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Court : Karnataka

Decided On : Sep-21-1967

Reported in : AIR1968Mys95; 1968CriLJ521; ILR1967KAR1194

Judge : K. Bhimiah, J.

Acts : [Official Secrets Act, 1923](#) - Sections 3 and 13(3); [Code of Criminal Procedure \(CrPC\), 1898](#) - Sections 4(1) and 164

Appeal No. : Criminal Revn. Petn. No. 273 of 1967 and Criminal Petn. No. 428 of 1967

Appellant : Mohammed Rahamathulla

Respondent : State of Mysore

Judgement :

ORDER

(1) The petitioner is an accused standing trial before the IInd Additional Sessions Judge, Bangalore. In this revision petition, he has challenged the order passed by the learned Sessions Judge on I. A. No. IV in Bangalore Sessions Case No. 22/1967 holding that the confession statement recorded by the Magistrate under Section 164 of the Criminal Procedure Code, to be hereinafter called the 'Code' in not hit by the proviso to Section 13(3) of the [Official Secrets Act, 1923](#), to be herein after called the 'Act'.

(2) The accused is tried for an offence under Section 3 of the Act. In the course of the trial, the prosecution sought admission of the confession statement recorded by the Magistrate of Doddaballapur on 22-3-1965 in evidence. The accused was arrested on 9-9-1965 and was produced before the Magistrate on 10-9-1965. He was remanded to police custody till 23-9-1965. He was produced by the Police before the Magistrate on 20-9-65 with a request to record his confession statement under Section 164 of the Code. The Magistrate remanded the accused to judicial custody till 21-9-1965. When the accused was produced before the Magistrate, he felt that it was necessary to record the confession in open Court and, therefore, remanded the accused to judicial custody with a direction to produce him on 29-9-1965. The accused was produced before him on that day and he recorded the confession statement in open Court. Subsequently, the Central Government accorded sanction to lay complaint against the accused.

(3) The short question for decision is whether the confession statement recorded by the Magistrate under Section 164 of the Code in this case is inadmissible in evidence.

(4) The answer to this question depends upon the interpretation of the proviso to subsection (3) of Section 13 of the Act. Sec. 13(3) of the Act reads as under:--

'No Court shall take cognizance of any offence under this Act unless upon complaint made by order of, or under authority from the appropriate Government or some officer empowered by the appropriate Government in this behalf; Provided that a person charged with such an offence may be arrested, or a warrant for his arrest may be issued and executed, and any such person may be remanded in custody or on bail, notwithstanding that such complaint has not been made, but no further or other proceedings shall be taken until such complaint has been made'.

(5) Mr. Devadas contended that the confession recorded by the Magistrate under Section 164 of the Code is hit by the proviso to Section 13(3) of the Act. His arguments were two-fold. Firstly he argued that a Magistrate is prohibited under the proviso to Section 13(3) from exercising any general powers under the Code until the complaint is duly made under the Act. Neatly, he argued that if for any

reason the Court were to come to conclusion that the Magistrate can exercise general powers under the Code, such Magistrate is prohibited under the proviso to Section 13(3) from recording a confession under Section 164 of the Code which is a solemn judicial proceeding. There is no merit in the arguments advanced by Sri Devadas.

(6) Sri Devadas emphasised the position of law that express provisions made in a special Act override the general principles laid down in the Code. There is no dispute about this provision of law. This is clear from the provisions of Section 5(2) of the Code which read as under:

'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'.

(7) Sri Devadas invited my attention to Section 11 and 12 of the Act. There is special provision made in the Act with regard to search warrants under Section 11. Section 12 of the Act deals with the powers to arrest and fine cognizable and non-cognizable offences under the Act. Section 13 lays down restrictions in trial of offences. Sri Devadas argued that under the proviso to sub-section (3) of Section 13 of the Act, the powers of the police to investigate an offence under the Act are not fettered while the acts to be done by a Magistrate are curtailed. he strongly relied upon the words found in the proviso which read thus:

'But no further or other proceedings shall be taken'

He argued that the Magistrate is prohibited from exercising the power to record the confession under Section 164 of the Code if a request is made by the police to that effect in the course of investigation.

The provisions of sub-section (3) of Section 13 do not lend support to the arguments advanced by Sri Devadas. The main sub-section to the proviso deals with the power to take cognizance of an offence by a Court. The condition required to take cognizance of an offence under the Act by a Court is that there should be

an order of the appropriate Government or some Officer empowered in this behalf. Until such an order is passed, the Court can exercise the powers in respect of the matters enumerated in the proviso and shall take no further or other proceedings until such a complaint has been made. The words 'further or other proceedings' used in the proviso are relatable only to those proceedings which a Court is empowered to take under the Code after taking cognizance of an offence under Section 190 of the Code. The term 'taking cognizance' is a judicial action, permitted by the Code, taken with a view eventually to prosecution and preliminary to the commencement of the inquiry or trial-see the decision in *Artatran v. State of Orissa*, AIR 1956 Orissa 129. The word 'Cognizance' is defined in Wharton's Law Lexicon, 14th Edition, as 'the hearing of a thing judicially'. Therefore, inquiry or trial follows cognizance and cognizance is proceeded by investigation. This is the basic scheme of the Code in respect of cognizable offences. Chapter XIV of the Code prescribes the procedure for investigation into cognizable as well as non-cognizable offences. The investigation starts on the information relating to the commission of an offence given to an officer-in-charge of a police station and recorded under Section 154 of the Code. As defined in S. 4(1)(1), investigation includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than Magistrate) who is authorised by a Magistrate in this behalf.

It is conceded by Sri Devadas that the police have unfettered powers under subsection (3) of Section 13 of the Act with regard to investigation into the case and collection of evidence relating to the commission of an offence under the Act. Section 164 of the Code comes within the Chapter XIV of the Code. A confession made to a police officer is inadmissible in evidence. But if a person in police custody desire to make a confession, he must do so in the presence of a Magistrate, who is required to record it under Section 164 of the Code in the manner provided therein and after being satisfied that it was voluntarily made. It meant what the police may not record, the Magistrate may record when it is made in the course of investigation proceedings and before the judicial proceedings commence.

(8) Mr. Shankara Chetty, the learned State Public prosecutor, contended that the investigating officer got the confession of the accused recorded by a Magistrate under Section 164, Cr. P. C. by way of collection of evidence. He pointed out that the word 'Magistrate' is used in Section 164 and not the word 'Court'. He further urged that the recording of a confession by a Magistrate is not a judicial proceeding but it is a proceeding during the course of investigation. He relied upon the definition of 'Judicial Proceeding' in Section 4(1)(m) which reads as under:

'Judicial Proceeding' includes any proceeding in the course of which evidence is or may be legally taken on oath.'

(9) What Mr. Chetty contends is that the words 'Further and other proceedings' referred to in the proviso is nothing but the judicial proceedings as required under the Code and further than recording of confession by a Magistrate under Section 164 of the Code is not a judicial proceedings. There is force in these contentions. In the present case, the proceedings in the course of which evidence is or may be legally taken on oath begins only after cognizance is taken by the Magistrate on a complaint duly made against the accused. Therefore, confession recorded by the Magistrate under Section 164 of Cr. P. C. during the course of investigation is not a judicial proceedings as the Magistrate is not duly authorised by law to record the same as evidence. In a Full Bench decision of the Bombay High Court in *Purshottam Ishvar Amin v. Emperor*, AIR 1921 Bom 3, it is held as follows:--

'A statement recorded by a magistrate of a witness in the course of police investigation under Chapter XIV is, I think, not evidence in a stage of judicial proceeding.'

The decisions in *Queen-Empress v. parshram Raysing*, (1884) IRL 8 Bom 216, *Queen Empress v. Alagu Kone*, (1893) ILR 16 Mad 421 and *Suppa Tevan v. Emperor*, (1906) ILR 29 Mad 89, dissented from. Therefore, the words 'further or other proceedings' used in the proviso to Section 13(3) of the Act are relatable only to those proceedings which a Court is empowered to take under the Code after taking cognizance of the offence on a compliant duly made to it. Further, a Magistrate is not prohibited under Section 13(3) of the Act from exercising the power to record the confession of an accused under Section 164 of the Code, if

the request is made by the police to that effect in the course of investigation. This is, in my humble opinion, the intendment of the Legislature. A confession recorded by a Magistrate under Section 164 of the Code in respect of offences coming under the Act is admissible in evidence in the course of inquiry or trial of the accused. Therefore, both the contentions raised by Mr. Devadas are legally untenable and so they fail.

(10) In the result, this revision petition fails and the same is dismissed. The stay order passed in Cr. P. No. 428 of 1967 stands cancelled.

(11) Revision dismissed.

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