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State of Mysore Vs. Anniah

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Court : Karnataka

Decided On : Sep-14-1956

Reported in : AIR1957Kant38; AIR1957Mys38; 1957CriLJ463; ILR1956KAR301

Judge : Padmanabhiah, J.

Acts : Prevention of Corruption Act, 1947 - Sections 5(2) and 5A; Indian Penal Code (IPC), 1860 - Sections 116, 161, 165 and 165A; Code of Criminal Procedure (CrPC) , 1898

Appeal No. : Criminal Revn. Petn. No. 149 of 1956

Appellant : State of Mysore

Respondent : Anniah

Advocate for Def. : P. Raghavendra Rao, Adv.

Advocate for Pet/Ap. : Asst. Adv. General

Judgement :
ORDER

1. This is a revision petition preferred by the Petitioner State Government against the order of the learned Special Judge, Mysore Division, in Misc. Case No. 23/54 rejecting as not maintainable the charge-sheet placed by the Police of Channaraya-patna against the respondent-accused.

2. The facts that have given rise to this petition are briefly as follow:

3. The Police of Channarayapatna placed a charge-sheet against the accused under Section 161 read with Section 116,1.P.C., in the Court of the learned Special First Class Magistrate, Hassan, alleging that on 3-10-53 the respondent-accused offered a bribe of Rs. 25 to the Sub-Inspector of Police of Nuggenahalli as illegal gratification in return for some favour to be shown by the said Sub-Inspector and that the respondent-accused thereby committed an offence under Section 161 read with Section 116, I.P.C.

4. The case was transferred to the file of the Additional First Class Magistrate as per orders of the. District Magistrate and it was subsequently disclosed that the learned Additional First Class Magistrate had no jurisdiction to try these offences and thereupon the case was transmitted to the Special Judge for disposal according to law. The respondent-accused filed an application, I.A.I, before the learned Special Judge praying for the rejection of the charge-sheet on the ground that the charge was groundless. This contention found favour with the learned Special Judge and he accordingly rejected the charge-sheet and as against that order, this revision petition is filed.

5. I am of opinion that the order of the learned Special Judge cannot be sustained. The grounds on which the charge-sheet has been rejected by the learned Special Judge are that there has not been investigation of the case by an officer prescribed under Section 5-A (c) of the Prevention of Corruption Act,that according to that provision it is only a DeputySuperintendent of Police (who is the same as Assistant Superintendent of Police in this State) that could investigate into an offence of his type that too with the permission of a First Class Magistrate, that in this case the investigation has been conducted by a Sub-Inspector of Police, that no officer below the rank of an Assistant Superintendent of Police can investigate into such offences and that the investigation is illegal. I am of opinion that the learned Special Judge has not correctly read or interpreted Section 5-A of the Prevention of Corruption Act.

6. The relevant portion of the Section 5-A reads thus: 'Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), no police

officer below the rank-

(a) in the presidency towns of Madras and Calcutta, of an Assistant Commissioner of Police,

(b) in the presidency town of Bombay of a Superintendent of Police, and

(c) elsewhere, of a Deputy Superintendent of Police, shall investigate any offence punishable under Section 161, Section 165 or Section 165-A of the Indian Penal Code (Act XLV of 1860) or under sub-s. (2) of Section 5 of this Act, without the order of a Presidency Magistrate or a Magistrate of the First Class, as the case may be, or make any arrest therefor without a warrant.....'

The clause applicable to the facts of the present case is 5-A (c). The post in this State corresponding to the post of the Deputy Superintendent of Police referred to in Section 5-A (c), is that of Assistant Superintendent of Police. What that clause means is that no police officer below the rank of a Deputy Superintendent of Police (who is the same as Assistant Superintendent of Police in this State) can investigate into offences coming under Ss. 161, 165 and 165-A of the Indian Penal Code without an order of a Presidency Magistrate or a Magistrate of the First Class as the case may be. According to this provision, a Deputy Superintendent of Police or an Assistant Superintendent of Police need not obtain permission of any Magistrate to investigate into offences coming under these sections. It is only when an officer below the rank or status of a Deputy Superintendent of Police or an Assistant Superintendent of Police takes-up the investigation that he has to obtain the previous permission of the Magistrate. This is what is contemplated in Section 5-A (c).

7. It is conceded in this case that the permission of the First Class Magistrate as contemplated in Section 5-A (c) has been, obtained by the Sub-Inspector who investigated into this case. Therefore it is clear that the Sub-Inspector had the authority or jurisdiction to investigate into this case and the investigation under these circumstances cannot be said to be illegal.

8. In the result, this revision petition is allowed and the order of the learned Special Judge rejecting the charge-sheet is set aside and the learned Special Judge is directed to take the case on file and dispose of the matter according to law.

9. Petition allowed.

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