

In Re: N. Venugopal and ors.

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Court : Andhra Pradesh

Decided On : Aug-31-1960

Reported in : AIR1961AP370

Judge : Chandra Reddy, C.J., ;Srinivasachari and ;Jaganmohan Reddy, JJ.

Acts : Madras District Police Act, 1859 - Sections 21, 44 and 53

Appeal No. : Criminal Appeal Nos. 551 of 1958 and 74 of 1959

Appellant : In Re: N. Venugopal and ors.

Advocate for Def. : O. Chinnapa Reddy, Public Prosecutor

Advocate for Pet/Ap. : V.T. Rangaswamy Ayyangar, ;R. Venugopal Reddy and ;K. Somakonda Reddy, Advs.

Judgement :

Srinivasachari, J.

1. These appeals came before Basi Reddi, J., for final disposal and a preliminary point was taken before the learned Judge that the prosecution of the appellants was barred by reason of the provisions of Section 53 of the Madras District Police Act of 1859 (hereinafter referred as the Act). Although this point was not raised in the lower Court, as it was a question of law going to the root of the jurisdiction of the Court, the learned Judge permitted the counsel to argue.

After bearing the arguments, the learned Judge was of the opinion that the view taken in a judgment of the Madras High Court in *Nichodemus v. State*, : AIR1955 Mad561 , by Chandra Reddy, J. as a Judge of the Madras High Court and in *Bapaniah v. State*, 1954 Mad WN (Cri) 316, a subsequent decision of the same learned Judge as a judge of the Andhra High Court were not in consonance with the view taken by the Madras High Court in an earlier decision in *Lakshmiah Swami v. Mohd. Galah Hussain*, AIR 1937 Mad 382. Inasmuch as the construction placed by Chandra Reddy, J., in the two cases referred to was not the same as that placed by the Madras decision (the last mentioned decision) he referred the case with the following question for determination by a Bench:-

'In the circumstances of this case, is the prosecution of the appellants barred by limitation by reason of the provisions of Section 53 of the Madras District Police Act.'

In pursuance of the above order of reference, the cases were placed before Monohar Pershad and Jaganmohan Reddy, JJ., and the bench, having regard to the importance of the matter, thought it desirable to refer the matter to a Full Bench. The following questions were referred to the Full Bench.

'1. In what circumstances would the bar of limitation prescribed by Section 53 of the Madras District Police Act be available to an accused officer?

2. In the circumstances of this case, is the prosecution of the appellants barred by limitation by reason of the provisions of Section 53 of the Madras ' District Police Act.'

2. These two questions have now come up before us for consideration. The Madras District Police Act has been enacted for the better regulation of the police within the territories in the Presidency of Madras. It deals with, the powers, duties and' responsibilities of the police officers. It also deals with, the penalties that might be imposed on a police officer (or unlawful acts.

The police officers are liable to be prosecuted for offences committed by them and where such offences are committed while in the actual discharge of their duties the

law enjoins that such prosecution or complaints shall be filed as early as possible. Section 53 prescribes a period of three months for the launching of prosecutions and the giving of at least one month notice of such action to the police officer and other superior officer mentioned in the section. Section 53 in so far as it is relevant reads as follows:-

'All actions and prosecutions against any person which may be lawfully brought for anything done or intended to be done, under the provisions of this Act, or under the provisions of any other law for the time being in force conferring powers on the police, shall be commenced within three months after the act complained of shall have been committed and not otherwise

3. Obviously this section does not give any protection to the police officer allowing him to perpetrate crimes or commit offences. The Police officer is liable to be punished and prosecuted like any other individual if he is responsible for an act which would constitute an offence under the Penal Code or under any other law. The protection afforded to the Officer is limited to this extent that where in the discharge of his duties the police officer does anything which would amount to an offence any action intended to be taken against him for such an offence would have to be commenced within three months.

The policy of the Act and the object of this provision appears to be to ensure that police officers are not unnecessarily harassed by complaints and prosecutions being filed long after the alleged commission of the offence when it might not be possible to know under what circumstances the alleged act was done. The idea behind is that where the police officer in the course of discharge of his duties happens to do an act, which is an offence, a prosecution should be launched against him as early as possible so that the police officer might be in a position to explain his act as otherwise it might be difficult to do so at a distance of time.

If the purpose of Section 53 of the Act was not so permit the prosecution of police officers committing offences while in the discharge of their duties then the section would be otiose. The only condition necessary for such prosecution is that the complaint, should be filed within three months,

4. The limited question that has to be examined is, in what cases and under what circumstances would the operation of the section come into play. The distinction as to whether a particular act which constitutes an offence could be regarded as having been done in the discharge of his duties or not is very subtle. Ordinarily where the act, complained of could be integrated with the discharge of his duties, the act would be regarded as having been done in the discharge of his duties, if it was not part of his duties that he was performing, then such an act would be outside the pale of Section 53 of the Act.

5. As to what would be regarded as having been done in the discharge of one's duties came to be considered by the Privy Council, Federal Court and the Supreme Court in connection with Section 197 of the Criminal Procedure Code, a provision affording protection to public servants when prosecution is launched against them. That Section 197 Cr. P. C. is intended to guard against vexatious proceedings against public servants and to secure the well considered opinion of a superior authority before prosecution is launched against the inferior officer. Section 197 reads as under:-

'When any person who is a Judge within the meaning of Section 19 of the Indian Penal Code (4-5 of 1860) or when any magistrate, or when any public servant who is not removable from his office save by or with the sanction of a State Government or the Central Government, is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction.

*****'

6. This section also speaks of acting or purporting to act in discharge of his official duty. Therefore the question of obtaining sanction of the superior authority before launching a prosecution against the public servant would arise only where it could be said that the act complained of was done by the public servant acting or purporting to act in the discharge of his official duty. The question came to be considered in the case of H. H. B. Gill v. The King, AIR 1948 PC 128. The question there was as to whether sanction before prosecution was necessary

under Section 197 Cr. P. C. Their Lordships of the Privy Council while approving the observations of Varadachari J. in *Hori Ram Singh v. Emperor*, 1939 FCR 159 : (AIR 1939 FC 43) stated as follows:-

'The test would be whether the public servant if challenged can reasonably claim that what he does he does in virtue of his office.'

This observation would make it amply clear that the sole test in such cases would be as to whether the officer when challenged could offer as his explanation that this act was done as part of his official duty. The same was the view taken by the Supreme Court when their Lordships of the Supreme Court said that the act should be directly concerned with his official duty so that if questioned it could be claimed to have been done by virtue of his office. Vide *Amrik Singh v. State of Pepsu*, : 1955 CriLJ865 .

This question as to whether it was in fact a proper discharge of his duty would be a matter that would have to be determined on the facts and circumstances of each case; in other words, does the act in respect of which a complaint or prosecution is filed hinge on his duties as a police officer. Two other cases to which reference may be made in this connection are *Shreekaanth Ramayya v. The State of Bombay*, (S) : 1955 CriLJ857 and *Salwant Singh v. State of Punjab*, : [1960]2SCR89 . It would follow, therefore, that in order to attract the provisions of Section 53 of the Act it is essential that the act complained of must have a bearing on the duty that the police official was discharging. This question is substantially one of fact and no hard and fast rule could be laid.

7. It now remains to consider whether the dictum of Chandra Reddy, J., (as he then was) in the two cases decided by him is in conflict with the decision of the Madras High Court in AIR 1937 Mad 382. This case related to a suit filed by a party against a Police Sub-Inspector alleging that he accused him falsely of having obstructed the pathway by keeping bricks charging under Sections 188 and 283 I. P. C. The plea of limitation under Section 53 of the Act was raised in this Case.

What the aforesaid decision laid down was that an act done by a police officer in the exercise of his police powers will not have the benefit of Section 53 of the Act,

if it was done maliciously. This could be regarded only as an authority for the proposition that where a police officer transgresses the bounds of his legitimate duties pertaining to him as a police officer, this Act could not give him any protection.

8. In an earlier decision of the Madras High Court, *Gundam Venkatasami v. Chainnam Purushottama*, 5 Mad HCR 466 a head constable sued the Sub-Inspector of Police for money had and received to the plaintiffs use. He said that the defendant had received the pay of the plaintiff but failed to give it to the plaintiff. The defendant pleaded that the suit was barred by Section 53 of the Act. Admittedly this claim was based upon a breach of private contract. Such, private contracts and their breaches were not covered by the Act and are acts done by police officials in their private capacity.

While holding that the case was not covered by Section 53 of the Act the learned Judges observed that Section 53 provided a special limitation for a special class of wrongs under the colour of the Police Act. This view of the learned Judges was followed and adopted by Ayling, J., in *In re Murugesu Naidu*, AIR 1916 Mad 142. That was a case of prosecution of the police constable for receiving an unauthorised fee or recompense.

The learned Judge held that the prosecution filed after three months could not be held to have been barred because the offence complained of could not be regarded as an act done purported to have been done in pursuance of the official powers. The whole case law was reviewed with reference to corresponding English Law by a Bench of the Madras High Court in AIR 1937 Mad 382 already referred to. In that case the learned Judges laid down that an act done by a police officer maliciously even though it might have been done in the exercise of his police powers, would not have the benefit of Section 53.

9. The learned referring Judge, Basi Reddy, J., was of the opinion that Chandra Reddy, J., as a Judge of the Madras High Court in : AIR 1955 Mad 561 and his subsequent decisions as a Judge of the Andhra High Court in 1954 Mad WN (Cri) 316 and in *In re Krishna Murthi*, 1955 Andh WR 882 equated 'purported' with 'intended' and 'pretended discharge of duty' with 'purported discharge'. We must

point out that the word 'intended' is used with reference to the act done and the expression 'purported discharge of duty' is used with reference to the latter part of the section, not with reference to the act done or intended to be done occurring in the first part, which bears only on the act complained (sic)

There is absolutely no scope for equating 'discharge' or 'purported discharge of the duties' with act done or intended to be done. A reference to the observations of Chandra Reddy, J., in the cases decided by him would clearly show that no such equation was made. In that case the expression was used with reference to the discharge of his duties. We may also make it clear that the section applies both to 'discharge' as well as 'purported discharge'.

10. In the first of the cases decided by Chandra Reddy, J., an Inspector of Police who was investigating into a series of cases of house breaking and theft questioned P. W. 1 regarding one of swell occurrences. When P. W. 1 denied knowledge of it he directed his subordinate officials to continue to investigate. P. W. 1 was taken to a corner and handcuffed and he was chained to the iron bar of the door. It would appear that this Inspector of Police when he went to the spot, finding the plight of P. W. 1 abused the constables and directed them to release him. This direction of the Inspector was not carried out. P. W. 1, therefore, filed a complaint for offence under Sections 348, 330 I. P. C. The learned Judge after disposing of the question whether a preliminary objection could be raised as regards the maintainability of the complaint, while dealing with the question of the bar of limitation, observed as follows:-

'In this case it Cannot be disputed that the alleged offence was Committed by the petitioner in the course of his official duty as Inspector of Police i.e. while he was investigating into several crimes that were committed in the town of Srikakulam. There Can be little doubt that the complaint falls within the purview of Section 53.'

11. He held that the complaint was barred under Section 53 of the Act. On the merits the learned Judge held that the accused Inspector of Police could not be held to be guilty of the offences. In the result he dismissed the revision petition brought by the complainant. In the second of the eases, viz., 1954 Mad WN (Cri) .316 the complaint filed against the police official was for offences under Sections

343, 348 and 330 I. P. C. It was alleged that with a view to extort information and confessions the officials caused hurt to P. W. 1.

In the circumstances of the case the learned Judge held that the case was covered by Section 53 of the Act. He observed that any action against a police officer for things done by him either in the discharge of his duties or purporting to discharge them should be filed within a particular time. The words 'purported to discharge them' could not be regarded as amounting to equating 'purported' with 'intended' or 'pretended discharge of duty' with 'purported discharge of duty' as thought by Basi Reddy. J.

All that was said by the learned Judge Chandra Reddy. J., was that the acts were done in the discharge of or in the purported discharge of the duties as a police officer. Section 53 would cover it. The question was elaborately dealt with by the learned Judge in 1955 Andh WR 882. In this case 3 police constable attached to a police out-station was on leave on a particular day and in the course of that day a person reported to him that his bull was missing and a certain person was suspected of theft.

The suspect and another person went to the house of another person who was P. W. 1 in the case and the suspect pointed out P. W. 1 as the person to whom the stolen bull was handed over. The police constable on the pretext of taking him to the Sub-Inspector of Police took him to a 'marava' and gave him a beating asking him to confess the guilt. The person who was beaten with fear of further beating told him that his sister P. W. 5 in that case knew everything about the bull

P. W. 1 was belaboured and handcuffed whereupon he gave the names of other persons as having something to do with it (the theft). P. W. 1 it would appear fell at the feet of the Dy. S. P. who happened to be there and sought his protection. A charge-sheet was filed under Section 330 I. P. C. The accused were found guilty and the police constable was sentenced to one year's R- I. In the revision that was carried to the High Court a point was raised that the prosecution was barred by reason of the provisions of Section 53 of the Act.

Dealing with this aspect of the case the learned Judge stated that if a police official was proceeded against while acting or purporting to act under the provisions of any other enactment, even then he will be entitled to the protection of Section 53. He elaborated and clarified the position by observing that when a crime is committed in the discharge of an official duty or anything done in the execution of his office the section would come into play.

He further observed that it would not be pretended that in that case the police constable purported or intended to act within the sphere of his official duty when he tortured P. W. I. In the view that he took that the act complained of was outside the purview of his official duty -- for he was not the police officer attached to the station on that day, he held that the objection on the ground of the bar of limitation could not be sustained.

The latter observation of the learned Judge would indicate that it would do if the officer pretended, to exercise his official functions, the act must have been done in the regular exercise of the official duty. We would only say that the protection afforded by the statute would disappear if the act is done with an improper motive such as spite or vengeance. An act with such an improper motive cannot be regarded as having been done in intended execution of a duty but only pretended execution thereof.

In effect an act done mistakenly but in the discharge of the duty would be covered by Section 53 of the Act. The other test that might be borne in mind in this connection is that if the act complained which constitutes an offence, by its very nature could not have been done by the officer while acting or purporting to discharge his official duty and further that act could have no necessary connection with the duties he was performing, such an act would not be covered by Section 53 of the Act

12. Section 21 of the Act prescribes the duties of a police officer of which detection and bringing offenders to justice is one. Section 44 prescribes the penalties for violation of duty and for abuse of powers and makes it an offence for the police officer to offer any unwarranted personal offence to any person in his custody, so that when Section 53 refers to acts done or intended to be done, it envisages

prosecutions for abuse of his power among others in detecting and bringing offenders to justice and for offering any unwarranted personal offence to any person in his custody. Similarly, it also refers to any abuse of power conferred under any law. Sections 21 and 44 lend support to the view that the prosecutions with respect to acts done or intended to be done which constitute offences must relate to the discharge of duties under powers conferred on the police officers.

13. We would, therefore, answer the first question referred to us by saying that the bar of limitation prescribed by Section 53 of the Act would be available to an accused officer only when the act complained of has been committed in the discharge of his official duties. We have already laid down that the question as to whether a particular act would be regarded as having been done in the discharge of one's duties would have to be determined on the facts and particular circumstances of the case. It is unnecessary for us to answer the second question. This will be decided by a single Judge.

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