

A. Ramchander Rao and ors. Vs. M. Krishniah and anr.

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Court : Andhra Pradesh

Decided On : Apr-12-1971

Reported in : 1972CriLJ1130

Judge : Madhava Reddy, J.

Appellant : A. Ramchander Rao and ors.

Respondent : M. Krishniah and anr.

Advocate for Pet/Ap. : Mr. B. Madhava Reddy

Judgement :

ORDER

Madhava Reddy, J.

1. An enquiry against the petitioners 1, 2 and 3, who are Sub-Inspector of Police, Police Head Constable and Police Constable, respectively, of Wanaparthy Police Station, was being held in P. R. C. No. 1/70 for offences under Sections 218. 220 and 342 read with 108, I. P.C.

2. According to the prosecution, the offence is alleged to have been committed on 17-7-1969 at 6.00 a.m. The complaint was filed on 3-2-1970. An objection was raised in the said P. R. C. Proceedings that Section 31 of the Hyderabad District Police Act is a bar to the filing of a complaint after 3 months of the alleged

commission of the offence. The learned Judicial 1st Class Magistrate. Wanaparthi by his order dated 4-8-1970 rejected the contention having regard to the decision of the Supreme Court in Maulud Ahmad v. State of Uttar Pradesh (Subba Rao, J.) 1964-2 Cri LJ 71 (SC). The accused carried the matter in revision before the learned Sessions Judge, Mahbubnagar who by his order dated 23-9-1970 in Cri. R. P. No. 13/70 dismissed the revision petition.

3. In this revision petition, Mr. B. Madhava Reddy, learned Counsel for the petitioners contended that both the Courts below erred in applying the decision in State of Andhra Pradesh v. Venugopal (Das Gupta. J.) : [1964]3SCR742 which was a decision based upon the interpretation of Section 53 of the Madras Police Act to the present case in which an objection is raised having regard to Section 31 of the Hyderabad District Police Act (hereinafter referred to as 'the Hyderabad Act') read with Sections 16 and 19 of the District Police Act and 151. Criminal P.C.

Section 31 of the Hyderabad Act in so far as it is relevant for the present purpose reads as follows:?

Limitation to Institution of Civil Suit or Prosecution: When a Civil suit or prosecution may be lawfully instituted for any act done or intended to be done by a person under the provisions of this Act, or under the other general Powers of the Police conferred by this Act, such suit or prosecution shall be instituted within three months after the act shall have been done and not otherwise. The notice in writing of such civil suit and of the cause thereof shall be given to the defendant or to the Superintendent of Police or the Assistant Superintendent of Police of the District within whose jurisdiction the act was committed, one month at least before the institution of the suit.

From the wording of Section 31. the period of limitation prescribed therein within which a prosecution may be launched for any act done by a person is limited to acts done by such a person 'under the' provisions of this Act or under other general powers of the Police conferred by this Act and does not extend to any act done by person under provision of any other enactment. That position is not really disputed by the learned Counsel for the petitioners. But what is, however, contended is that the power to detect offenders apprehend them and have them

convicted is one of the duties entrusted to a Police Officer under Section 19 of the Hyderabad Act and if in purpose of such a duty the police officer arrests or detains any person and a complaint is made that such an arrest or detention was wrongful and constituted an offence under Section 220 or 342, I. P.C. that is an act done by the Police Officer under the Provision of the Hyderabad Act or under other general powers of the Police conferred under the Act and, therefore, the power of limitation prescribed under Section 31 is attracted. Section 16 of the Hyderabad Act lays down that 'the Police Officers enrolled under this Act shall not have any other powers except the powers conferred by this Act or by the Code of Criminal Procedure. 1898. Under Section 19. the duties of every Police Officer are laid down as follows:

19. Duties of Police Officers: (1) It shall be the duty of every Police Officer

(a) to execute forthwith all orders and warrants of arrest lawfully issued to him by a competent authority:

(b) to collect and communicate intelligence respecting public order.

(c) to prevent offences and public nuisance:

(d) to detect offenders and have them convicted and to apprehend all persons whom he is legally authorised to apprehend and for whose apprehension sufficient ground exists.

The power of detecting offences, apprehending all persons whom he is legally authorised to apprehend and to have them convicted is no doubt one of the duties of a Police Officer. But the Code of Criminal Procedure also empowers the Police Officer to arrest persons with or without warrant, as the case may be. as laid down in Criminal P.C. They may arrest persons against whom they have reasonable suspicion of having committed offences or against whom a reasonable complaint is made or credible information is received. They may even arrest persons for the purpose of preventing any cognizable offences. They may investigate into such offences and produce the arrested persons before the Magistrate concerned. Section 19 (d) of the Hyderabad Act does not lay down when a Police Officer can

legally apprehend a person. It merely lays down that the Police Officer may apprehend all persons whom he is legally authorised to apprehend. That apart the mere fact that Section 19 authorises the arrest of all persons whom a Police Officer is legally authorised to apprehend does not take away the general powers vested in a Police Officer under the Code of Criminal Procedure. When a person is arrested for the purpose of investigation into an offence, the arrest cannot be said to be only in exercise of the powers under Section 19 (d) of the Hyderabad Act. It is referable to the powers of investigation vested in the Police Officers under the Code of Criminal Procedure and if in exercise of those powers, the Police Officers apprehend a person and having apprehended, commit an act which constitutes an offence under Sections 218, 220 and 342, I. P.C. that act cannot be said to be an act done by a person only under the Provisions of the Hyderabad Act or under the general powers of the Police conferred by that Act. That would be an act done in the course of exercise of the powers of investigation vested under the Criminal P.C. as well.

4. In my view, when the period of limitation prescribed under Section 31 is expressly confined to prosecution for acts done under the Hyderabad Act, the Police Officers cannot plead the bar of limitation prescribed thereunder for such acts which also fall under the Provisions of the Code of Criminal Procedure. Section 16 of the Act which limits the powers of the Police Officers enrolled under the Hyderabad Act lays down that they shall have powers conferred by the Hyderabad Act or those conferred by the Code of Criminal Procedure, 1898. In other words, they shall have no other powers. If any power is conferred by the Hyderabad Act which is already conferred by the earlier Code of Criminal Procedure, that does not cease to be a power conferred by the Code of Criminal Procedure, but merely because that power is also once again conferred by the Hyderabad Act. Even without being so conferred by the Hyderabad Act, the Police Officers would have had the right to arrest an accused in the course of investigation into an offence. That being so. the protection under Section 31, cannot, in my opinion, extend to such Act. In order to claim the benefit of Section 31, the act done by the Police Officer should be one re-ferrable exclusively to an act done in exercise of the powers or duties conferred only by the Hyderabad Act and not conferred by Code of Criminal Procedure or any other enactment.

5. The learned Counsel for the petitioner places strong reliance upon a decision in : [1964]3SCR742 (supra) (Das Gupta, J.). In that case, their Lordships were considering the effect of Section 53 of the Madras District Police Act which also prescribed a period of limitation for prosecutions in respect of the acts done by Police Officers. Section 53 of the Madras District Police Act 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.

With reference to Section 53, their Lordships held:

All prosecutions whether against a police officer or a person other than a police officer (e, g. a member of the Madras Fire Service, above the rank of a fireman acting under Section 42 of the Act) must be commenced within three months after the act complained of. if this act is one which has been done or intended to be done under any of the provisions of the Police Act. The protection of Section 53 also extends to acts done or intended to be done under the provisions of any other law conferring powers on the police. One such law is the Code of Criminal Procedure which confers numerous powers on the police in respect of arrest, search and investigation.

This conclusion was reached having regard to the specific provisions in Section 53 which covers prosecutions which may be brought for anything done not merely under the provisions of the Madras District Police Act but also done under the Provisions of any other law for the time being in force. The expression 'another law for the time being in force' or some other words to that effect are not to be found in Section 31 of the Andhra Pradesh (Telangana Area) District Police Act. 1329 F. That section is limited to acts done by a person under the provisions of the Hyderabad Act or other general powers of the Police conferred again under the Hyderabad Act and not by any other law for the time being in force. That decision, therefore, does not support the petitioner's contention.

In 1964 (2) Cri LJ 71 (SC) (Subba Rao, J.). dealing with Sections 42 and 36 of the Police Act (1861) (Central Act of 1861) which reads as follows:

All 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 general police-powers hereby given shall be commenced within three months after the act complained of shall have been committed, and not otherwise.

It was held that:

The period of three months prescribed for commencing a prosecution under this section is only with respect to prosecution of a person for something done or intended to be done by him under the provisions of the Police Act or under General Police powers given by the Act. Section 42 does not apply to prosecutions against any person for anything done under the provisions of any other Act or under police powers conferred under any other Act. A combined reading of the provisions of Sections 42 and 36 leads to the conclusion that Section 42 only applies to a prosecution against a person for an offence committed under the Police Act.XX XX XX

The provisions contained in Section 31 of the Hyderabad Act are in pari materia with Section 42 of the Central Act of 1861 and not with Section 53 of the Madras District Police Act.

The Supreme Court in *Ajaib Singh v. Joginder Singh* (Sikri, J.) : 1969 CriLJ4 reiterated its earlier view expressed in 1964 (2) Cri LJ 71 (SC) (Subba Rao J.).

6. Mr. B. Madhava Reddy. learned Counsel for the petitioner, sought to distinguish these two decisions on the ground that the Central Police Act does not contain a provision similar to Section 16 of the Hyderabad Act. But I am unable to see how the presence of Section 16 which lays down that the police officers enrolled under the Hyderabad Act shall not have any other powers except the Powers conferred by that Act or by the Code of Criminal Procedure 1898, makes any difference in the conclusion. Section 16 itself does not confer any powers. It merely lays down that they shall not have any powers other than those conferred by that Act or by

the Code of Criminal Procedure. That section does not enlarge the powers of the Police or confer any special power on them.

7. I am, therefore, of the view that the limitation of 3 months prescribed by Section 31 of the Act cannot apply for prosecution of police officers for offences punishable under Sections 210, 220 and 342, I, P.C. read with 108, I. P.C. in respect of any act done in exercise of the powers conferred under the Code of Criminal Procedure. This Criminal Revision Petition, therefore, fails and is dismissed.

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