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**M. Madiah Vs. the State of Karnataka**

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**SooperKanoon Citation** : sooperkanoon.com/376032

**Court** : Karnataka

**Decided On :** Jul-29-1977

**Reported in** : 1978CriLJ734

**Judge** : D.B. Lal, J.

**Appellant** : M. Madiah

**Respondent** : The State of Karnataka

**Judgement** :
ORDER

**D.B. Lal, J.**

1. This revision is directed against the Judgment of the Sessions Judge, Mysore, confirming on appeal the judgment of the J. M. F. C, Chamarajanagar, in a case Under Sections 332 and 355 of the I. P. Code, convicting the petitioner-accused and sentencing him to pay a fine of Rs. 300/- for the offence Under Section 332 I. P. Code and to pay a fine of Rs. 100/-for the offence Under Section 355 of the I. P. Code.

2. The prosecution case was that the petitioner-accused was one of the non-official members of the Social Welfare Sub-Committee of the Taluk Develop- ment Board, Chamarajanagar. The complainant Shivaiah (P. W.

2) the Social Welfare Inspector and Rangegowda (P. W.

1) the Block Development Officer, were official members of that committee. The President of the said Committee was Venkataiah (P. W.

3) and he was presumably a non-official member of the said Committee. It appears, Rangegowda (P. W.

1) had deputed Shivaiah (P. W.

2) to go along with the accused for an inspection of the Girls' Hostel which was being managed by the Committee. This inspection took place on 29-11-1971. According to the accused he detected at that time that the Watchman of the Girls| Hostel was found in a room of the Girls' Hostel and that was objectionable according to him. Shivaiah (P. W.

2) however did not find anything objectionable in that conduct of the Watchman. On a subsequent date, i. e., on 20-12-19'71 the meeting of the Social Welfare Sub-Committee was called while Venkataiah (P. W.

3) presided. Rangegowda, B.D.O., (P. W. 1), Shivaiah, Social Welfare Inspector (P. W.

2) and the accused were present in the meeting. When the affairs of the Girls' Hostel were being discussed, the accused raised the objection that at the time of his inspection on 29-11-1-971 the conduct of the Watchman was not found satisfactory. At that time Shivaiah (P.W.

2) objected that the complaint of the accused was. incorrect and that no objection could be taken to the conduct of the watchman. That gave rise to a quarrel between Shivaiah (P. W.

2) and the accused. The latter abused Shivaiah, gave a first blow on his mouth and also kicked him with chappals which he was putting on at that time. Rangegowda (P. W.

1) at that time asked Venkataiah (P. W. 3), the President to record all that in his minute book which he did and of which the record is Exhibit P-2. Thereafter Shivaiah (P. W.

2) filed the F.I.R., Exhibit P-l before the Police, he was medically examined by the Doctor C. Kamalamma (P. W.

6) and some mark of injury was found over his mouth and tenderness as well as pain were detected on the portion of the thigh where the kicking was administered. All this gave rise to a case Under Sections 332 and 355 of the I. P. Code.

3. The petitioner-accused however pleaded not guilty. He denied the incident and did not admit that he at all administered any beating to Shivaiah (P. W. 2)

4. The prosecution produced Rangegowda, B. D.O., (P. W. 1), Shivaiah Social Welfare Inspector (P.W. 2), Complainant, Venkataiah, the President of the Social Welfare Sub-Committee (P.W. 3), Dr. C. Kamalamma (P.W. 6), the Lady Medical Officer, besides B. P. Uthappa the Sub-Inspector of Police (P.W. 7). The other witnesses were more or less formal in character. The accused did not produce any witness and in his statement before the Court however he admitted that Shivaiah (P.W. 2) attended that meeting in his official capacity. The learned Magistrate believed the prosecution version and found the accused guilty of. the two offences Under Sections 332 and 355 of the I. P. Code. He sentenced him to undergo R.I. for 3 months Under Section 332 I. P. Code and to pay a fine of Rupees 500/- Under Section 355 I. P. Code. Thereafter, the accused came in appeal before the learned Sessions Judge and although his appeal was not successful yet the learned Sessions Judge reduced the sentence, in as much as he awarded a sentence of Rs. 300/- for the offence Under Section 332 I. P. Code and a fine ol Rs. 100/- for the offence Under Section 355 I. P. Code. The accused felt dissatisfied from the judgment of the learned Sessions Judge and so he filed the present revision petition.

5. While sitting in revision, this Court does not ordinarily re-appreciate the evidence. That is an essential function of the trial Magistrate or the First Appellate Judge. If a dependable view could be taken in favour of the prosecution, while

appreciating the evidence, that would be the end of the matter. It is not a valid argument that any other court left to itself might have taken a different: view than what has been taken by the Magistrate or by the Sessions Judge. In order to interfere in revision, yet more compelling circumstances, have got to be pointed out. The learned counsel for the petitioner, rather confined his argument by asking for a re-appreciation of evidence and pointed out one lacuna here and one there, meaning thereby that the evidence before the Magistrate was not sufficient, according to him for conviction. On the other hand the learned State Public Prosecutor pointed out that the statements of the three witnesses P.Ws. 1 to 3 who were all eye-witnesses, were most convincing and it was proved before the trial Magistrate that the accused abused Shivaiah (P.W. 2) and not only did that but also assaulted him by giving a blow on his mouth and by kicking him with chappaL It could not be denied that Shivaiah (P.W. 2) was performing his official duty. He was an official member of the Committee. According to Rangegowda (P.W. 1), he was deputed by him to go and to inspect the hostel along with the accused. In the meeting according to Rangegowda (P.W. 1), Shivaiah, (P.W. 2.) and Venkataiah (P.W. 3), the Girls' Hostel management was the subject matter of discussion. Both Shivaiah (P.W. 2) as well as the accused were entrusted with that discussion. Since the accused had gone for inspection of that hostel along with Shivaiah (P.W. 2), he raised the objection regarding the conduct of the Watchman of that hostel. Shivaiah (P.W. 2) had performed an official duty of inspecting that hostel but he had no objection to the conduct of the watchman. Therefore, at the occasion of Shivaiah (P.W. 2) performing his public duty, that the accused assaulted him and the offence Under Section 332 was committed he caused him hurt, which is clear from the statement of the Dr. C. Kamalamma, (P.W. 6).

6. The learned counsel contended that there was no sufficient provocation from the accused who simply raised the complaint against the Watchman and Shivaiah, (P.W. 2) should not have taken an exception, indicating thereby that it was Shivaiah (P.W. 2) who perhaps assaulted the accused and the latter retaliated him. The learned counsel further argued in the alternative that there was some provocation from the direction of Shivaiah (P.W. 2) and that is why the accused participated in the assault. All these arguments are nothing but another shape of the contention, that the evidence was not properly appreciated by the two courts

below. As I have stated above, that could not be the purpose while deciding a revision. The three witnesses-Rangegowda (P.W. 1), Shivaiah, (P.W. 2) and Venkataiah (P.W. 3) gave out a consistent version of the incident and the said version was believed by the trial Magistrate as well as by the learned Sessions Judge. It could not be stated that the inference drawn by the two courts below was in any manner perverse or illegal and hence interference in revision would not be possible.

7. It was stated that the accused gave the beating while performing his official duty as he was taking part in that Committee and therefore a plea was raised that prior sanction of the Government was required under Section Code before the prosecution could be instituted against him. But in order to attract that Section the offence had to be connected with the official act so as to form part of the same transaction as if it was inseparable from it. The act must be shown to be in discharge of official duty or fairly purporting to be in such discharge. The word 'while' used in Section 197, must be read with the words that follow and is not to be construed strictly in its meaning of time. Therefore it was rightly concluded by the learned Sessions Judge that the assault made by the accused could not be a component of the public duty to be performed by him. It could not be stated that he was acting or purporting to act in the discharge of his official duty while committing the assault. As such Section 197 was not attracted and no prior sanction of the Government was needed.

8. In this view of the matter, in my opinion, the two offences imputed against the accused were duly made out and no exception could be taken to the order of conviction made by the two courts below.

9. This revision is without any merit and the same is dismissed.

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