S. K. Viswambaran

Vs

E. Koyakunju and Others

Criminal Appeal No. 109 Of 1987

(B. C. Ray, S. Natarajan JJ)

03.03.1987

JUDGMENT

S. NATARAJAN, J. -

1. This appeal by special leave is by a gazetted police officer to seek expunction of certain adverse remarks passed against him by the High Court of Kerala in an order passed with reference to two criminal miscellaneous petitions filed by respondents 2 and 3 herein without issuing any notice to him and without hearing him.

2. The somewhat unusual circumstances in which the appellant has been made the victim of strictures by the High Court may now be looked into. One Chandrasekaran Pillai residing within the limits of Karungapally Police Station was charged under Section 302 IPC for having committed the murder of his wife Komalavalli by first beating her and kicking her and then hanging her in order to make it appear that it was a case of suicide. The accused's son aged about 12 years and a neighbour claimed to have witnessed the beating as well as the accused dragging the deceased to the western side of the house. A little later the son made bold to go into the house and found his mother hanging with a noose round her neck. He raised alarm and the neighbours including his maternal uncle came to the house and cut the rope and rendered first aid unsuccessfully because Komalavalli had already died.

3. A report was given at Karunagapally Police Station and a case of "suspicious death" was registered and investigation was done by Shri T. P. Rajagopalan, Inspector of Police (respondent 2) who was examined as PW 16 in the Sessions Trial against the accused. As the brother of deceased Komalavalli was not satisfied with the manner of investigation of the local police he filed a petition before the Deputy Inspector General Southern range. Under orders of the Deputy Inspector General the investigation was entrusted to the Crime Detachment in which the appellant was serving as a Deputy Superintendent of Police. The appellant took charge of the case and his investigation revealed that Komalavalli's death was due to homicide and not suicide. The appellant was in charge of the investigation of the case only from November 26, 1980 to January 5, 1981 and thereafter the further investigation was done by another police officer of the Crime Detachment who was examined as PW 18 in the trial. The charge-sheet was eventually filed by yet another officer viz. PW 19 an Inspector of Police.

4. The defence of the accused was that his wife Komalavalli had committed suicide and that he had not murdered her. In support of his defence the accused placed reliance upon the first Investigating Officer viz. PW 16 carrying out a cellophane tape test on the palms of Komalavalli and sending the cellophane tapes to the Forensic Science Laboratory to find out whether any fibres of coir rope were

found in the cellophane tape and if so whether the fibres had come out of the coir rope used for the hanging. The report of the Forensic Science Laboratory was that the cellophane tape contained fibres of coir which were similar to the coir rope used for the hanging. It was, therefore, contended that Komalavalli's death was due to suicide as otherwise fibres from the coir rope used for hanging would not have been found in the palms of her hands. To prove the despatch of the cellophane tapes to the Forensic Science Laboratory and the receipt of the report from the said laboratory and its despatch to the Crime Detachment a Head Constable of Karunagapally Police Station by name E. Koyakunju (respondent 1) was examined as defence witness 2.

5. The Sessions Judge entertained serious doubts about PW 16 carrying out the cellophane tape test to lift any fibres of coir sticking to the palms of Komalavalli and sending the tapes to the Forensic Science Laboratory and the bona fides of the exercise. We shall set out later the numerous suspicious features noticed by the Sessions Judge regarding the conduct of PW 16 and DW 2 with reference to the carrying out of the cellophane tape test and the despatch of the tapes to the Forensic Science Laboratory and the entrustment of the report to the Crime Detachment. For the present we will continue with the narrative so as to make known the circumstances which have let to the filing of this appeal.

6. After evaluating the prosecution evidence the Sessions Judge held that the prosecution had failed to prove the case against the accused beyond reasonable doubt and, therefore, gave him the benefit of doubt and acquitted him of the charge under Section 302 IPC. It is significant to note that acquittal was not rendered in acceptance of the defence case that Komalavalli had committed suicide but because the court felt that it would not be safe to act upon the evidence of PW 2, the son and PW 3, the neighbour and convict the accused for the offence of murder.

7. In the course of his judgment the Sessions Judge made severe comments against PW 16, the Inspector of Police, DW 2, Head Constable and another policeman PC 2599 and observed as follows :

> Therefore in my view this is a fit case where appropriate action has to be taken against PW 16, DW 2 and PC 2599 who wrote Ex. D-14 for the reasons stated earlier. Otherwise indiscipline and the tendency to tamper with official documents and create false documents will set at naught the very purpose of having a police establishment. When one wing of the police establishment tries to investigate properly and to book the culprit, PW 16, DW 2 and PC 2599 were trying to neutralise all the work that has been done by the Crime Detachment and to help the accused to get an acquittal. This is a serious situation which the higher authorities in the police department have to take serious notice of and curb the tendency even in the beginning.

8. Aggrieved by the strictures passed by the Sessions Judge, the Inspector (PW 16) and the Head Constable (DW 2) filed criminal miscellaneous petitions before the High Court of Kerala for expunging the adverse remarks made against them. A learned Single Judge of the High Court, without making any examination of the conduct of the petitioners before him and without considering whether the features noticed by the Sessions Judge warranted the adverse remarks or not went at a tangent and put the appellants in the dock for having failed to place before the court the scientific materials which PW 16 had obtained in the course of investigation to find out whether Komalavalli's death was due to suicide or homicide. The learned Judge had taken it for granted that PW 16 and DW 2 had acted in a blemishless manner and that the report of the Forensic Science

Laboratory had been obtained through bona fide investigative process and it was the appellant who had schemingly kept back the crucial records from the notice of the court in order to secure a conviction unjustly against the accused and as such the appellant should be reprimanded in no uncertain terms. The relevant portions in the judgment where the appellant who was examined as PW 17 in the sessions trial has been criticised are as under :

> (para 6) PW 17, Dy. S.P. who conducted the investigation kept the above facts concealed purposely. If the report sent by the Assistant Director of Forensic Science Laboratory was made available to the court it would have gone a long way to establish innocence of the accused. So to foist a false case of murder on the accused he did not send the report of the Assistant Director of Forensic Science Laboratory to the court. He pleaded complete ignorance of the above examination when examined before court.

(para 8) The part played by PW 17 is not beyond suspicion. He had purposely concealed materials which were favourable to the accused. It would appear that this officer was averse to scientific methods being made use of in investigation of crimes. His attempt was only to see that the accused is convicted in this case. This should not have been the approach of a senior officer like PW 17, who was investigating a very serious crime. The life and liberty of innocent person should not be placed at the mercy of such unscrupulous officer. It will be proper for the higher officers in the department to look into this matter and take proper corrective measures for future guidance.

9. Stung by the remarks made against him without even a hearing, the appellant had preferred this appeal to seek expunction of the remarks.

10. Now let us have a look at the distressing and suspicious features noticed by the Sessions Judge in the conduct of PW 16 and DW 2 in the "cellophane tape test" carried out by them and in obtaining the report of the Forensic Science Laboratory and the despatch of the opinion to the Crime Detachment. The relevant portions extracted from the judgment are as follows :

> (i) The Inquest Report prepared by this witness (PW 16) does not show that he had seized any cellophane tape or coir or that they were sent to the Forensic Science Laboratory;
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> (ii) There are no documents to show that the tape and coir were taken into custody for the purpose of sending them to the Forensic Science Laboratory in the case diary;
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> (iii) Normally any material to be examined by the Forensic Science Laboratory will be sent only though the court. Admittedly the cellophane tape and the coir were not sent through court. On the other hand it is stated that they were sent to the laboratory through a constable. But the case diary does not show that any constable was sent to the Forensic Science Laboratory for handing over these articles;
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> (iv) PW 16 did not prepare any mahazar for seizure of any cellophane tape and inquest report also does not state anything about any tape said to have been affixed by him on the palm or the dead body and taken for the purpose of examination at the laboratory;
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> (v) DW 1 Assistant Director of the Forensic Science Laboratory Trivandrum, examined by the defence to prove his report Ex. D-10 regarding the presence of small

bits of coconut fibres bearing similarity to the coir rope that was also sent, had stated in cross-examination "that even if the tape was affixed to the coir (instead of the palms) and then sent, it will contain the fibres similar to the one found on the coir";

(vi) The investigation was taken over by the Crime Detachment on November 26, 1980. The cellophane tapes and the coir pieces are said to have been sent by PW 16 to the laboratory on December 1, 1980 when he had ceased to be the Investigating Officer;

(vii) Even if he had taken any cellophane tape and coir pieces at the time of inquest or thereafter and wanted them to be examined by the laboratory the proper course for him would have been to send them to the Dy. S.P. who was investigating the case on December 1, 1980;

(viii) DW 2 Head Constable, summoned and examined by the defence to prove the sending of the cellophane tapes and coir to the laboratory and the report received from the laboratory had stated "that there is no document in the police station to prove that cellophane tape or coir piece were sent from Karunagapally Police Station to the Forensic Science Laboratory, Trivandrum;

(ix) He further stated that the report received from the laboratory was sent to the Crime Detachment on January 7, 1981 but claimed that there is nothing to show that it was received by any officer of the Crime Detachment Office. The despatch register Ex. D-13 only shows that a cover was handed over to a constable for delivery to the Crime Detachment Officer. But there is no acknowledgement to show that the constable had actually handed over the same to the office of the Crime Detachment at Quilon;

(x) DW 2 produced a notebook Ex. D-14 said to have been maintained by the constable to whom this cover was handed over for delivery at the office of the Crime Detachment. In this the curious aspect is that the entry regarding this handing over is written in a sheet of paper which is affixed in the note book as an extra sheet ..... Their entry Ex. D-14 has been purposely manufactured for the purpose of this case and I have no doubt that it has been done at the instance of DW 2 the Head Constable and PC 2599 who wrote Ex. D-14. Therefore the constable who wrote Ex. D-14 and DW 2 are equally responsible for this fraud;

(xi) The extent to which DW 2 would go to help the accused is evident from the fact that the voluntarily produced Ex. D-17;

(xii) Ex. D-17 is a letter sent from the Forensic Science Laboratory to the SI on November 15, 1980. This letter states that the sealed packet said to contain the MOs involved in Crime 220 of 1980 of Karunagapally Police Station were being returned unopened for want of forwarding note and certificate and hence the sealed packet may be re-submitted with proper forwarding not and certificate. At the bottom of this letter in vernacular it is written "cellophane tape". Except this vernacular writing there is nothing to show that the MOs referred to in Ex. D-17 were cellophane tape and coir piece .... As the packet sent from the Karunagapally Police Station was not opened, by the Forensic Science Laboratory, the writing in vernacular at the bottom

of Ex. D-17 could not have been written by anybody from the laboratory. It is a subsequent interpolation probably at the instance of DW 2. This was also interfering with official documents and tampering with it by DW 2 or somebody from the police station at Karunagapally.

11. It was with reference to all these features the Sessions Judge made his adverse remarks against PW 16, DW 2 and PC 2599 and observed that the conduct of the concerned official was highly open to suspicion, that as such a full-fledged enquiry should be held against them and that "otherwise indiscipline and the tendency to tamper with official documents and create false documents will set at naught the very purpose of having a police establishment".

12. Coming now to the merits of this appeal when PW 16 and DW 2 moved the High Court for expunging the adverse remarks against them the scope of the enquiry was confined to the bona fides of their action in the investigation proceedings and whether the Sessions Judge was justified in drawing adverse inferences against them on the basis of suspicious features catalogued by him. The High Court was not dealing with an appeal against the acquittal of the accused and there was no need or occasion for the High Court to go into the conduct of the appellant. The enquiry in the criminal miscellaneous petitions was only touching upon the conduct of PW 16 and DW 2 and not the conduct of the appellant. Furthermore one material fact which the High Court had completely overlooked is that the appellant ceased to be in charge of the case on January 5, 1981. Thereafter the investigation of the case was taken charge of by PW 18 and still later by PW 19. Even according to DW 2 the report from the Forensic science Laboratory was sent to the Crime Detachment only on January 7, 1981 whereas the appellant ceased to be in charge of the case on January 5, 1981 itself. It, therefore, passes one's comprehension as to how the appellant can be accused of having wilfully suppressed material documents from the notice of the court in order to secure a conviction unjustly against the accused in a murder case. The High Court, it is surprising to find, has not applied its mind to the series of suspicious features notices by the Sessions Judge to draw an adverse inference against PW 16 and DW 2 in conducting the so-called cellophane tape test and sending the tape to the Forensic Science Laboratory for its report. The learned Judge has taken it for granted that PW 16 had actually carried out a cellophane tape test, that the carrying out such a test he was wedded to Scientific methods of investigation and that he and DW 2 had acted fairly and squarely in trying to find out the real cause of death of Komalavalli and that it was the appellant who had an aversion to the use of scientific methods in investigation of crimes and that the appellant had purposely concealed materials which were favourable to the accused in order to secure a conviction at any cost. The learned Judge had failed to see that as a matter of fact the accused was not kept in the dark regarding the cellophane tape test that was deemed to have been done but on the other hand he had full information of the test and its result, and it was on account of that he was able to summon police officials to figure as defence witnesses and police records as defence exhibits. We are, therefore, clearly of opinion that the High Court had completely misdirected itself in its consideration of the petitions filed by respondents 2 and 3 to seek expunction of the adverse remarks made against them by the Sessions Judge.

13. We have also to point out a grievous procedural error committed by the High Court. Even assuming for argument's sake that for expunging the remarks against respondents 2 and 3 the conduct of the appellant required scrutiny and merited adverse comment, the principles of natural justice required the High Court to have issued notice to the appellant and heard him before passing adverse remarks against him if it was considered necessary. By its failure the High Court has failed to render elementary justice to the appellant.

14. Yet another serious infirmity contained in the impugned order is that the High Court has failed to bear in mind the well settled principles of law laid down by this Court in more than one case that should govern the courts before disparaging remarks are made against persons or authorities whose conduct comes into consideration before courts of law in cases arising before them for decision. In State of U. P. v. Mohd. Naim ((1964) 2 SCR 363, 374 : AIR 1964 SC 703 : 1964 (1) Cri LJ 549) it was held as follows :

If there is one principle of cardinal importance in the administration of justice, it is this : the proper freedom and independence of Judge and Magistrate must be maintained and they must be allowed to perform their functions freely and fearlessly and without undue interference by anybody, even by this Court. At the same time it is equally necessary that in expressing their opinions Judges and Magistrates must be guided by considerations of justice, fair play and restraint. It is not infrequent that sweeping generalisations defeat the very purpose for which they are made. It has been judicially recognised that in the matter of making disparaging remarks against persons or authorities whose conduct comes into consideration before courts of law in cases to be decided by them, it is relevant to consider (a) whether the party whose conduct is in question is before the court or has an opportunity of explaining or defending himself; (b) whether there is evidence on record bearing on that conduct justifying the remarks; and (c) whether it is necessary for the decision of the case, as an integral part thereof, to animadvert on that conduct. It has also been recognised that judicial pronouncements must be judicial in nature, and should not normally depart from sobriety, moderation and reserve.

This ratio has been followed in R. K. Lakshmanan v. A. K. Srinivasan ((1976) 1 SCR 204 : AIR 1975 SC 1741 : (1975) 2 SCC 466 : 1975 SCC (Cri) 654) and Niranjan Patnaik v. Sashibhusan Kar ((1986) 2 SCC 569 : 1986 SCC (Cri) 196) (to which one of us was a party). Judged in the light of the above tests, it may be seen that none of the tests is satisfied in this case. It is indeed regrettable that the High Court should have lightly passed adverse remarks of a very serious nature affecting the character and professional competence and integrity of the appellant in purported desire to render justice to respondents 2 and 3 in the petition filed by them for expunction of adverse remarks made against them.

15. The appeal is, therefore, allowed and the adverse remarks against the appellant in the order of the High Court which have been extracted above will stand expunged from the order under appeal.

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