

Public Prosecutor Vs. Jagannadham

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Court : Andhra Pradesh

Decided On : Aug-31-1960

Reported in : 1961CriLJ448

Judge : M.C. Desai, J.

Appellant : Public Prosecutor

Respondent : Jagannadham

Judgement :

ORDER

M.C. Desai, J.

1. This revision has been filed by the public prosecutor, Andhra Pradesh against order dated 25-4-1960 which has been passed by the Principal Sessions Judge, Secunderabad in CrI. R.P. No. 5/ 1960 on his file.

2. The relevant facts of the case are briefly as follows:

3. The C.I.D. of Police GopalaPuram, registered a case under Section 354, I.P.C. on an allegation that Jaganatham (respondent herein as well as in CrI. R.P. No. 5 of 1960) (hereafter referred to for convenience as the accused) outraged the modesty of a girl called Maurean Terry in the night of 2-5-59. The Police investigated the case but did not file any final report under Section 173, Cri. P.C.

to the City Magistrate, Secunderabad or to any other Magistrate. They did not file a charge-sheet or a 'referred' charge-sheet. But, it would appear that copies of case-diaries were being sent to the Magistrate. On 9-1-1960, the 2nd City Magistrate adopted the extra-ordinary procedure of passing an order that Jagannadham should be put up before the court for trial for an offence under Section 354, I.P.C.

It would be seen from the order of the learned Sessions Judge that the City Magistrate adopted the course as a result of his coming to a conclusion (on the basis of case diaries and other materials placed before him in connection with the crime) that the accusation against Jagannadham appeared to be reasonably well-founded. The learned City Magistrate posted the case to 13-1-1960. On that date, Jagannadham was bound over to appear on the next adjourned date of hearing, 18-1-1960. On the latter date, the Police did not file a charge-sheet. On 19-1-1960, the City Magistrate passed an order as follows:

P.P.O. present. Accused Jagannadham is present in person and through advocate.

No charge-sheet filed despite giving opportunities. Hence on the records, a charge under Section 354, I.P.C. framed against the accused, to which the accused pleaded not guilty.

Call on 22nd January, 1960. The Prosecutor is directed to conduct the case and call the evidence as per the records.

Thereupon, the state filed a petition under Sections 435 and 438, Cri. P.C. before the Principal Sessions Judge, Secunderabad that the case might be reported to the High Court to quash the proceedings in file and to pass other suitable orders. The learned Sessions Judge concluded at the end of para 5 of his order, as follows:

In the present ca.se, as there is no complaint in writing by the complainant before the Magistrate, it can be said that the Magistrate has taken cognizance under Section 190, Sub-section (1) Clause (b).

He came to the final conclusion that no illegality had been committed by the trial Magistrate and accordingly dismissed the revision petition. Aggrieved by that order, the State represented by the Public Prosecutor, has filed this petition.

4. The learned Advocate for the accused has drawn my attention to a report dated 8-5-1959 by the Assistant Commissioner of Police (Law and Order) wherein he has stated that the investigation of the case had been completed. The particular statement referred to by the learned Counsel is underlined (in single quotation marks in this report - Ed.) by me and shown in its position and context in the paragraph in that report, which I am extracting in full, as below:

In my opinion, the evidence on record is sufficient to send up the case to the court on a charge of outraging the modesty of a woman, under Section 354 I.P.C. in view of the statements of witnesses cited above. However, the only 'snag' is that the fountain pen and keys found at the scene of offence could not be traced conclusively to Sri Jagannadham. 'The investigation of the case is completed'. If approved, a draft charge-sheet will be prepared and submitted to P.P.O. for scrutiny and opinion. As S. I, L. and O Srinivasa Rao has been a party to the affair and is an intimate friend of D. S. I. Jagannadham, his further continuance at Gopala-puram P. S. is considered a veritable danger to the prosecution evidence adduced so far against DSI Jagannadham. I, therefore, request that he may be transferred to some other Division in the best interest of the case.

Further orders for the prosecution of S. D. I. Jagannadham in the court of law on a charge Under Section 354 I.P.C. are solicited.

It is true that the above paragraph contains a statement that the investigation of the case had been completed but it is also clear from the entire paragraph that it was purely an expression by the Assistant Commissioner of Police to his departmental superior, who was the Deputy Commissioner of Police, and that the Assistant Commissioner asked for further orders from the Deputy Commissioner, for prosecution of the case. He has also expressed that there was what he viewed as a 'snag'.

Obviously, the Assistant Commissioner was expecting further orders and it was quite open to the Deputy Commissioner to pass orders giving suitable instructions to the Assistant Commissioner. The instruction might be to file a charge-sheet or not to file a charge-sheet or to postpone the filing of a charge-sheet or to do further investigation. The Assistant Commissioner himself contemplated that a draft charge-sheet should be Submitted to the P. P. O. for scrutiny and obviously he intended that an opinion from the P.P. O. had to be obtained and considered, before deciding whether to file a charge sheet or not.

It would also be seen that a departmental enquiry was being held by the Assistant Commissioner of Police. It is quite possible that the concerned superior police-officers in consultation with the P. P. O. or any other competent authority considered the question as to whether proceedings were to be instituted in Court straightway Or whether they should proceed with the departmental enquiry first and decide later the question as to whether the matter was to be proceeded with in a court of law.

In this matter, the higher police officers had the power and authority as well as duty and obligation to consider the various aspects, which would legitimately include questions of administrative expediency and not merely a question of sufficiency of evidence to prosecute the accused in a court. In effect, the report of the Assistant Commissioner dated 8-5-1959, cannot be taken as proving conclusively that the Police had nothing further to do regarding the investigation of the incident and that they ought to file a charge-sheet straightway before a competent Magistrate. It cannot also be said that the failure to file a charge-sheet was a failure by the Police to discharge their statutory duties properly.

5. The report of the Assistant Commissioner would show that he (Assistant Commissioner) felt, as his opinion, that a charge-sheet was capable of being prepared and that the evidence on record was sufficient to send up the case to court on a charge under Section 354, I.P.C. So, it cannot be said that the conclusion of the Magistrate (on perusal of the evidence on record in case-diaries etc. which were available to him) that there was a prima facie accusation against the accused which appeared to be reasonably well-founded, was absolutely

baseless or untenable.

But, it is not clear as to what was the reason which prompted the City Magistrate to take the premature and precipitate step of passing an order that the accused should be put up before the Court and directing the Prosecutor to conduct the case and why the Magistrate could not have the patience to wait for the proper time and occasion and do his duty in due course, in the ordinary manner, after allowing the police officers and others concerned with the filing of the charge-sheet to do their duty in their turn in the way they thought best and in the best interests of the administration of justice, as they considered proper.

6. The important question is under what provision of the Criminal Procedure Code, the City Magistrate took cognizance of the case. For, it has got a material bearing on the appropriate procedure. The order of the City Magistrate does not mention the provision under which he took action. The finding of the learned Sessions Judge is that it could validly be under Section 190(1)(b) Cri P. C. (It is represented to me by the learned Public Prosecutor that the procedure adopted in trial was also on the basis that cognizance had been taken under Section 190(1)(b) Cri P. C.)

The City Magistrate framed a charge straightway, following the procedure under Section 251-A. It means that he treated the case as one instituted on a police-report, as contemplated under Section 251-A Cri. P.C. and that he had taken cognizance under Section 190(1)(b) Cri. P.C. The learned Public Prosecutor contends that the Magistrate could not, in law, take cognizance of the case under Section 190(1)(b) Cri, P.C. and that if at all it is deemed to have been validly taken cognizance of, it must be under Section 190(1)(c), Cri P.C. Section 190(1) Cri P.C. runs as follows:

190(1). Except as hereinafter provided, any Presidency Magistrate, District Magistrate, or Sub-Divisional Magistrate and any other Magistrate Specially empowered in this behalf, may take cognizance of any offence-

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a report in writing of such facts made by any police officer;

(c) upon information received from any person other than a police officer, or upon his own knowledge or suspicion, that such offence has been committed.

Learned Advocate for the accused seeks to rely on the decision of this Court in Venkatachalapatirao v. Govindarajulu : AIR 1960 AP300 . In that case, the relevant facts were as follows : The Tahsilder in a preliminary inquiry found that there was prima facie a case against the petitioners under Sections 353, 356 and 146, Penal Code and transferred the papers to the Station House Officer for investigation. The Sub-Inspector after investigation, submitted a final report to the Magistrate stating that the evidence disclosed only the commission of a non-cognizable offence under Section 352, Penal Code.

The report was not opposed by the Tahsildar though a notice was served on him (the latter). Eventually, the Magistrate took cognizance under Section 190(l)(c) Cri. P.C. being of opinion, that the records clearly disclosed offences under Sections 353 and 355, Penal Code. On those facts, it was held that the action of the Magistrate was justified as there were ample materials before the Magistrate to support his suspicion that offences under Sections 353 and 355, Penal Code had really been committed and therefore, the Magistrate had not exceeded the jurisdiction vested in him under Section 190(1) Cri. P.C.

In that case, an argument was raised that the action of the Magistrate could be supported even as coming under Section 190(l)(b) Cri. P.C. and that the Magistrate was not bound to adopt the conclusions of the Sub-Inspector in his report but that argument was abandoned, as the impugned order concerned in that case unequivocally stated that the offence was taken cognizance of only under Section 190(l)(c) Cri. P.C. Consequently, in that decision the question as to whether the Magistrate could take cognizance under Section 190(l)(b) Cri. P.C. was not considered and decided. Therein, it was observed as follows:

It was urged that in these circumstances the Magistrate had 'received information' within the meaning of Section 190(l)(c) from the Tahsildar, who was a person other than a police officer. But, the Tahsildar's report of 17-2-1958 was addressed not to

the Magistrate but only to the Station House Officer, Duggirala. It was obviously not intended for the Magistrate, because it concluded by asking that Station House Officer to take such further action as he thought fit, after registering the case and conducting the investigation.

7. Hence, the letter dated 8-5-1959 of the Assistant Commissioner addressed to the Deputy Commissioner (to the effect that evidence on record was sufficient to send a charge-sheet to a court) cannot be treated as a 'police report' by the Police to the Magistrate on which cognizance could be taken under Section 190(l)(b) Cri. P.C. Further, in that case, there was a report of the Sub-Inspector which was a report under Section 173. Cri. P.C. to the Magistrate, though the report was to the effect that, in the opinion of the Sub-Inspector only a non-cognizable offence under Section 352. I.P.C. was made out.

8. Learned Counsel for the accused relies on the Full Bench decision of the Madras High Court. in Public Prosecutor v. Ratnavelu Chetty AIR 1926 Mad 865 (FB). There the question involved was whether a charge sheet in a non-cognizable case was a 'police report' or not, for the purpose of Section 190(1)(b) Cri. P.C. It was held by the Madras High Court that the report of a police officer mentioned under Section 190(l)(b) Cri. P.C. was not confined to a report of a cognizable offence and included even the police report in a non-cognizable case. In that decision, beyond doubt or dispute, there was a police report, though it was about a non-cognizable case. So that decision is not helpful to decide the present case.

9. In Panu Samal v. Emperor AIR 1940 Pat 111 a final report was received from the police referring a certain case as 'mistake of law' as it was a Civil dispute. But, the learned Magistrate read the case diary and also a petition filed by the prosecution and called for a charge-sheet under various sections against the accused. It was held by the Patna High Court that the petition to the Magistrate put in by the person, who had lod the F.I.R. with the police, was really a complaint petition and that, though the Magistrate acted only on information contained in the police diary as well as the petition of complaint, the action on the complaint petition came within Section 190(l)(a) and, therefore, Sea. 190(l)(b) and (c) Cri. P.C. had no application whatsoever. That decision does not apply to this case because

there was a final report, in that case (though it was report of 'mistake of law') and as it was held that the case came under Section 190(1)(a) Cri. P.C.

10. In *Api Samal v. Bisi Mallik* : AIR1953 Ori83 , the Magistrate received a complaint but without recording the sworn statement, sent it to the police for inquiry and report presumably under Section 202, Cri. P.C. On receipt of that report, the Magistrate passed an order that cognizance should be taken under Section 190(l)(b) Cri. P.C. It was contended before the learned Judge that as the Police had not filed the charge-sheet and had merely recommended the issue of summons, it was not a 'police-report' within the meaning of Section 190(l)(b) Cri. P.C. The learned Judge observed thus:

but the authorities on the question go to show that any report from a police-officer would be enough to give jurisdiction to the Magistrate to take cognizance of an offence under Sub-clause (b) of Section 190(1).

11. It is not clear from that decision as to what are the authorities referred to by the learned Judge. But in that case, there was a report by the police officer, and that too, recommending issue of summons to the accused which obviously implied that there was a *prima facie* case for prosecuting the accused. Further, it was decided in that case 'having regard to the orders passed from time to time' the Magistrate really took cognizance under Section 190(l)(a) Cri. P.C. and that the Magistrate was under a wrong impression when he noted that he was taking cognizance under Section 190(l)(b) Cri. P.C. So, the observation in the above decision relied upon by the learned Advocate for the accused was not necessary for a final decision in that case and is, therefore, in the nature of an obiter.

12. In *Devi Singh v. Shiv Ram Singh* AIR 1980 Raj 150 - the Magistrate had taken cognizance on a report made by a Police Officer and not on a complaint.

13. One important feature in all the decisions relied upon by the Learned Advocate for the accused is that, in all of them, there was a final report by the Police whereas, in the present case, there has been no final report by the police.

14. In *R.R. Chad v. State of U.P.* : 1951 CriLJ775 , the Supreme Court has discussed about Section 190(1)(a), (b) and (c)- Therein, it was observed as follows at page 208: It is clear from the wording of the section that the initiation of proceedings against a person commences on the cognizance of the offence by the Magistrate under one of the three contingencies mentioned in the section. The first contingency is evidently in respect of non-cognizable offences, as defined in the Cri. P.C. on the complaint of an aggrieved person. The second is on a police report, which evidently is the case of a cognizable offence when the police have completed their investigation and come to the Magistrate for the issue of a process. The third is when the Magistrate himself takes notice of an offence and issues the process....

15. It is seen from this passage that, acting under Section 190(1)(b) Cri. P.C. is contemplated when the police have not merely completed the investigation but have also gone to the Magistrate for the issue of a process. It is obvious that, in the present case, the Police have not come to the Magistrate for the issue of a process and, therefore, cognizance could not be under Section 190(1)(b) Cri. P.C.

16. Thus, it is clear that cognizance of the offence could not have been taken under Section 190(1)(b) Cri. P.C., but, it could have been taken under Section 190(1)(c) Cri. P.C. So, the learned Magistrate cannot be said to have acted without jurisdiction in passing the order, but he must be considered to have taken cognizance under Section 190(1)(c) Cri. P.C. His action in doing so without waiting for the final report from the Police, which they were bound to send him ultimately under Section 173, Cri. P.C., was not illegal.

It is prima facie premature and has led to a highly anomalous situation in which the Police (who ordinarily in normal cases where they file charge-sheet would be keen to prosecute) are averse to prosecuting the accused in the court whereas the accused (who normally in ordinary cases would not at all like to be prosecuted or be in a hurry to be prosecuted) is particularly keen on the prosecution being done (as he wants to avoid the Departmental Enquiry) and the learned Magistrate (who ordinarily ought to adopt a neutral attitude and not either demand a prosecution or hurry it on the one hand or avoid it or delay it on the other) has taken the case on

file and has ordered a prosecution and insisted on a charge-sheet being filed.

The learned Public Prosecutor has explained that the Police Department are conducting a Departmental Enquiry against the accused, that they want that enquiry to be completed and that they do not desire to have prosecution in a case in Court because they cannot continue the Departmental Enquiry, if a criminal case is pending in a court. The fact that the Departmental Enquiry has been started against the accused and proceeded to some extent is beyond doubt or dispute, It is also admitted by the learned Advocate for the accused that a Writ petition (W. P. No. 591 of 1959) was filed in this Court praying for the issue of a writ of prohibition against the Departmental Enquiry being continued, that this High Court dismissed that writ petition and thereby left it free to the Police Department to hold the Departmental Enquiry.

But, the learned Magistrate, by his premature action, under Section 190(1)(c) Cri. P.C. without waiting for the final report of the police under Section 173 Cri. P.C. has rendered it impracticable for the departmental enquiry to go on and nullified the effect of the order of the High Court dismissing the writ petition. The Magistrate by his order has produced the same effect, as if the High Court allowed the writ petition instead of dismissing it. That is, he has made it practically impossible, in view of the instructions contained in the G.O., for the Department to Proceed further with the Departmental Enquiry.

17. In S.A. Venkataraman v. The State : 1958 CriLJ254 - the relevant facts were: On September 18, 1952 a final report was submitted to the Court under Section 173, Cri P.C. wherein it was stated that, although a prosecution was recommended the order of the Ministry of Commerce and Industry was that the appellant would be dealt with departmentally. On September 19, 1952 the Magistrate by his order, approved of the closing of the investigation, discharged the appellant from his bail and directed that the sum of Rs. 10,000/- seized from him was to be returned to the complainant. The Prosecution of the appellant was, however, recommenced on February 11, 1954, on the same materials and on the same allegations but on a fresh complaint. In that decision, it was observed, about the right of the Department to proceed against the appellant departmentally first

before prosecuting that person in court as follows:..All that is indicated is that the Government chose to proceed against the appellant departmentally. It can hardly be said that, in doing so, the Govt., had positively refused to grant sanction for the prosecution of the appellant. Indeed, it may be legitimately said that the Government preferred to await the result of a departmental enquiry. If that enquiry exonerated the appellant the occasion for granting a sanction may not arise. If, on the other hand, the departmental enquiry established the allegation against the appellant, the Government might find itself in possession of more material than that disclosed by the police investigation on which to decide whether a sanction should or should not be granted.

18. In that case, the Supreme Court held that it was lawful and proper for the Government to allow the Departmental Enquiry to be closed and, after that enquiry, to consider with reference to the fuller material, which would be in its possession by way of evidence which came on record in the Departmental Enquiry, for the purpose of deciding whether sanction for prosecution should or should not be granted.

Without such sanction, the prosecution in Court even by the Police could not proceed, Similarly, in this case, it would be quite lawful and proper if the Police Officers concerned allow the Departmental Enquiry to proceed first and after that enquiry decide ultimately, with reference to the additional material which came on record in that enquiry as to whether the accused should or should not be prosecuted in court. It would not be unlawful and improper if they even took into consideration, the result of the enquiry i.e., whether the accused officer was acquitted in the enquiry or found guilty and awarded a punishment in the enquiry.

19. The complaint of the learned Public Prosecutor that the action of the learned City Magistrate amounted to an interference by the Court with the duties of the Police is not completely groundless. It was observed by the Privy Council in *Emperor v. Nazir Ahmed* AIR 1945 PC 18 at p. 22 as follows (at page 22):

In their Lordships opinion however, the more serious aspect of the case is to be found in the resultant interference by the court with the duties of the police. Just as it is essential that every one accused of a crime should have free access to a court

of justice so that he may be duly acquitted if found not guilty of the offence with which he is charged, so it is of the utmost importance that the judiciary should not interfere with the police in matters which are within their province and into which the law imposes upon them the duty of enquiry. In India, as has been shown, there is a statutory right on the part of the Police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would, as their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the court. The function of the judiciary and the police are complementary, not overlapping and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always, of course, subject to the right of the court to intervene in an appropriate case when moved under Section 491 Cr. P.C. to give directions in the nature of habeas corpus. 'In such a case as the present, however, the court's functions begin when a charge is preferred before it and not until then.

20. In that case, the question which their Lordships were considering was whether the High Court was justified in using its powers under Section 561-A Cr. P.C. to quash a police investigation. Their Lordships observed that Section 561-A Cr. P.C. gave no new powers to the High Court but only provided that those which the court already inherently possessed should be preserved and, on the facts of that particular case, held that the High Court was not justified in prohibiting the investigation.

21. Ordinarily, it is not only possible but quite common for a statute to vest powers and duties in different departments of officers. (For the purpose of convenience, I use the word 'Department' including the judicial department and the word 'Officers' as including judicial officers like the Magistrate). When the statute given powers like that, it would ordinarily be clear from the provisions of the statute as well as concerned Rules as to what are the rights and duties, powers and obligations of each department and officer.

The provision should also ordinarily be sufficient to ensure that the powers and duties of one department and one officer do not overlap but are complementary to

the powers and duties of another department or officer, Such provision (supplemented in cases by departmental instructions) would be sufficient to see that there is no scope for direct conflict or head-on collision between one department and another or one officer and another, if each departmental officer carried out his duties and fulfils his obligations while exercising his rights and powers, not only in conformity with the letter of the law but also with the spirit of the law and also in his turn and in the proper manner.

If an officer, for some reason, considers the desirability of adopting an extraordinary course or exercising his power under some special provision, out of his Ordinary turn, even during the turn of another officer, he should accordingly consider the matter in all the possible aspects, not only from his point of view but also, from the point of view of the officer or department. In that connection, he should carefully consider not only his rights and powers together with the duties and obligations of the other officer but also consider his (former officer's) own duties and obligations together with the rights and powers of the latter officer.

The law expects every officer to do his duty. In ordinary life, conflicts and clashes are avoided and peaceful co-existence and co-operation is rendered possible by following the principles of live and let live! Similarly, conflicts and clashes can be avoided in the field of official work if a similar principle is followed namely 'Do duty and let do duty'-Apart from the duties imposed by statute, it must be recognized as a duty by way of convention and courtesy, though not under the strict letter of the law, of each officer to ensure, as far as possible, that when he carries out his duties and discharges his obligations without fear or favour, he does not embarrass or hamper another officer's bona fide and lawful discharge of the latter's duties and obligations and allow free scope for the latter to carry out his own duties and obligations. Of course, this does not mean that, in fitting cases, a Magistrate should not, after consideration of all relevant aspects, decide to follow a course which is provided by law and which is necessary in the interests of justice.

22. In the result the position is as follows:

The Magistrate had reason to expect the Police to send hi a final report under Section 173, Cri. P.C. But, he did not choose to wait for that report. It does not

appear that he even tried to find out by correspondence, as to when that report could be expected by him, or as to what was the stage, in which the investigation was or requesting them to avoid undue delay and expedite the sending of the final report. On the other hand, the learned Magistrate passed an order that the accused should be put up for trial.

This action cannot be treated as action under Section 190(1)((b) Cri. P.C. There was no occasion or need for the learned Magistrate to treat the case diary and other material already put up before him, as amounting to a police report, for the purpose of taking the case on file, under Section 190, Cri. P. C-when he had reason to expect that a final police report under Section 173, Cri. P.C. would come to him, in the ordinary course. In effect, he took the case on file under Section 190(1)(c) Cri P.C. Taking, on file under Section 190(1)(c) is not illegal.

In certain justifying circumstances, it may be proper. In the present case, the action of the learned City Magistrate though not illegal, was not justified by any necessity in the interests of justice. It was highly improper and amounted to interference with the statutory rights and duties of the police and, in effect, prevented them from exercising their administrative discretion to finish the Departmental Enquiry first and then to consider after the Departmental Enquiry (with reference to material available in that enquiry in addition to material gathered in the investigation) as to whether the accused should be prosecuted in court and whether charge-sheet should be filed or a report was to be sent that no prosecution was necessary. It has given rise to practical difficulties referred to already. I consider it necessary and desirable to quash the order of the City Magistrate.

23. I, therefore, allow the revision petition filed by the State and quash the proceedings of the II City Magistrate, Secunderabad in C.C. No. 635/4 of 1960 on his file.