

State of Karnataka

Vs

L. Muniswamy and Others

Criminal Appeal Nos. 345-346 of 1976

(Y. V. Chandrachud, P. K. Goswami, P. N. Shinghal JJ )

03.03.1977

JUDGMENT

CHANDRACHUD, J. -

1. These two appeals by special leave arise out of a judgment dated September 30, 1975 rendered by the High Court of Karnataka in Criminal Petitions 248 and 253 of 1975. By the aforesaid judgment the High Court in the exercise of its inherent powers has quashed proceedings initiated by the State of Karnataka, appellant herein, against the respondents.

2. The incident out of which these proceedings arise took place on December 6, 1973 in the Central Avenue of the Indian Telephone Industrial Colony, Bangalore. Thyagaraja Iyer, accused 1, who was an employee of the Indian Telephone Industrial Ltd. was dismissed from service on September 20, 1973 on the allegation that he had assaulted a Canteen supervisor. The complainant Ajit Dutt, Works Manager of the Crossbar Division, attempted to serve the dismissal order on him but he refused to accept it and threatened the complainant that he, the complainant, was primarily responsible for the dismissal and would have to answer the consequences. It is alleged that the I.T.I. Employees' Union took up cudgels on his behalf and resolved to support his cause. The case of the prosecution is that accused 1 and 8 to 20 conspired to commit the murder of the complainant and that in pursuance of that conspiracy accused 1, 8 and 10 hired accused 8, a notorious criminal, to execute the object of the conspiracy. Accused 2 in turn engaged the services of accused 3 to 7 and eventually on the morning of December 6, 1973 accused 1 to 6 are alleged to have assaulted the complainant with knives, thereby committing offences under Section 324, 326 and 307 read with Section 34 of the Penal Code. Accused 2 was charged separately under Section 307 or in the alternative under Section 326, Penal Code.

3. By this order dated October 23, 1974 the learned Metropolitan Magistrate, V Court, Bangalore directed all the 20 accused to take their trial before the Session Court for offences under Section 324, 326 and 307 read with Section 34 of the Penal Code.

4. At the commencement of the trial before the learned First Additional District and Session Judge, Bangalore, two preliminary questions were raised, one by the prosecution and the other by the accused. It was contended by the prosecution that the specification of particular sections in the committed order did not preclude the Session Court from framing a new charge under Section 120-B of the Penal Code. On the other hand it was contended by the accused that there was no sufficient ground for proceeding with the prosecution and therefore they ought to be discharged. The learned Additional Sessions Judge accepted the contention of the prosecution that he had the power to frame a charge under Section 120-B. The correctness of that view was not challenged before us by Mr.

Frank Anthony who appears on behalf of the accused. That is as it ought to be because the power of the Sessions Court to frame an appropriate charge is not trammelled by the specifications contained in the committal order. The Sessions Court, being seized of the case, has jurisdiction to frame appropriate charges as the facts may justify or the circumstances may warrant. The contention of the accused that they ought to be discharged was accepted by the learned Additional Sessions Judge partly. He held that there was no case against accused 11, 12 and 16 and that they were therefore entitled to be discharged. By an order dated August 8, 1975 the learned Judge discharge those three accused in the exercise of his powers under Section 227 of the Code of Criminal Procedure, 1973. We are informed that the correctness of that order is under challenge before the High Court in a proceeding taken by the State of Karnataka. We are not concerned with that order in these appeals. After discharging accused 11, 12 and 16 the learned Judge turning to the case against the remaining accused, observed that there was "some material to hold that they have had something to do with the incident which occurred on December 6, 1973, in the I.T.I. Colony, Bangalore". The learned Judge adjourned the case to September 1, 1975 "for framing specific charges as made out from the material on record against the rest of the accused persons".

5. Two revision petition were filed against this order, one by accused 10, 13, 14 and 15 and the other by accused 17 to 20. Those petitions were allowed by the High Court on the view that there was no sufficient ground for proceedings against the petitioners before it. The High Court accordingly quashed the proceedings in regard to them which has led to these appeals.

6. Mr. Mookerjee who appears on behalf of the State of Karnataka contends that the High Court ought not to have exercised its power to quash the proceedings against the respondents without giving to the Sessions Court, which was seized of the case, an opportunity to consider whether there was sufficient material on the record on which to frame charges against the respondents. It is argued that the Sessions Court had adjourned the case for a consideration of that very question and it was not proper for the High Court to withdraw the case, as it were, and to exercise its extraordinary powers, thereby preventing the trial Court from examining the sufficiency of the material which is the primary duty and function of that Court to examine. There is some apparent justification for this grievance because the language in which the Sessions Court couched its order would seem to suggest that it had adjourned the case to September 1, 1975 for consideration of the question as to whether there was sufficient ground for proceedings against the respondents. But a careful reading of the Sessions Court's judgment would reveal that while discharging accused 11, 12 and 16 it came to the conclusion that in so far as the other accused were concerned there was some material to hold they were connected with the incident. The case was, therefore adjourned by the Court for framing specific charges against them. In other words, the learned Judge adjourned the case not for deciding whether any charge at all could be framed against the remaining accused but for the purpose of deciding as to which charge or charges could appropriately be framed on basis of the material before him. The grievance therefore that the High Court interfered with the Sessions Court's order prematurely is not justified.

7. The second limb of Mr. Mookerjee's argument is that any event the High Court could not take upon itself the task of assessing or appreciating the weight of material on the record in order to find whether any charges could be legitimately framed against the respondents. So long as there is some material on the record to connect the accused with the crime, says the learned counsel, the case must go on and the High Court has no jurisdiction to put a precipitate or premature end to the proceedings on the belief that the prosecution is not likely to succeed. This, in our opinion, is too broad a proposition to accept. Section 227 of the Code of Criminal Procedure 2 of 1974, provides that :

If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submission of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

This section is contained in Chapter XVII called "Trial Before a Court of Session". It is clear from the provision that the Sessions Court has the power to discharge an accused if after perusing the record and hearing the parties he comes to the conclusion, for reasons to be recorded, that there is not sufficient ground for proceeding against the accused. The object of the provision which requires the Session Judge to record his reasons is to enable the superior court to examine the correctness of the reasons for which the Session Judge has held that there is or is not sufficient ground for proceeding against the accused. The High Court therefore is entitled to go into the reasons given by the Session Judge in support of his order and to determine for itself whether the order is justified by the facts and circumstances of the case. Section 482 of the New Code, which corresponds to Section 561-A of the Code of 1898 provides that :

Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code or to prevent abuse of the process of any Court or otherwise to secure the end of justice.

In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction.

8. Let us then turn to the facts of the case to see whether the High Court was justified in holding that the proceedings against the respondents ought to be quashed in order to prevent abuse of the process of the court and in order to secure the ends of justice. We asked the State counsel time and again to point out any data or material on the basis of which a reasonable likelihood of the respondents being convicted of any offence in connection with the attempted murder of the complainant could be predicated. A few bits here and a few bits there on which the prosecution proposes to rely are woefully inadequate for connecting the respondents with the crime, howsoever, skillfully one may attempt to weave those bits into a presentable whole. There is no material on the record on which any tribunal could reasonably convict the respondents for any offence connected with the assault on the complainant. It is undisputed that the respondents were nowhere near the scene of offence at the time of the assault. What is alleged against them is that they had conspired to commit that assault. This, we think, is one of those cases in which a charge of conspiracy is hit upon for the mere reason that evidence of direct involvement of the accused is lacking. We have been taken through the statements recorded by the police during the course of investigation and the other material. The

worst that can be said against the respondents on the basis thereof is that they used to meet one another frequently after the dismissal of accused 1 and prior to the commission of the assault on the complainant. Why they met, what they said, and whether they held any deliberations at all, are matters on which no witness has said a word. In the circumstances, it would be a sheer waste of public time and money to permit the proceedings to continue against the respondents. The High Court was therefore justified in holding that for meeting the ends of justice the proceedings against the respondents caught to be quashed.

9. Learned counsel for the State Government relies upon a decision of this Court in *R. P. Kapur v. The State of Punjab* ((1960) 3 SCR 388 : AIR 1960 SC 866 : (1961) 1 SCJ 59 : 1960 CrLJ 1239) in which it was held that in the exercise of its inherent jurisdiction under Section 561A of the Code of 1898, the High Court cannot embark upon an enquiry as to whether the evidence in the case is reliable or not. That may be so. But in the instant case the question is not whether any reliance can be placed on the veracity of this or that particular witness. The fact of the matter is that there is no material on the record on the basis of which any tribunal could reasonably come to the conclusion that the respondents are in any manner connected with the incident leading to the prosecution. Gajendragadkar, J., who spoke for the Court in Kapur's case observes in his judgment that it was not possible, desirable or expedient to lay down any inflexible rule which would govern the exercise of the High Court's inherent jurisdiction. The three instances cited in the judgment as to when the High Court would be justified in exercising its inherent jurisdiction are only illustrative and can in the very nature of things not be regarded as exhaustive. Consideration justifying exercise of inherent powers for securing the ends of justice naturally vary from case to case and a jurisdiction as wholesome as the one conferred by Section 482 ought not to be encased within the strait-jacket of a rigid formula.

10. On the other hand, the decisions cited by learned counsel for the respondents in *Vadilal Panchal v. D. D. Ghadigaonkar* (AIR 1960 SC 1113 : 1960 Cri LJ 1499 : 62 Bom LR 915) and *Century Spinning & Manufacturing Co. v. State of Maharashtra* (AIR 1972 SC 545 : 1972 Cri LJ 329 1972 SCC (Cri) 495) show that it is wrong to say that at the stage of framing charges the court cannot apply its judicial mind to the consideration whether or not there is any ground for presuming the commission of the offence by the accused. As observed in the latter case, the order framing a charge affects a person's liberty substantially and therefore it is the duty of the Court to consider judicially whether the material warrant the framing of the charge. It cannot blindly accept the decision of the prosecution that the accused be asked to face a trial. In *Vadilal Panchal's* case, Section 203 of the old Code was under consideration, which provided that the Magistrate could dismiss a complaint if after considering certain matters mentioned in the section there was in his judgment no sufficient ground for proceeding with the case. To an extent Section 327 of the new Code contains an analogous power which is conferred on the Session Court. It was held by this Court, while considering the true scope of Section 203 of the old Code that the Magistrate was not bound to accept the result of an enquiry or investigation and that he must apply his judicial mind to the material on which he had to from his judgment. These decision show that for the purpose of determining whether there is sufficient ground for proceeding against an accused the court possesses a comparatively wider discretion in the exercise of which it can determine the question whether the material on the record, if unrebutted, is such on the basis of which a conviction can be reasonably to be possible.

11. We are therefore in agreement with the view of the High Court that the material on which the prosecution proposes to rely against the respondents is wholly inadequate to sustain the charge that they are in any manner connected with the assault on the complainant. We would, however, like to observe that nothing in our judgment or in the judgment of the High Court should be taken as

detracting from the case of the prosecution, to which we have not applied our mind, as against accused 1 to 9. The case against those accused take its due and lawful course.

12. The appeals are accordingly dismissed.

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