SUPREME COURT OF INDIA

State of Karnataka

Vs.

Madesha

(Dr. Arijit Pasayat and P.P. Naolekar JJ.)

01.08.2007

JUDGMENT

Dr. ARIJIT PASAYAT, J.

1. Challenge in this appeal is to the order passed by a Division Bench of the Karnataka High Court directing acquittal of the respondents.

2. In this appeal, a notice limited to applicability of Section 201 of the Indian Penal Code, 1860 (in short the 'IPC') was issued by this Court. The High Court came to the conclusion that Section 201 IPC can only be applied to situations wherein an offence has taken place and the accused did some act towards screening the offenders and more importantly destroying or tampering with the evidence. When no offence was established to have been committed, Section 201 will not be applicable.

3. This Court had occasion to deal with such plea. In V.L.

Tresa v. State of Kerala (2001 (3) SCC 549) it was noted as follows:

"9. The issue thus pertains to the maintainability of conviction and sentence under Section 201. The law on this score is well settled since the decision in Kalwati case wherein Chandrasekhara Aiyar, J, speaking for the Bench observed:

"21. But there can scarcely be any doubt that she must have witnessed the murder of her husband lying next to her on a charpai. Shibbi who was at a distance of 18 feet was roused by the sound of a sword attack. Kalawati must have woken up also at least during the course of the assault if not at its commencement, several injuries having been inflicted in succession.

When Shibbi woke up, Kalawati's bed was empty, and she was found in a room nearby and not at the place of occurrence. She trotted out an elaborate story of dacoity, which cannot be accepted as true. Even if, in terror she ran away from her bed and stood at a distance, she is almost sure to have known who was the offender, unless he had his face muffled. The first version she gave to the police head constable when he appeared on the scene immediately after the occurrence is, we think, false, and we are of opinion that she knew or believed it to be false. The borderline between abetment of the offence and giving false information to screen the offender is rather thin in her case, but it is prudent to err on the safe side, and hold her guilty only of an offence under Section 201 Penal Code, as the learned Sessions Judge did."

xx xx xx 11. Section 201 IPC reads as below:

"201. Causing disappearance of evidence of offence or giving false information to screen offender- Whoever, knowing or having reason to believe that an offence has been committed, causes any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gives any information respecting the offence which he knows or believes to be false, (if a capital offence) shall, if the offence which he knows or believes to have been committed is punishable with death, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine;

(if punishable with imprisonment for life) and if the offence is punishable with imprisonment for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine;

(if punishable with less than ten years' imprisonment) and if the offence is punishable with imprisonment for any term not extending to ten years, shall be punished with imprisonment of the description provided for the offence, for a term which may extend to one-fourth part of the longest term of the imprisonment provided for the offence, or with fine, or with both."

12. Having regard to the language used, the following ingredients emerge:

(I) commission of an offence;

(II) person charged with the offence under Section 201 must have the knowledge or reason to believe that the main offence has been committed;

(III) person charged with the offence under Section 201 1PC should have caused disappearance of evidence or should have given false information regarding the main offence; and (IV) the act should have been done with the intention of screening the offender from legal punishment.

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14. Having regard to the language used, mere suspicion would not be sufficient. There must be available on record cogent evidence that the accused has caused the evidence to disappear in order to screen another known or unknown.

The foremost necessity being that the accused must have the knowledge or have reason to believe that such an offence has been committed. This observation finds support in the oft-cited decision of this Court in Palvinder Kaur v. State of Punjab. Further, in Roshan Lal v. State of Punjab, this Court in AIR para 12 of the Report observed:

"(12) Section 201 is somewhat clumsily drafted but we think that the expression 'knowing or having reason to believe' in the first paragraph and the expression 'knows or believes' in the second paragraph are used in the same sense. Take the case of an accused who has reason to believe that an offence has been committed. If the other conditions of the first paragraph are satisfied, he is guilty of an offence under Section 201. If it be supposed that the word 'believes' was used in a sense different from the expression 'having reason to believe', it would be necessary for the purpose of inflicting punishment upon the accused to prove that he 'believes' in addition to 'having reason to believe'. We cannot impute to the legislature an intention that an accused who is found guilty of the offence under the first paragraph would escape punishment under the succeeding paragraphs unless

some additional fact or state of mind is proved."

4. The position was re-iterated in Sou. Vijaya @ Baby v.

State of Maharashtra (2003 (8) SCC 296) as follows:

"6. Section 201 IPC presents a case of accusations after the fact. "An accessory after the fact" said Lord Hale, "may be, where a person knowing a felony to have been committed, receives, comforts, or assists the felon". (See 1 Dale 618.) Therefore, to make an accessory ex post facto it is in the first place requisite that he should know of the felony committed. In the next place, he must receive, relieve, comfort, or assist him. And, generally any assistance whatever given to a felon to hinder his being apprehended, tried or suffering punishment, makes the assister an accessory. What Section 201 requires is that the accused must have had the intention of screening the offender. To put it differently, the intention to screen the offender, must be the primary and sole object of the accused. The fact that the concealment was likely to have that effect is not sufficient, for Section 201 speaks of intention as distinct from a mere likelihood.

7. Section 201 punishes any person, who knowing that any offence has been committed, destroys the evidence of that offence or gives false information in order to screen the offender from legal punishment. Section 201 is designed to penalize "attempts to frustrate the course of justice".

5. In this case, however, there was no evidence on record to attribute knowledge of the commission of offence to the accused. Therefore, it was held that Section 201 IPC cannot be applied.

6. Learned counsel for the State has submitted that evidence of PW-26 establishes that the accused persons A-3 and A-4 had thrown the body of the deceased to fire. It was submitted that there was no question of exercising the right of private defence vis-`-vis the deceased and, therefore, the order passed by the High Court cannot be maintained.

7. Learned counsel for the respondents on the other hand supported the order of acquittal.

8. Coming to the question whether the plea relating to exercise of right of private defence can be made available vis-`- vis the deceased who had no role to play in the dispute, the provisions of Section 106 IPC needs to be noted. It reads as follows:

"106-Right of private defence against deadly assault when there is risk of harm to innocent person- If in the exercise of the right of private defence against an assault which reasonably causes the apprehension of death, the defender be so situated that he cannot effectually exercise that right without risk of harm to an innocent person, his right of private defence extends to the running of that risk."

9. Therefore, the possibility of the right of private defence vis-`-vis the deceased has to be considered in the background of what was stated in Section 106 IPC. It has been held that A-1 to A-5 were not the members of any unlawful assembly. A specific stand was that A-3 and A-4 had thrown the body of the deceased to fire and reliance was placed on the evidence of PW-26.

10. It is to be noted that there can be no dispute that Section 201 would have application even if the main offence is not established in view of what has been stated in V.L. Tresa's and Sou. Vijaya's cases (supra). PW-26 who was the star witness was not believed by the trial Court and the High Court and it was held that his evidence was not cogent and credible.

Therefore, while clarifying the position in law we find no scope for interference with the order of the High Court in view of the specific findings recorded regarding the role played by A-3 and A-4.

11. The appeal fails and is dismissed.