

Mudkappa Vs. State of Karnataka

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Court : Karnataka

Decided On : Jul-03-1985

Reported in : ILR1985KAR3275; 1986(1)KarLJ51

Judge : Kudoor, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 482

Appeal No. : Cr. R.P. 298 of 1984

Appellant : Mudkappa

Respondent : State of Karnataka

Advocate for Def. : K.H.N. Kuranga, Addl. State P.P. for R-1; ;Krishnaji Rao, Adv. for R-2

Advocate for Pet/Ap. : A.M. Farooq, Adv.

Judgement :

ORDER

Kudoor, J.

1. This Criminal Revision one under Section 397 read with Section 401 of the Code of Criminal Procedure (the Code) is directed against the judgment and order dated 9-4-1984 passed by the Addl. J.M.F.C, Koppal, in C.C. No. 470/82

acquitting the 2nd respondent accused, of the offences under Section 323 I.P.C. and Section 7(1)(d) of the Protection of Civil Rights Act, 1955 (for short 'the Act').

2. The matter arises in this way :

The petitioner (who will be referred to as the complainant) filed a complaint before C.P.I., Koppal against the*Cr. R.P. 298 of 1984 dated 3rd July 1985.2nd respondent (who will be referred to as the accused) alleging that the accused had committed offences under Section 323 I.P.C. and Section 7(1)(d) of the Act. The C.P.I., after investigation, placed a charge sheet against the accused for the above said offences. The case was taken on file by the J.M.F.C., Koppal, in C.C. No. 128/82. The case was then transferred to the Addl. J.M.F.C, Koppal in which Court the case was renumbered as C.C. No. 470/82. The Trial Magis-trate, after conducting the Trial, acquitted the accused as per his judgment and order dated 9-4-1984. The complainant, being aggrieved by the order of the Trial Magistrate, has filed this revision not only assailing the acquittal of the accused, but also to expunge the remarks made by the Trial Court against the complainant contained in para-36 of the judgment.

3. Heard Sri Farooq, the Learned Counsel for the complainant and Sri Kuranga, the Learned Addl. State P.P, for the 1st respondent State.

4. Sri Farooq, in his argument submitted that he would restrict the reliefs claimed in the Revision Petition only to expunge the adverse remarks made against the complainant, contained in para-36 of the judgment.

5. Para-36 of the judgment reads :

'I am constrained to say that the complainant has misled theinvestigating authority to initiate this proceedings. In fact he ought to have been taken to task by the Department concerned when he has beenconverted as a Christian. Now-a-days it has become the tendency of the people to claim that they belong to Scheduled Caste only for the purpose of getting employment, promotions and other unchallenged benefits. When once they get all these benefits they would try to convert into other caste other than Scheduled Caste. Such type of activities should

be nipped in the bud. The complainant is liable for disciplinary action by the Department itself. Therefore send the copy of the judgment to the Superintendent of Police, Raichur, for taking action against the complainant.'

Sri Farooq forcefully contended that the adverse remarks made and the recommendation for holding disciplinary action against the complainant contained in para-36 of the judgment are wholly irrelevant and unjustifiable; that retention of the passage on the record will cause serious harm to the complainant and that the expunction of the passage will not affect the reasons for the judgment of acquittal passed by the Learned Magistrate.

6. It cannot be contended and also rightly not contended in this case that this Court will have no power or jurisdiction to grant the only relief sought by the complainant, if it is found that the passage complained of is wholly irrelevant and unjustifiable and that its retention on the records would cause serious harm to the complainant. Granting such a relief, even if does not fall squarely under the revisional power exercisable by this Court, certainly this Court under its inherent power could grant such relief in an appropriate case to secure the ends of justice. The Supreme Court on this question in Raghbir Saran -v.- State of Bihar, : 1964 CriLJ1 observed thus :

'When the question arises before the High Court in any specific case where to resort such undefined power, it is essential for it to exercise great caution and circumspection. Thus when it is moved by an aggrieved party to expunge any passage from the order or judgment of a subordinate Court it must be fully satisfied that the passage complained of is wholly irrelevant and unjustifiable, that its retention on the records will cause serious harm to the person to whom it refers and that its expunction will not affect the reasons for the judgment or order.'

7. Bearing these principles of law in mind, let me now examine the relevant facts established in this case touching Upon the question whether the passage complained of is liable to be expunged.

8. Both the complainant and the accused were the Police Constables attached to Alwandi Police Station of KoppalTaluk, Raichur District. The allegation made

against the accused in the complaint was that on 28-3-1982 when the complainant was in the Police Station, the accused came to the Police Station and abused him in filthy language and assaulted him and thereby committed offences punishable under Section 323 I.P.C. and Section 7(1)(d) of the Act. In the complaint, the complainant had described himself as a member belonging to the Scheduled Caste. The case was investigated and a charge sheet was filed against the accused for the offences alleged in the complaint. The Trial Court after going through the records of investigation and the material collected by the police at the investigation, recorded the plea of the accused and conducted the trial. The complainant was examined as PW-1 and two eye witnesses as PW-2 and 3. The prosecution examined a few more witnesses in addition to the eye-witnesses. The Trial Court, appreciating the evidence adduced in the case, came to the conclusion that the prosecution has failed to prove any of the offences charged against the accused and acquitted him by its judgment and order dated 9-4-1984.

9. The complainant had joined the Police Department as a Constable on 31-7-1972 seeking employment as a member of the Scheduled Caste. There is no dispute that he was a member of the Scheduled Caste then. The complainant has described himself as a member of the Scheduled Caste in his complaint and alleged that the accused abused him in the name of his caste and thereby insulted him on the ground of untouchables. There is, no doubt, some evidence on record that the complainant appeared to have changed his religion into Christianity long after he secured the job of a Police Constable representing that he was a member of the Scheduled Caste. PW-8 has stated in his evidence that he was the Parish Priest of Manvi Church during the period 1980 to 1983, that the father of the complainant had told him that the complainant had changed his religion into Christianity that the complainant did not attend the Church after his conversion as a Christian to observe the religious functions and Sunday prayers. Since the complainant did not observe the rules of Christianity during his period, the complainant was ousted from the Church, Indeed the complainant has also stated that he embraced Christianity for a day and since then he continued to be a member of the Scheduled Caste. This is the evidence that had prompted the Trial Magistrate to make the adverse comments against the complainant contained in para-36 of the judgment excerpted (supra).

10. The question therefore for consideration is whether the passage complained of is wholly irrelevant and unjustifiable, that its retention on record will cause serious harm to the complainant and its expunction will not affect the reasons for the judgment.

11. No doubt, as noticed earlier, the Learned Trial Magistrate, on appreciating the evidence, found the accused not guilty of the offences charged and acquitted him. The Learned Magistrate did not stop with this. He proceeded further and made the adverse comments against the conduct of the complainant and finally recommended to take disciplinary action against the complainant and in that view he directed a copy of the judgment to be forwarded to the Superintendent of Police, Raichur who was competent to take disciplinary action against the complainant. It seems to me that every one of the reasons advanced by the Learned Magistrate in recommending a disciplinary action against the complainant is wholly irrelevant and unjustifiable and I find no basis on the evidence to reach that conclusion. The complainant did not seek employment on any misrepresentation that he belonged to Schedule Caste and got the job and enjoyed the benefit as a member of the Scheduled Caste. It is indisputable that when the complainant secured the job he was a member of the Scheduled Caste. If the complainant later became a convert to Christianity or changed his original caste, he would not be liable for any disciplinary action on the score. Change of religion or caste is not forbidden either by the fundamental law or any other statute governing the citizens of this country. It would have been a different thing if the complainant had sought the employment falsely representing that he belonged to Scheduled Caste and thereby secured the benefit exclusively reserved for the members of the Scheduled Caste.

12. Now turning to the complaint, it is difficult to hold that the complainant was motivated in stating in the complaint that he belonged to the Scheduled Caste solely with an intention to implicate the accused for an offence under the Act. Even if the evidence of PW-8 is accepted, it is clear from his evidence that the complainant was ousted from the Church as he did not observe the rules of Christianity. He did not have any personal knowledge that the complainant had embraced Christianity. He learnt about it through the father of the complainant.

The complainant himself had admitted in his evidence that he embraced Christianity for a day and since then he continued to be the member of the Scheduled Caste. There is no material on record to show that the complainant was not received by the members of his original caste as a member of their caste after he relinquished Christianity. The complainant has specifically averred in the complaint that the accused had abused him calling the complainant as belonging to a member of the Scheduled Caste. This would show that the complainant honestly believed at the time of lodging the complaint that he was a member of the Scheduled Caste even though he had embraced Christianity for a day as admitted by him in his evidence. All these circumstances, in my opinion, would not justify for any disciplinary action to be taken against the complainant as observed by the Learned Magistrate. The adverse remarks contained in para-36 of his judgment are wholly irrelevant and unjustifiable and if they are retained on the records they would cause serious harm to the complainant. If these remarks are expunged from the judgment, it would not affect the reasons for the judgment and order, by which the accused was acquitted.

13. Since Sri Farooq has submitted at the very outset that he would restrict this revision only to expunge the passage contained in para-36 of the judgment, I do not propose to express any view on other points raised in the Revision Petition.

14. In the result, for the reasons stated above, I pass the following order:

Para-36 of the judgment is expunged. Revision is disposed of accordingly.

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