

In Re: Barjorji Framji Bharucha

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Court : Mumbai

Decided On : Sep-23-1931

Reported in : AIR1932Bom196; (1932)34BOMLR258

Judge : Patkar and ;Barlee, JJ.

Appeal No. : Criminal Application for Revision No. 205 of 1931

Appellant : In Re: Barjorji Framji Bharucha

Judgement :

Patkar, J.

1 In this case the applicants were proceeded against under Section 107 of the Criminal Procedure Code on a complaint filed on June 10,1931, by Mr. Antia, the Deputy Superintendent of Police, who was deputed by the Superintendent of Police to proceed to Udwada and inquire into the affair. It is alleged that Mr. Antia arrived at Udwada on June 7, 1931, and held an investigation, in the course of which he recorded statements of several persons, and as a result of his investigation he decided to take proceedings against the applicants under Section 107 of the Criminal Procedure Code.

2. In the lower Court, after the examination of certain witnesses, an application was made to get copies of the statements made by the witnesses to Mr. Antia in the investigation which he is alleged to have made. The learned Magistrate

refused to give copies on the ground that Section 162 of the Criminal Procedure Code did not apply.

3. It is urged on behalf of the applicants that a person against whom proceedings are taken under Section 107 of the Criminal Procedure Code is an accused person according to the ruling in *Baba Yashwant Desai, In re* I.L.R. (1911) Bom. 401 :13 Bom. L.R. 505 that according to the decision in the Madras High Court in the case of *Venkatachinnayya v. King-Emperor* I.L.R. (1920) Mad. 511 the proceedings amount to a trial within the meaning of Section 350 of the Criminal Procedure Code, and that according to Section 117 of the Criminal Procedure Code the procedure in the present enquiry is the same as provided in summons cases. It is urged, therefore, that Mr. Antia having taken the statements during the investigation, Section 162 applies, and copies of the statements ought to be furnished to the accused,

4. It is urged on the other hand that a person against whom proceedings under Chapter VIII are taken is not a person accused of an offence within the meaning of Section 250 of the Criminal Procedure Code according to the decision in *In re Govind Hanmant* I.L.R. (1900) Bom. 43 : 2 Bom. L.R. 339

5. The question, therefore, arises whether Section 162 of the Criminal Procedure Code applies to the statements taken by the investigating officer in the present case. Section 162 applies to an investigation under Chapter XIV of the Criminal Procedure Code which relates either to the commission of a cognizable offence or the commission of a non-cognizable offence. Section 154 of the Criminal Procedure Code relates to the commission of a cognizable offence and the police-officer has the power to investigate a cognizable offence under a 156 of the Code after recording the information under a 154. In respect of a non-cognizable offence, the information shall be kept in a book and the police-officer is not entitled to investigate into a non-cognizable offence without the order of a Magistrate of the first or second class having power to try such case or commit the same for trial, or of a Presidency Magistrate. The investigation, therefore, under Section 162 of the Criminal Procedure Code refers to an investigation with regard to the commission of either a non-cognizable offence in which order is given by a Magistrate to a

police-officer to inquire, or a cognizable offence in which a police-officer is entitled to make an investigation without the order of a Magistrate.

6. Chapter VIII of the Criminal Procedure Code under which the present proceedings were started falls under Part IV relating to the prevention of offences, Section 107 says that whenever a Presidency Magistrate, District Magistrate, Sub-Divisional Magistrate, or Magistrate of the first class is informed that any person is likely to commit a breach of the peace or disturb the public tranquillity, or to do any wrongful act that may probably occasion a breach of the peace, or disturb the public tranquillity, the Magistrate may require such person to show cause why he should not be ordered to execute a bond. There is no provision in Chapter VIII for making any preliminary investigation by the police with regard to proceedings under Chapter VIII. The foundation of jurisdiction for action under Section 107 of the Criminal Procedure Code is credible information from a police-officer or a private person. The only provision for investigation by the police in such cases appears is Clause (b) of Section 51 of the Bombay District Police Act (Bom. IV of 1890). The investigation, therefore, which was made in the present case cannot fall under Chapter XIV of the Criminal Procedure Code.

7. The first clause of Section 162 of the Criminal Procedure Code lays down that no statement made by any person to a police-officer in the course of an investigation under this Chapter (i.e. Chapter XIV) shall, if reduced into writing, be signed by the person making it and it shall not be used for any purpose at any inquiry or trial in respect of any offence under investigation at the time when such statement was made. We are concerned in the present case with the proviso to Section 162 which lays down that, when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, the Court shall, on the request of the accused, refer to such writing and direct that the accused be furnished with a copy thereof, in order that any part of such statement, if duly proved, may be used to contradict such witness in the manner provided by Section 145 of the Indian Evidence Act. 'Such inquiry or trial' means inquiry or trial in respect of any offence under investigation at the time when such statement was made. The learned Government Pleader urges that a distinction is made in the amended Criminal Procedure Code between a person

accused of an offence and a person against whom proceedings are instituted under Chap, VIII of the Code, and reliance is placed on the amended Section 340 and Sub-section (8) of Section 488 and Section 436, which corresponded to old Section 437, and Sections 107, 112 and 117 of the Code, Assuming that the applicants are accused within the meaning of the proviso, it must appear that a witness is called in for the prosecution in the inquiry or trial in respect of any offence under investigation at the time when such statement is made. The investigation under Section 162 refers to the commission of either a cognizable or a non-cognizable offence which was under investigation at a time when such statement was made. Even if the words 'in respect of' be read in a wide sense as being 'in relation to', still the difficulty arises whether the present inquiry can be said to be in respect of any offence under investigation at a time when such statement was made. It does not appear that any statement can be made at the time of the investigation under Chapter XIV except in respect of the commission of any offence whether cognizable or non-cognizable. Assuming that the investigation was in respect of an offence under Section 296, Indian Penal Code, as suggested on behalf of the applicants, the present inquiry is not in respect of the offence under investigation at the time the alleged statements were made. There cannot be an investigation of a contemplated offence as Chapter XIV relates to investigation of the commission of a cognizable offence under Section 156 and the commission of a non-cognizable offence under the order of a Magistrate under Clause (2) of Section 155 of the Criminal Procedure Code. If there was any investigation in this case it must have been under Section 51(1)(b) of the Bombay District Police Act, which lays down the obligatory duty of every police-officer to obtain intelligence concerning designs to commit cognizable offences and take such steps as may be best calculated to prevent commission of offences. I think, therefore, that the investigation, if any, made with respect to proceedings under Chapter VIII does not fall within the investigation relating to offences under Chapter XIV of the Criminal Procedure Code and, therefore, Section 162 does not apply to the statement taken in the investigation, if any, made under Section 51(1)(b) of the Bombay District Police Act (Bom. IV of 1890).

8. It is further urged on behalf of the accused that, when Mr. Karanjawalla was examined, he refused to answer any question with regard to the letter or report

made by him to the Sub-Inspector, and that the learned Magistrate wrongly held that the letter fell within the protection afforded by Section 124 of the Indian Evidence Act. Section 124 says that no public officer shall be compelled to disclose communications made to him in official confidence, when he considers that the public interests would suffer by the disclosure. Mr. Karanjawalla is not a person to whom the communication was made; he was a person by whom the communication was made. Further, Mr. Karanjawalla for the purposes of this case must be considered to be a private person and the letter written by him to the Sub-Inspector cannot be said to be communication made in official confidence, and it has not been made clear to us how the public interests would suffer by the disclosure. We think, therefore, that the learned Magistrate erred in holding that the communication made by Mr. Karanjawalla to the Sub-Inspector fell within Section 124 of the Indian Evidence Act. Mr. Karanjawalla, when under examination, can be asked to depose to the report, or the Sub-Inspector, when examined, can be asked to refer to the communication made by Mr. Karanjawalla. We think, therefore, that neither Mr. Karanjawalla nor the Sub-Inspector can seek protection under Section 124 of the Indian Evidence Act.

9. This case comes before us at an interlocutory stage and generally this Court does not interfere at an interlocutory stage. But as a rule was issued in the present case and in order to avoid further arguments later on, we think it is desirable that the points argued before us should be decided even at an interlocutory stage.

Barlee, J.

10. I agree. Some inhabitants of Udwada made a complaint that they had been disturbed in their religious worship by the conduct of other people in the same town, and in consequence Mr. Antia, Deputy Superintendent of Police, was sent to Udwada where he made inquiries. He examined several persons as witnesses and eventually he gave information to the Magistrate which resulted in proceedings against the applicants under Chapter VIII of the Criminal Procedure Code so that security might be obtained from them to keep the peace.

11. In the course of the trial the question arose as to whether the applicants were entitled to copies of the statements made to Mr. Antia. They claimed this privilege under Section 162 of the Criminal Procedure Code. The learned Magistrate held that Section 162 had no reference to the proceedings under Chapter VIII and refused the request.

12. The first question we have to decide is whether statements made to Mr. Antia by the witnesses were statements made to a police-officer in the course of an investigation under Chapter XIV of the Criminal Procedure Code. It has been argued, first of all, by Mr. Thakor that Mr. Antia's investigation must have been an investigation under Chapter XIV, inasmuch as a police-officer has no power to make any investigation except under this Chapter. With this I am unable to agree, since Section 51 (1)(b) of the Bombay District Police Act imposes a duty on police-officers to make inquiries for the purposes of prevention of breaches of the peace, amongst other things, and under that section Mr. Antia had ample power to make an investigation. Of course, he may not have had all the powers given to police-officers under the Criminal Procedure Code, but that does not mean to say that his investigation was illegal, or, in the alternative, that it must have been an investigation under Chapter XIV of the Criminal Procedure Code.

13. This point, however, is not of much importance because, as Mr. Thakor has pointed out, the complaint made by the Mobeds of Udwada appears to have been something in the nature of a complaint of an offence under Section 298 of the Indian Penal Code, and it is possible that the inquiry made by Mr. Antia at first was an inquiry into the commission of an offence. What we have to interpret is the proviso to Section 162 and to decide whether the magisterial inquiry under Chapter VIII is in respect of the offence under investigation by Mr. Antia, assuming that he was investigating an offence falling under Section 296 of the Indian Penal Code. In support of his claim the learned Counsel has put forward two arguments. The first is that the word 'offence' in Section 162 of the Criminal Procedure Code will include a contemplated offence. This at first sight seemed possible; but there is this objection that the inquiry under Chapter XIV was not as regards the contemplated offence but as regards the offence which was alleged to have been committed.

14. The second argument is that the words 'in respect of any offence' must be given a very liberal interpretation to include not only the offence which is the subject-matter of the magisterial inquiry, that is, the offence charged, but any offence which has been investigated under Chapter XIV, if the magisterial inquiry has been the outcome of the investigation. I can agree that the 'accused' in a Chapter VIII case is in danger of imprisonment and should have every consideration which is given to a person accused of a substantive offence; but I cannot agree that he is actually entitled to the benefit of the proviso to Section 162 unless by a correct interpretation of that section he can be brought under it. And I do not think we can interpret the section so widely without doing violence to its proper meaning. It seems to me clear that an accused can have the benefit of the proviso only if the magisterial inquiry is to establish his guilt or innocence of the offence which was the subject of the investigation and not, as here, when the offence investigated is not the *factum probandum* at the trial but only evidence to establish it.