

K. Hiriyananna Setty Vs. State of Mysore

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Court : Karnataka

Decided On : Oct-18-1973

Reported in : 1975CriLJ96; (1973)2MysLJ528

Judge : Santosh, J.

Appellant : K. Hiriyananna Setty

Respondent : State of Mysore

Judgement :

ORDER

Santosh, J.

1. Petitioner before this Court is the 2nd accused in C.C. 2992/72 on the file of the II City Magistrate, Mysore. Proceedings had been instituted against accused 1 and 2 under Section 67 of the Factories Act, 1948. While the case was pending on the application made by the A.P.P. under Section 94, Cr.P.C. the learned Magistrate issued summons to the 2nd accused to produce certain documents which were in his custody. This order issuing summons to the 2nd accused, is challenged in this revision petition.

2. Sri V. N. Satyanarayana, learned counsel appearing on behalf of the petitioner, has contended that the learned Magistrate was not competent to issue such summons to the petitioner as the same is hit by Sub-clause (3) of Article 20 of the

Constitution of India. Strong reliance is placed on the decision of the Supreme Court in *M. P. Sharma v. Satish Chandra* AIR 1954 SC 300 : 1954 Cri LJ 865 and on the decision of the Madras High Court in *Swarnalingam Chettiar v. Asst Labour Inspector, Karaikudi* AIR 1956 Mad 165 : 1956 Cri LJ 248 (1) in support of the said contention. The learned counsel has also referred to the decision of the Supreme Court in *State of Bombay v. Kathi Kalu Oghad* AIR 1961 SC 1808 : 1961 (2) Cri LJ 856.

3. In *Sharma's case* AIR 1954 SC 300 : 1954 Cri LJ 865 referred to above, their Lordships of the Supreme Court have pointed out that guarantee under Article 20 (3) would be available to an accused when any compulsory process is issued against him for production of any evidentiary documents which are reasonably likely to support a prosecution case against him.

4. In *Swarnalingam Chettiar* a case AIR 1956 Mad 165 : 1956 Cri LJ 248 (1) the Bench consisting of the Chief Justice Rajamannar and Rajagopala Iyyangar, J. have held that the guarantee under Article 20 (3) would extend to any compulsory process for production of evidentiary documents which are reasonably likely to support a prosecution against the accused.

5. In *State of Gujarat v. Shyamlal Mohanlal* AIR 1965 SC 1251 : 1965 (2) Cri LJ 256 their Lordships have held that summons under Section 94, Cr.P.C. cannot be issued to an accused to produce documents which are likely to be used in evidence against him. Their Lordships have pointed out that Article 20 (3) has been construed by the Supreme Court in *Kalu Oghad's case* AIR 1961 SC 1808 : 1961 (2) Cri LJ 856 referred to above to mean that an accused person cannot be compelled to disclose documents which are incriminatory and based on his knowledge. If Section 94 is construed to include an accused person, some unfortunate consequences would follow. Though the language of Section 94 is general, there are indications that the Legislature did not intend to include an accused person.

6. It is clear from the decision in AIR 1965 SC 1251 : 1965 (2) Cri LJ 256 referred to above that summons under Section 94 cannot be issued to an accused to produce documents which are increment nature and may be used against him at

the trial. It, therefore, follows that the order of the learned Magistrate issuing summons to the accused to produce documents which are likely to be incriminatory is illegal and has to be set aside.

7. In the result, for the reasons mentioned above, I allow the revision petition and set aside the impugned order passed by the learned Magistrate issuing summons to the petitioner-2nd accused to produce documents.

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