

Gangappa and ors. Vs. State of Mysore

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Court : Karnataka

Decided On : Nov-25-1957

Reported in : AIR1959Kant100; AIR1959Mys100; 1959CriLJ496;
(1958)36MysLJ124

Judge : K.S. Hegde, J.

Acts : Mysore Prohibition Act, 1948 - Sections 4(1), 16, 41, 45, 51 and 56; [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 4, 5(2), 173, 173(1), (3), 251-A and 252; [Constitution of India](#) - Article 14

Appeal No. : Criminal Revn. Petn. Nos. 349 to 352 of 1957

Appellant : Gangappa and ors.

Respondent : State of Mysore

Advocate for Def. : A.B. Mariappa, High Court Govt. Pleader

Advocate for Pet/Ap. : H.R. Venkataramaniah, Adv.

Judgement :

ORDER

1. Identical questions of law arise for consideration in this batch of 4 criminal revision petitions.

2. The accused in these cases were convicted for offences under Section 4(1)(g)(i) of the Mysore Prohibition Act (which shall be hereinafter called 'the Act') and sentenced to undergo Rigorous imprisonment for 3 months each. They pleaded guilty in the trial Court and were convicted on their plea,

3. It is contended on behalf of the petitioner that they were not tried according to law, and as such their conviction is unsustainable. According to the learned Counsel for the petitioners, the Court had no jurisdiction to follow the procedure laid down in Section 251(A) of the Cr. P. C. and that the accused should have been tried under Section 252 of the Cr. P. C. His grievance is that his clients were deprived of the benefit of Section 252 Cr. P. C. and thereby they were prejudiced.

4. The difficulties in these cases are the outcome of the amendments made to the Cr. P. C. Prior to the amendments there was one common procedure for all warrant cases. Section 51-A of the amended Code provides that in cases instituted on police report, the Magistrate is entitled to frame a charge on a consideration of the documents referred to in Section 173 Cr. P. C., after making such examination of the accused as the Magistrate thinks proper and after giving the prosecution and the accused an opportunity of being heard. But in other cases the old procedure is continued by Section 252 Cr. P. C.

5. Section 51 of the Mysore Prohibition Act provides as follows:

'When a Police or Prohibition Officer forwards in custody any person accused of an offence under this Act to the Magistrate having jurisdiction to inquire into or try the case, or admits any such person to bail to appear before such Magistrate, such officer shall also forward to such Magistrate a report setting forth the name of the accused person and the nature of the offence with which he is charged and the names of the persons who appear to be acquainted with the circumstances of the case and shall send to such Magistrate any article which it may be necessary to produce before him. Upon receipt of such report the Magistrate shall inquire into such offence and try the person accused thereof in like manner as if complaint had been made before him as prescribed in the Code of Criminal procedure 1898 (Central Act V of 1898).'

This section contemplates a complaint by a Police Officer or a Prohibition Officer. 'Complaint' is defined in Section 4(h) of the Criminal procedure Code as follows:

'Complaint means the allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person whether known or unknown, has committed an offence, but it does not include the report of a police officer'. If the prosecution is initiated by a complaint then the procedure laid down in Section 252 Cr. P. C, will have to be followed. Hence the accused contend that they should have been so tried. If the Mysore Prohibition Act had stopped with Section 51 of that Act then the matter would have been different. The next relevant section is Section 16. Section 16 of the said Act provides as follows:

'All offences under this Act shall be cognizable and the provisions of the Code of Criminal Procedure, 1898 (Central Act V of 1898) with respect to cognizable offences shall apply to them.' The other section which we may take note of is 56 of the said Act which lays down that 'nothing contained in this Act shall affect the operation of the Code of Criminal Procedure.'

6. The offence in question is made cognizable by the aforesaid Section 16. The said section also attracts the provisions of the Criminal procedure Code with respect to cognizable offences. Hence the police could investigate the offence under Chapter XIV of the Criminal procedure Code. Before proceeding further we may also take note of Section 5(2) Cr. P. C. This relates to trial of offences against other laws. It provides as follows:

'All offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.' From the foregoing it is clear that the Police Officer had a right to investigate into the offence in question under Chapter XIV of the Criminal procedure Code. If that be so he could send a final report under Section 173 (1) Cr. P.C. which is better known as charge-sheet. Once he files a charge-sheet under Section 173(1) Cr. P. C. provisions of Section 251(A) are attracted and there is nothing wrong in the Magistrate inquiring into or trying the case under that section.

7. The learned counsel for the petitioners urged that Section 51 of the Mysore Prohibition Act being a special section, it over-rides the general provisions contained in the Cr. P. C. I do not think that rule will apply in this case. The intention of the legislature seems to be otherwise. It is clear that the legislature wanted that Section 51 of 'the Act' to supplement the provisions of the Cr. P. C.

The responsibility for working the Prohibition Act is not merely that of the Police Department but also of the Prohibition Department. Hence it was necessary for the Legislature to confer powers on all these officers and that was why Section 51 was enacted. The Prohibition Officers have no powers to investigate a case under Chapter XIV Cr. P. C.

It is true that it would have been desirable if the Legislature had confined the powers given under Section 51 of the Prohibition Officer and left the Police to function under Chapter XIV of the Criminal procedure Code. But it must be borne in mind that at the time when this legislation was enacted the Cr. P. C. did not contain Section 251-A. Hence there was no necessity to get into niceties of law.

8. On a reading of Sections 51, 16 and 56 of the Act, it is absolutely clear that the powers of the Police to investigate under Chapter XIV of the Criminal procedure Code is preserved in full.

9. At this stage I may usefully cite the decision of the Madras High Court In re Pavadai Goundan AIR 1937 Mad 292. It is a bench decision. The judgment was delivered by Somasundaram J. Similar contentions were raised before their Lordships. But they were rejected in a well considered judgment. All that I need say is that I respectfully agree with these conclusions.

9A. The petitioner's counsel was unable to show to me as to how prejudice had been caused to the petitioners by the procedure adopted by the Magistrate. To my mind they had the benefit of Section 173(3) Cr. P. C. They had been supplied with copies as required by the said section. No complaint is made about the charge. The charge was explained to them and they chose to confess. Recent decisions tend to establish that there is no material difference between the breach of a mandatory provision and that of a directory provision. The test is one of prejudice.

10. It is argued that, if the police are permitted to prosecute an accused in a prohibition case either under Section 251-A or 252 Cr. P. C. it means throwing open the door to the police to discriminate between the several accused. Police might in some cases hold inquiries under Sections 41, 45 and lay complaint under Section 51 of the Act. and thereby give the accused the benefit of Section 252 of the Criminal procedure Code, whereas in other cases they may choose to hold an investigation under Chapter XIV and send a final report under Section 173 Cr. P. C. and thereby force the accused to have his inquiry and trial under Section 251(A) Cr. P. C.

This according to the petitioners will amount to discrimination in procedure and will be repugnant to Article 14 of the Constitution. Equality contemplated in Article 14 extends also to procedural right. I am afraid that this is a much ado about nothing. Article 14 does not embody a rule of rigid equality. It is not intended to fight shadows. The procedural differences with which we are now concerned are the outcome, of changes in law. They are not designed to produce inequality. The two procedures are substantially same.

What the Legislature wanted was that whenever a responsible police officer had an opportunity to investigate into a case and file a charge-sheet, then it would be sufficient if the Magistrate examines the records prepared by him and questions the accused and hears argument on behalf of the prosecution and the accused before he makes up his mind to frame charge or discharge the accused'.

But in the case of a private complaint in which the accused generally had not the benefit of an earlier investigation by any responsible officer, then it was thought proper that the Courts should examine the matter with care, right from the beginning. Whether one adopts one procedure or the other it made no difference in the standard of proof required or in the tests to be applied in appreciating the evidence. The accused had the fullest possible opportunity to cross-examine the P. Ws. Article 14 does not take note of trivial differences in procedure incapable of producing any injustice.

11. I see no reason to interfere with the conviction and sentence passed.

12. In the result these revision petitions Fail and are dismissed.

13. Revisions dismissed.

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