

Yellappachari and anr. Vs. State of Mysore and anr.

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Court : Karnataka

Decided On : Sep-10-1973

Reported in : 1974CriLJ878

Judge : Range Gowda, J.

Appellant : Yellappachari and anr.

Respondent : State of Mysore and anr.

Advocate for Pet/Ap. : Sri. K.T. Mohan

Judgement :

ORDER

Range Gowda, J.

1. This petition is directed against the Order dated 25-11-1972 passed under Section 98 Cr.P.C. by the Munsiff-Magistrate. Narasimharajapura, in CR. No. 11/1972. and it reads thus:

Heard the Counsel for the complainant. It is recorded that the Circle Inspector is not in station and has gone on leave till Monday. In the meantime, the Sub-Inspector of Police. Koppa. is directed to seize the crop grown on the land in dispute from the land if available or from the thrashing ground of A-6 and sell the paddy to an authorised despot and deposit the sale proceed pending disposal of

the dispute mentioned in the petition in the interest of justice.

It is the legality and the correctness of the said order that is assailed in this petition. Before dealing with the contentions of the learned Counsel for the petitioner, a few facts giving rise to this petition may be stated: The first respondent filed a complaint against the petitioners who are Accused 1 and 2 and 38 others for offences under Sections 447 and 379 read with Section 34 I.P.C. His case was that on 24-11-1972 at about 1 P. M. they trespassed into his land bearing S. No. 10 of Meritorious village in Koppa Taluk and dishonestly cut and removed the standing crops to the thrashing floor of M.D. Krishnamurthy who is Accused 6. On the same day he filed an application under Section 98 Cr.P.C. for issuing a search warrant authorising the competent police officer to search and seize the said crops from the thrashing yard of the said Krishnamurthy and to produce the same before the Court. On that application, the learned Magistrate has passed the impugned order.

2. It is contended by Sri. K.T. Mohan learned Counsel for the petitioner that the impugned order on the face of it is illegal in that it does not satisfy the requirements of Section 98 Cr.P.C. and is liable to be set aside. His argument is that the learned Magistrate has passed the said order in haste without holding any enquiry and without satisfying himself whether there was reason to believe that the petitioners had committed theft of the crops and had removed and kept the same in the thrashing floor of A-6, and that without entertaining such belief it was not open to him to make such an order and it violates the provisions of Section 98. Cr.P.C.

3. In my opinion the contention of Sri Mohan is well founded. Section 98 Cr.P.C. in so far as it is relevant for the present purpose reads as follows:

98. Search of house suspected to contain stolen property, forged documents etc.

(1) If a District Magistrate. Sub-Divisional Magistrate. Presidency Magistrate or Magistrate of the First Class, upon information and after such inquiry as he thinks necessary has reason to believe that any place is used for the deposit or sale of stolen property:

A reading of Section 98 Cr.P.C. makes it clear that before issuing a search warrant under that Section, the Magistrate must have reason to believe that the place or premises sought to be searched is used for keeping, depositing or selling stolen properties. That means that the Magistrate should apply his mind for ascertaining the same by holding such enquiry as he thinks necessary and if upon such enquiry he has reason to believe that the place or premises is used for the said purposes he can issue a search warrant. The power conferred on the Magistrate by Section 98 Cr.P.C. is of a drastic nature and he ought to be very cautious and circumspect before exercising that power and must satisfy himself that he has strictly complied with the provisions of that section from which that power springs. This approach is of paramount importance because anything done in disobedience to the provisions of that section is likely to produce harmful and unjust results.

4. In the instant case it is clear from the impugned order that the learned Magistrate has not complied with the provisions of Section 98 Cr.P.C. Nowhere in the impugned order it is indicated that he had reason to believe that the petitioners had committed theft of those crops and had removed and kept them in the thrashing floor of A-6. Indeed nothing is said about the accusation made against the petitioners by the respondents. The learned Magistrate appears to have also not held any enquiry for ascertaining whether there was any truth in the said accusation or whether there was any reason to believe the same. Evidently therefore he has not at all applied his mind before passing the impugned order, and has acted in a very casual and mechanical manner. The exercise of power under that section must be guided by the considerations mentioned therein, without which the action taken or order passed under that section cannot be said to be one in accordance with law. Consequently the impugned order being not one passed in accordance with the provisions of Section 98 Cr.P.C. cannot be sustained.

5. In the result, this revision petition is allowed and the impugned order is set aside.

