

Emperor Vs. Janke Gopal Koli

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Court : Mumbai

Decided On : Sep-18-1935

Reported in : AIR1936Bom35; (1935)37BOMLR967; 160Ind.Cas.689

Judge : Broomfield and ;Divatia, JJ.

Appeal No. : Criminal Reference No. 106 of 1935

Appellant : Emperor

Respondent : Janke Gopal Koli

Judgement :

Broomfield, J.

1. There is a case under Section 324 of the Indian Penal Code proceeding in the Court of the Second Class Magistrate at Bassein. One Pedru, the person alleged to have been injured, instructed an advocate of this-Court Mr. Kondkar to appear for him. The case was sent up by the Police, and a police-officer who is styled the Court Jamadar (it appears that he is a first grade head constable) was also present in Court, and to begin with the prosecution was conducted partly by Mr. Kondkar and partly by the Court Jamadar. Later on, when the witnesses for the defence were to be cross-examined, the Court Jamadar claimed the right to conduct the prosecution for the rest of the case instead of Mr. Kondkar. This claim was upheld by the Magistrate who declined to allow Mr. Kondkar to take any

further part in the; case. Then an application was made on Pedru's behalf to the Sessions Judge. He is of opinion that the Magistrate had no right to stop Mr. Kondkar conducting the prosecution, and he refers the case to this Court recommending that the Magistrate should be directed to allow Mr. Kondkar to appear and conduct the prosecution from the stage at which he was stopped.

2. In our opinion the point in issue is settled by a certain Government resolution which was not known to the trial Magistrate nor to the learned Sessions Judge at the time when he referred the case, though he subsequently discovered it and mentioned it in a supplementary letter. The resolution which is dated. February 6, 1923, and is No. 179 in the Home Department is in these terms :-

Under the provisions of section 495 of the Criminal Procedure Code, 1898, and in supersession of the orders contained in Government Resolution No, 179 of the 6th May 1922, the Governor in Council is pleased to prescribe that no prosecution in a Magistrate's Court shall be conducted by a Police Officer below the rank of 2nd Grade Head Constable.

That obviously has reference to the first part of Clause (I) of Section 495 and it means-that a police-officer below the rank of a second grade head constable cannot conduct a prosecution even with the Magistrate's permission. Then the resolution goes on in para 2 to set out an amendment which has been made in the Bombay District Police Manual. The rule in the manual was amended as follows :-

Subject to the condition contained in sub-cl. 4 of Section 495 of the Criminal Procedure Code, 1898, a prosecution in a Magistrate's Court may be conducted by a Police Officer not lower in rank than a second grade Head Constable. The sanction of the District Magistrate shall be obtained before any prosecution is withdrawn under Clause 2 of Section 495.

Now the words 'a prosecution may be conducted' are capable of two interpretations. They might mean that officers of the rank indicated are authorised to conduct prosecutions provided they obtain the permission of the Magistrate under sub.-s. (1) of Section 495. On the other hand the words may also mean that this rule made by Government Resolution empowers the police-officers who are

specified to conduct prosecutions. In our opinion the latter appears to be the correct construction of the rule. In the first place it would be superfluous for Government to make a rule that officers not below the prescribed rank may be permitted by the Court to conduct prosecutions, for that is stated in the section. In the second place it is important to compare the resolution which I have just set out with the preceding Government Resolution No. 179 of May 6, 1922, which is superseded by the later one. The rule laid down in that resolution was as follows :-

Police Officers of and above the rank of Sub-Inspectors have been empowered under Section 495 (2) to conduct prosecution in a Magistrate's Court subject to the restriction in Clause (4) of Section 495, Criminal Procedure Code.

(2) Magistrates may permit Head Constables, 1st Grade, to conduct cases in their Court.

(3) Police Officers of and above the rank of Sub-Inspectors are also competent under Section 495 (2) of the Criminal Procedure Code to withdraw from a prosecution.

3. That rule, therefore, empowered certain police-officers, Sub-Inspectors and those of higher rank, to conduct prosecutions, and that clearly had reference to the latter part of Sub-section (1) of Section 495 and the rule meant that those officers were entitled to conduct prosecutions without permission of the Magistrate and it then went on to say that officers of lower rank, that is 1st grade head constables, could conduct prosecutions with the Magistrate's permission.

4. Now, turning to the later resolution, if we were to accept the construction that the words ' a prosecution may be conducted' in the new rule merely mean that the officers referred to may conduct provided the Magistrate gives permission, then there is no provision in the rule empowering any police-officers,, however high their rank, to conduct prosecutions without the Magistrate' permission. It seems to us to be extremely unlikely that Government intended by this new rule to deprive the higher police-officers of the authority which they had possessed before. The intention rather seems to have been to extend that authority to all police-officers of rank not lower than that of 2nd grade head constables. On that view of the

construction of the orders of Government the Court Jamadar in this case is an officer generally empowered by the local Government to conduct prosecutions and is therefore an officer entitled to conduct the prosecution without the permission of the Magistrate. When there is an officer who has that power present in Court, we think that it cannot be open to the Magistrate to give permission to some other person to conduct the prosecution either instead of or along with him without his consent.

5. There is one point raised in the Sessions Judge's supplementary letter which I should mention. ' He refers to the new Government Resolution but expresses the opinion that it should not be construed as empowering' police-officers not lower in rank than a second grade head constable to conduct prosecutions because of the provision at the end of the rule that the sanction of the District Magistrate shall be obtained before any prosecution is withdrawn under Sub-section (2) of Section 495. That clause provides that 'any such officer" (i.e., apparently an officer generally or specially empowered by the local Government in this behalf) shall have the like power of withdrawing from the prosecution as is provided by Section 494, and the provisions of that section shall apply to any withdrawal by such officer. In view of this provision in the statute there might no doubt be some difficulty and possibly some question as to the validity of the provision in the Government rule that the sanction of the District Magistrate shall be obtained. That, however, is not a matter with which we are concerned in this case. The learned Sessions Judge thinks that this requirement of obtaining the sanction of the District Magistrate indicates that Government did not intend to empower these police-officers to conduct prosecutions, That view, however, seems to be untenable, because if we look at the provisions of Sub-section (2) of Section 495, we see that it is only such officers as are empowered by Government to conduct prosecutions who could be entitled to withdraw a case, either with or without permission. restriction, therefore, which is placed upon their power to withdraw does not indicate that they are not intended to be empowered to conduct prosecutions.

6. For these reasons we hold that there was nothing illegal in the procedure followed by the learned Magistrate and we make no order on this reference.

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