State Of Karnataka vs L. Muniswamy & Ors on 3 March, 1977

Equivalent citations: 1977 AIR 1489, 1977 SCR (3) 113, AIR 1977 SUPREME COURT 1489, (1977) 2 SCC 699, (1977) 2 SC WR 327, 1977 CRI APP R (SC) 143, 1977 SCC(CRI) 404, 1977 MADLJ(CRI) 428, (1977) 3 SCR 113, (1977) 2 SCJ 145, ILR (1977) 1 KANT 617

Author: Y.V. Chandrachud

Bench: Y.V. Chandrachud, P.K. Goswami, P.N. Shingal

PETITIONER:
STATE OF KARNATAKA

Vs.

RESPONDENT:
L. MUNISWAMY & ORS.

DATE OF JUDGMENT03/03/1977

BENCH:
CHANDRACHUD, Y.V.
BENCH:
CHANDRACHUD, Y.V.
GOSWAMI, P.K.
SHINGAL, P.N.

CITATION:
1977 AIR 1489 1977 SCR (3) 113
1977 SCC (2) 699
CITATOR INFO :
E 1980 SC 962 (7,63,64,110)
D 1992 SC1894 (10)

ACT:
Code of Criminal Procedure, 1973 (Act II of 1974)--S.482 (s. 561 A of -1899 Code)--Inherent power of the High Court to quash proceedings at the stage of framing of charges--Explained.

HEADNOTE:
The apellants are accused Nos. 10, 13, 14, 15 and 17 to 20 before the Sessions Court for trial under various offences, viz., s. 324, 326, and 307 read with s. 34 of the Penal Code. While discharging accused Nos. 11, 12 and 16 and 17

of the Criminal Procedure Code 1973, on 8.8.1975, the learned Sessions Judge observed that there was "some material to hold that the remaining accused have had something to do with the incident which occurred on 6.12.1973 in I.T.I. Colony, Banglore" and 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 person . Two revision petitions were filed against this order, one by accussed Nos. 10, 13, 14 and 15 and the other by accused Nos. 17 to 20. These petitions were allowed by the High Court on the view that there was no sufficient ground for proceeding against the petitioners before it. The High Court accordingly quashed the the proceedings in regard to them.

In appeal by Special Leave, the appellant State contended: (1) The High Court ought not to have exercised its power to quash the proceedings against the respondent 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. (ii) In 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.

Dismissing the appeal, the Court

HELD: (1) The High Court was justified in holding that for meeting the ends of justice the proceedings against the respondents ought to be quashed. It would be a sheer waste of public time and money to permit the proceedings to continue against the respondent, when there is no material on the record on which any tribunal could reasonably convict them for any offence connected with the assault on the complainant. This is one of these cases in which a charge of conspiracy is hit upon for the mere reason that evidence of direct involvement of the accused is lacking. [118 A, D-E]

(2) 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 proceedings 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. [117 F-G]

(3) Considerations justifying the exercise of inherent powers for securing the ends of justice vary from case to case and a jurisdiction as wholesome as the one conferred by s. 482 ought not to be encased within the strait-jacket of a rigid formula. The three instances' cited in the Judgment in R.P. Kapoor Vs. The State of Punjab, [1960] 3 SCR 388, 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. [118 F-H, 119 A]

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R.P. Kapur vs. State of Punjab [1960] 3 SCR 338 explained..

(4) 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. [119 B]

(5) While considering 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 said reasonably to be possible. [119 B-E]

Vadilal Panchal v. D. D. Ghadigaonkar AIR 1960 SC 1113; Century Spinning & Manufacturing, Co. v. State of Maharashtra AIR 1972 SC 545 applied.

(6) In the instant case the High Court is right in its view that the materials on which the prosecution proposed 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. [119 E-F]

(7) The grievance that the High Court interfered with the Sessions' Court's order prematurely is not justified. The case was adjourned by the Sessions Judge 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 the basis of the material before him.

[116 G-H]

(8) The object of section 227 of the Code of Criminal Procedure, Act 2 of 1974, is to enable the superior Court to examine the correctness of the reasons for which the Sessions Judge has held that there is not sufficient ground for proceeding against the accused. [117 C-D]

(9) The High Court is entitled to go into the reasons given by the Sessions Judge in support of his order and to determine for itself whether the order is justified by the facts and circumstances of the case. [117 D-E] .

(10) In the exercise of the wholesome power u/s 482 of the Act 2 of 1974 (s. 561 of 1898 Code), 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. [117 E-F]

Observations:

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. 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. [117

G-H]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal Nos. 345-346 of 1976.

(Appeals by Special Leave from the Judgment and Order dated 30-9-1975 of the Karnataka High Court in Crl. Peti- tions Nos. 248 and 253 of 1975).

D. Mookherjee, and B.R.G.K. Achar, for the Appellant, Frank Anthony, K.B. Rohtagi and M.N. Kashyap, for the Respondents.

The Judgment of the Court was delivered by CHANDRACHUD, J. These two appeals by social leave arise out of a judgment dated september 30, 1975 rendered by the High Court of Karnataka in Criminal Petitions Nos. 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 respond- ents.

The incident out of which these proceedings arise took place on December 6, 1973 in the Central Avenue of the Indian Telephone Industries Colony, Bangalore. Thyagaraja Iyer, accused No. 1, who was an employee of the Indian' Telephone Industries 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 re- solved to support his cause. The case of the prosecution is that accused Nos. 1 and 8 to 20 conspired to commit the murder of the complainant and that in pursuance of that conspiracy accused Nos. 1, 8 and 10 hired accused Nos. 2, a notorious criminal, to execute the object of the conspiracy. Accused No. 2 in turn engaged the services of accused Nos. 3 to 7 and eventually on the morning of December 6, 1973 accused Nos. 1 to 6 are alleged to have assaulted the complainant with knives, thereby committing offences under ss. 324, 326 and 307 read with s. 34. of the Penal Code. Accused No. 2 was charged separately under s. 307 or in the alternative under s. 326, Penal Code.

By his order dated October 23, 1974 the learned Metro- politan Magistrate, V Court, Bangalore directed all the 20 accused to take their trial before the Sessions Court for offences under s. 324, 326 and 307 read with s. 34 of the Penal Code.

At the commencement of the trial before the learned First Additional District and Sessions 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 committal order did not preclude the Sessions Court from framing a new charge under s. 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 prosecu- tion 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 s. 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 tram- melled 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. lie held that there was no case against accused Nos. 11, 12 and 16 and that they were therefore entitled to be discharged. By an order dated August 8, 1975 the, learned Judge. discharged those three. accused in the. exercise of his powers under s. 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 Karna- taka. We are not concerned with that order in these ap- peals. After discharging accused Nos. 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 6-12-1973 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." Two revision petitions were filed against this order, one by accused Nos. 10, 13, 14 and 15 and the other by accused Nos. 17 to 20. Those petitions were allowed by the High'Court on the view that there was no sufficient ground for proceeding against the petitioners before it. The High Court accordingly quashed the proceedings in regard to. them which has led to these appeals.

Mr. Mookerjee who. appears on behalf of the State of Karnataka contends that the High Court ought not to have exercised its; powers 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 ex- traordinary powers, thereby preventing the Trial Court from examining the sufficiency of the material which it 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 proceeding against the respondents. But a careful reading of the Sessions Courts judgment would reveal that while discharg- ing accused Nos. 11, 12 and 16 it came, to the conclusion that insofar as the other accused were. concerned there was some material to hold that they were connected with the incident. The case was, therefore, adjourned by the Court for flaming specific charges against them. In other words, the learned Judge adjourned the case not for deciding wheth- er 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 the basis of the material before him. The grievance therefore that the High Court interfered with the sessions Court's order prematurely is not justified.

The second limb of Mr. Mookerjee's argument is that in 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 legiti- mately 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 there- with, and after hearing the submissions of the accused and the prosecution in this be- half, 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 XVIII called "Trial Before a Court of Sessions". It is clear from the provi- sion 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 re- corded, that there is not sufficient ground for proceeding against the accused. The object of the provision which requires the Sessions Judge to record his reasons is to enable the superior court to examine the correctness of the reasons for which the Sessions Judge has held that there is of is not sufficient ground for proceeding against the accused. The High Court therefore is entitled to go into the reasons given by the Sessions 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 s. 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 ends of justice."

In the, exercise of this. whole some power, the High Court is entitled to quash a proceeding if it comes to the conclu- sion 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 salu- tary public purpose which is that a court proceeding ought not to be permitted to degenerate into 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 pur- pose 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.

Let us then turn to the facts of the case to see, wheth- er the High Court was justified in holding that the proceed- ings 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 respond- ents with the crime, howsoever, skilfully one may attempt to weave those bits into a presentable whole. There is no material on the record on which any tribunal could reason- ably 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 No. 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 ought to be quashed.

Learned counsel for the State Government relies upon a decision of this Court in R.P. Kapur v. The State of Punjab (1) in which it was held that in the exercise of its inher- ent jurisdiction under s. 561A of the Code of 1898, the High Court cannot embark upon an enquiry as to whether the evi- dence in the case is reliable or not. That may be so. But in the instant case the question is not whether any reli- ance can be placed on the veracity of this or that particu- lar 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(1) 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. Considerations justifying the exercise of inherent powers for securing the ends of justice naturally vary from case to (1) [1960] 3 S.C.R. 388 case and a jurisdiction as wholesome as the one conferred by s. 482 ought not to be encased within the strait-jacket of a rigid formula.

On the other hand, the decisions cited. by learned counsel for the respondents in Vadilal Panchaly. D.D. Gha- digaonkar(1) and Cen-tarS, Spinning & Manufacturing Co. v. State of Maharashtra(2) show that it is wrong to say that at the stage of flaming 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 judi- cially whether the

material warrants 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. (supra) 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 art extent section 227 of the new Code contains an analogous power which is conferred on the Sessions Court. It was held by this Court, while considering the true scope of s. 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 form his judgment. These decisions 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 said reasonably to be possible. 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 inade- quate 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 detract- ing from the case of the prosecution, to. which we have not applied our mind, as against accused Nos. 1 to 9. The case against those accused must take its due and lawful course. The appeals are accordingly dismissed.

S.R. Appeals dismissed.

(1) A.I.R. 1969 S.C. 1113.

(2) A.I.R. 1972 S.C. 545.

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