

Halappa Gowda Vs. State of Mysore and ors.

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Court : Karnataka

Decided On : Nov-26-1952

Reported in : AIR1953Kant91; AIR1953Mys91; ILR1953KAR197;
(1954)32MysLJ201

Judge : Vasudevamurthy, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 190, 190(1) and 250; Mysore Prohibition Act - Sections 4(1); Evidence Act - Sections 25; Bombay District Police Act, 1890; Village Police Act, 1867; Mysore Village Rules

Appeal No. : Criminal Revn. Petn. No. 290 of 1951-52

Appellant : Halappa Gowda

Respondent : State of Mysore and ors.

Advocate for Def. : A.R. Somanath Iyer, Adv. General

Advocate for Pet/Ap. : K.S. Puttaswamy, Adv. for ;B.S. Puttasiddiah, Adv.

Judgement :

ORDER

1. The Special First Class Magistrate, Sagar, has made an order in Crl. Misc. 3/51-52 directing the petitioner to pay compensation to the two accused who were concerned in C. C. 754/51-52 on his file and whom he acquitted of a charge under

Section 4 (1) (a) (3), Mysore Prohibition Act. The petitioner is a Patel of the village where the alleged offence is said to have taken place and it is not disputed that he gave information to the Police of Sagar who placed a charge-sheet against the accused persons and that the case ultimately ended in favour of the accused.

2. Mr. K. Puttaswamy, learned counsel for the petitioner, contends before me that the learned Magistrate erred in awarding compensation against the petitioner. The petitioner, it is urged, was a Police Patel and reliance is placed on Village Manual, Vol. 1, (1914) Edn.), pp. 68 to 81, Chapter III, where his duties are denned by rules. Under Rule 15 (b) it is his duty to report to nearest police station the commission within the limits of the village of all cognizable, offences. There is no doubt that in Mysore a Patel like the petitioner has been recognized as being a Police Officer. It has been held by Miller C. J. and Plumer J. in -- '27 Mys CCR 136 (A)', that a village Patel who is made responsible for the duties of the village police under the Mysore Village Rules is a police Patel and that as village Patels in Mysore are not Magistrates the provisions of Section 25, Evidence Act, will apply to them as being 'police officers' within the meaning of that section.

It has been held in a case in -- 'Mahomed Meera v. Dattatraya Babaji', AIR 1947 Bom 36 (B), by Lokur and Rajadhyaksha. JJ. that Section 250 read in conjunction with Section 190, Criminal P. C., applies to information given by a police officer if that information can come as a complaint under Section 190 (1) (a) but not if it amounts to a report under Section 190 (1) (b) and that although a Police Patel may not be called a member of the Police force under the Bombay District Police Act, 1890, yet when considering the exemption from the operation of Section 250 the term 'police officer' should be construed, not in its strict technical sense, but according to its more comprehensive and popular meaning -- and a Police Patel is to be deemed to be an officer of the Police quite as much as the members of the regular force. Hence the rule which is intended as a wholesome protection for the Police Officer carrying out the duty of reporting a cognizable offence must extend to a Police Patel performing the same duty imposed on him by the Village Police Act, 1867 and that therefore a Village Police Patel making a false and frivolous or vexatious report of a cognizable offence cannot be ordered to pay compensation under Section 250, Criminal P. C., to the person or persons reported against. If I

may say so with respect, this case lays down a salutary rule. It is possible that in a stray case the Patel may misuse his powers while making complaints to the Police regarding cognizable offences but such cases can be dealt with by proceedings other than Section 250, Criminal P. C.

3. It is contended by the learned Advocate-General that Section 250, Criminal P. C., does not in terms apply to a case like the present. He argues that if in any case instituted upon complaint or information given to a Police Officer or to a Magistrate, the trying Magistrate discharges or acquits all or any of the accused he can award compensation in suitable cases and that in the present case the prosecution was launched on the information given by the Patel and not on the information which he obtained in the course of his duties. I think that would be taking too narrow a view of the matter. If the Patel sees a cognizable offence committed in his presence it cannot be reasonably argued, I think, that an F. I. R. he may give to a Police Officer is not given by him as Patel but in his personal or private capacity. This is not a case where the Patel has made a complaint, say in respect of trespass on his private land or theft of his own private property but it is a complaint made of an offence concerning the public of the village. The learned Advocate-General has also relied upon a case in -- '7 Mys LJ 377 (C)', where this Court has held that there can be no exemption under Section 250, Criminal P. C., on the bare score that the Police investigated the case so long as it was done in consequence of the information which was originally furnished by the complainant and which he persisted in maintaining to the end. I do not think that case can have much of an application to the present as the complainant there was a private party and not a Patel. Here the complaint has not been made by the petitioner to the Police in his private or individual capacity but as Patel and it involved no complaint of his own private rights having been infringed but of an offence against public rights or morals, i.e. under the Prohibition Act. I think, therefore, the order of the learned Magistrate cannot be legally supported.

4. There is also another point on which the order cannot be sustained. It has to be observed that though 10 witnesses were cited for the prosecution only 6 witnesses were examined and the other 4 were not examined. I think the petitioner can reasonably complain that he should not be made to pay compensation in a case

where all the witnesses for the prosecution have not been examined and over the trial of which he had really no control. It has been held in -- 'Parthasarathi Naicker v. Krishnaswami Ayyar', AIR 1928 Mad 169 (1) (D), that the awarding of compensation under Section 250 without having all the evidence that the complainant wants to adduce is illegal. No doubt the Magistrate is entitled at any stage to discharge the accused but that cannot be a ground for awarding compensation to the accused.

5. In the result, this petition is allowed and the order of the learned Magistrate is set aside. The compensation, if any, recovered from the petitioner will be refunded to him if it has not already been paid over to the accused persons. If it has been paid over to them it will be recovered from them and paid to the petitioner.

6. Revision allowed.

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