

Delhi Administration Vs. Kishan

Delhi Administration Vs. Kishan

SooperKanoon Citation : sooperkanoon.com/686193

Court : Delhi

Decided On : Aug-09-1973

Reported in : ILR1973Delhi765; 1973RLR655

Judge : P.N. Khanna and; M.R.A. Ansari, JJ.

Acts : Suppression of Immoral Traffic in Women and Girls Act, 1956 - Sections 13;
[Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 367 and 537

Appeal No. : Criminal Appeal No. 96 of 1967

Appellant : Delhi Administration

Respondent : Kishan

Advocate for Pet/Ap. : P.P. Malhotra and; M.R. Chawla, Advs

Judgement :

M.R.A. Ansari, J.

(1) The respondent herein was convicted by the Sub Divisional Magistrate, Hauz Kazi, Delhi for an offence under section 8 of the Suppression of Immoral Traffic in Women and Girls Act, 1956 (hereinafter referred to as the Act) and sentenced to pay a fine of Rs. 150.00 or in default to under go 1' months rigorous imprisonment. The respondent preferred an appeal in the Court of Session against his conviction and the sentence passed against him and the learned Additional Sessions Judge,

who heard the appeal, set aside the conviction of the respondent and the sentence passed against him and allowed the appeal. Against this judgment of the learned Additional Sessions Judge acquitting the respondent the State has preferred the present appeal.

(2) It is not necessary to state the facts of this case, because the learned Additional Sessions Judge acquitted the respondent only on one ground, namely, that the investigation of the case by the police was illegal inasmuch as the police officer who investigated into this offence was not a special police officer appointed by the State Government under section 13 of the Act. The relevant portion of that section reads as follows :-

'13(1)There shall be for each area to be specified by the State Government in this behalf a special police officer appointed by or on behalf of that Government for dealing with offences under this Act in that area. (2)The special police officer shall not be below the rank of- (a) an Assistant Commissioner of Police in the presidency towns of Madras and Calcutta; (b) Superintendent of Police in the presidency town of Bombay; and (c) a Deputy Superintendent of Police elsewhere.'

In the present case, the respondent was arrested by Public Witness 3, who was admittedly not a special police officer appointed under section 13 of the Act. It was also Public Witness 3 who investigated into this offence and examined witnesses. The charge-sheet was, however, filed by P.W. 5, who was a special police officer appointed under section 13 of the Act. The learned Additional Sessions Judge was of the view that the filing of the charge-sheet by Public Witness 5 did not amount to a proper compliance with the provisions of section 13 of the Act and that the investigation into this case was in fact conducted by a police officer who was not a special police officer appointed under section 13 of the Act. We shall proceed on the basis that it was P.W. 3 and not Public Witness 5 who had investigated into this case and that, therefore, the investigation was not conducted by a special police officer appointed under section 13 of the Act. The question for consideration is whether the learned Additional Sessions Judge was right in setting aside the respondent's conviction and in acquitting him on that ground alone.

(3) The learned Additional Sessions Judge has followed the decision of a Single Bench of the Punjab High Court in *State v. Mehro* 1962 (1) Cri. L.J. 361. Before referring to the rule laid down in that case, it may be noticed that this decision was over-ruled by a Division Bench of the Punjab & Haryana High Court in *State of Haryana v. Rugha*. The main question that arose for consideration in the case of *State v. Mehro* was whether the words 'dealing with' in Section 13 (1) of the Act included the investigation of an offence under the Act. The learned Judge held that these words included the investigation of an offence under the Act and that only a special police officer appointed under section 13 of the Act was competent to investigate into an offence- under the Act and an investigation by a police officer who was not appointed as a special police officer under section 13 of the Act was illegal. To this extent, the view of the learned Judge is supported by the decision of the Supreme Court in *Delhi Administration v. Ram Singh* : [1962]2SCR694, in which the majority view was expressed in the following terms:-

'WE are, therefore, of opinion that the special police officer is competent to investigate and that he and his assistant police officers are the only persons competent to investigate offences under the Act, and that police officers not specially appointed as special police officer cannot investigate the offence under the Act even though they are cognizable offences.'

(4) But neither in the case of *State v. Mehro* nor in the case before the Supreme Court cited above was the further question examined as to what is the effect of an illegal investigation upon the trial and conviction of a person for an offence under the Act. The learned Additional Sessions Judge also did not consider whether the trial and conviction of the respondent was vitiated by reason of the illegal investigation. There are decisions of the Supreme Court directly on this point.

(5) In *H. N. Rishbud and another v. State of Delhi* AIR 1955 Sc 1961 the effect of non-compliance of section 5-A of the Prevention of Corruption Act, 1947 was considered. Under that section, an offence under the Act shall be investigated only by a police officer not below the rank of the police officers mentioned in that section. The investigation in that case was conducted by a police officer who was below the rank specified in that section. While holding that the investigation was

illegal, the Supreme Court proceeded to consider the question 'whether and to what extent the trial which follows such investigation is vitiated ?' and answered the question as under :-

'A defect or illegality in investigation, however, serious, has no direct bearing on the competence or the procedure relating to cognizance or trial. No doubt a police report which results from an investigation is provided in Section 190, Criminal Procedure Code . as the material on which cognizance is taken. But it cannot be maintained that a valid and legal police report is the foundation of the jurisdiction of the Court to take cognizance. Section 190, Criminal Procedure Code . is one out of a group of sections under the heading 'Conditions requisite for initiation of proceedings'. The language of this section is in marked contrast with that of the other sections of the group under the same heading i.e., Sections 193 and 195 to 199. These latter sections regulate the competence of the Court and bar its jurisdiction in certain cases excepting in compliance therewith. But section 190 does not. While no doubt, in one sense, Clauses (a), (b) and (c) of section 190(1) are conditions requisite for taking of cognizance, it is not possible to say that cognizance on an invalid police report is prohibited and is therefore a nullity. Such an invalid report may still fall either under Clause (a) or (b) of Section 190(1), (whether it is the one or the other we need not pause to consider) and in any case cognizance so taken is only in the nature of error in a proceeding antecedent to the trial. To such a situation section 537 Criminal Procedure Code . xx. xx. xx. xx. xx. xx. is attracted. If therefore, cognizance is in fact taken, on a police report vitiated by the breach of a mandatory provision relating to investigation, there can be no doubt that the result of the trial which follow it cannot be set aside unless the illegality in the investigation can be shown to have brought about a miscarriage of justice. That an illegality committed in the course of investigation does not affect the competence and the jurisdiction of the Court for trial is well settled as appears from the cases in-'Prabhu v. Emperor' and 'Lumbhardar Zutshi v. The King' (AIR 1950 Pc 26). xx. xx. xx. xx. xx. xx. xx. xx. We are, therefore, clearly also of the opinion that where the cognizance of the case has in fact been taken and the case has proceeded to termination, the invalidity of the precedent investigation does not vitiate the result, unless miscarriage of justice has been caused thereby.'

(6) This rule has been reiterated in a number of other decisions of the Supreme Court (vide *Munnalal v. State of Uttar Pradesh* : 1964 CriLJ11 , *Khandu Sonu Dhobi and another v. The State of Maharashtra* : 1972 CriLJ593 and *A. C. Sharma v. Delhi Administration* : 1973 CriLJ902).

(7) The learned counsel for the respondents seeks to rely upon the decision of the Supreme Court in the case of *Delhi Administration v. Ram Singh*, already referred to, and the decision of a single Bench of the Allahabad High Court in *Smt. Tara v. The State* : AIR1965 All372 . As already stated, the Supreme Court in *Ram Singh's* case was not called upon to consider the effect of an illegal investigation upon the trial and conviction of a person for an offence under the Act. In *Ram Singh's* case, an objection was taken at the earliest stage when the charge-sheet was filed and the Magistrate upheld the objection and quashed the charge-sheet holding that the special police officer alone was competent to investigate the cases and not the Sub Inspector of police who had actually investigated the case but who had not been appointed as a special police officer by the State Government. This order of the Magistrate was upheld by the High Court as well as by the Supreme Court. The case before the Supreme Court is clearly distinguishable from the present case. In that case, the Magistrate himself had declined to take cognizance of the offence upon a police report submitted by the police officer who was not appointed as a special police officer under section 13 of the Act. In the present case, however, the Magistrate had taken cognizance of the offence upon a report of the police officer and had proceeded to the trial of the respondent without any objection having been raised by him at any stage before the conclusion of the trial. In the case before the Allahabad High Court also, an objection was taken at the earliest stage and the objection was over-ruled by the Magistrate and the Magistrate proposed to proceed with the trial. At that stage, a revision was filed before the Sessions Judge which was dismissed by him. A second revision was then filed in the High Court and the objection of the petitioner was upheld by the High Court and the order of the Magistrate was quashed. The case before the Allahabad High Court also is, therefore, distinguishable from the present case. But even apart from the fact that the two cases can be distinguished, the view expressed by the learned Judge does not appear to be correct in view of the several decisions of the Supreme Court referred to supra.

(8) Under the Explanation to Section 537 Criminal Procedure Code .-

'In determining whether any error, omission or irregularity in any proceeding under this Code has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings.'

In H. N. Rishbud's case referred to above, the Supreme Court has held that section 537 Criminal Procedure Code . applies even to cases of an illegal investigation. therefore, the accused has to show that prejudice has been caused to him by reason of the illegal investigation and in determining whether any prejudice has been caused to the respondent by reason of the illegal investigation, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings. The respondent did not raise any objection during his trial. It is only before the learned Additional Sessions Judge that he raised this objection for the first time. Further, it has not been shown how and in what manner he has suffered any prejudice by reason of the illegal investigation. No presumption can be drawn that every illegal investigation causes a prejudice to an accused person. therefore, the learned Additional Sessions Judge was clearly wrong in acquitting the respondent merely on the ground that the police officer who had investigated the case was not a special police officer appointed under section 13 of the Act.

(9) The next question for consideration is whether it would be proper to set aside the judgment of the learned Additional Sessions Judge and to restore that of the learned Magistrate convicting the respondent. We have perused the judgment of the learned Magistrate and we are not satisfied that it is a judgment within the meaning of section 367 Criminal Procedure Code . After setting out the facts of the case and the summary of the evidence of the prosecution witnesses and the statement of the accused under section 342 Criminal Procedure Code ., the learned Magistrate has contented himself with concluding his judgment by recording his findings in one short paragraph which reads as follow :-

'I have gone through the entire evidence on record as discussed above and heard both the parties. The learned defense counsel has drawn my attention towards the

.discrepancies in the statement of the witnesses. I have gone through these discrepancies very carefully. I do not think that those discrepancies are too much material. I, therefore, feel that there is a reasonable case under section 8 Sit against the accused person. I, therefore, convict him and sentence him to pay a fine of Rs. 150.00 or in default to undergo li months rigorous imprisonment.'

(10) There is no discussion of the evidence. The nature of the discrepancies pointed out by the defense has not been indicated. No reasons have been given for arriving at the conclusion that the respondent was guilty under section 8 of the Act. This is not a judgment in accordance with law.

(11) In view of the nature of this judgment, the proper course would be to remand the case for fresh disposal on the evidence already recorded, but we consider that this would amount to unnecessary harassment of the respondent. The offence itself is alleged to have been committed as far back as 6th May, 1965. The offence itself is not of a serious nature. We do not, therefore, think it proper to remand the case for fresh disposal. The learned Additional Sessions Judge has no doubt acquitted the respondent on an erroneous view of the law. But for the reasons already stated, we do not consider it proper to set aside his judgment of acquittal on that ground. The appeal is, therefore, dismissed.