be directed to face the trial. Under those circumstances, I do not find any reason to interfere with the order passed by the court below. Taking note of the fact that the Calander Cases are pending from the year 2007, the Court below is directed to dispose it at the earliest.

24. In the light of the above discussion, the Criminal Revision Cases are dismissed.

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