

**Mathai Manjuran Vs. State**

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**SooperKanoon Citation :** [sooperkanoon.com/716659](http://sooperkanoon.com/716659)

**Court :** Kerala

**Decided On :** Aug-07-1950

**Reported in :** 1953CriLJ49

**Judge :** Govinda Pillai, J.

**Appellant :** Mathai Manjuran

**Respondent :** State

**Judgement :**

**Govinda Pillai, J.**

1. The accused in C.C. 111 of 1125 of the second class Magistrate's Court, Mattancherry has filed this petition for an order to the Magistrate to drop the proceedings against him in that case. He stated that the Ernakulam Town Police had started two proceedings against him for demonstration which took place on 27th Kanni 1123, one under Sections 92 and 93(a), Cochin Criminal P.C. and another under Sections 129, 133, 135, 333, 427 and 484, Cochin Penal Code. The case under Sections 92 and 93(a) Cochin Criminal P.C. had been registered as M.C. 32 of 1123 in the Court of the Anjikaimal First Class Magistrate's Court. He was directed to give security for one year for keeping peace. As he did not do so, he was directed to undergo imprisonment for one year. The Second case is now pending before the Mattancherry Court as mentioned. According to him the incidents that led to the two proceedings were the same and he stated that he

could not be tried twice for the same offence.

2. The prosecution case in C.C. 111 of 1125 was that at about 3.30 P.M. on 27th Kanni 1123, this petitioner and others coming to about 150 persons formed themselves into an unlawful assembly and trespassed into the court-yard of the Legislative Council, Ernakulam and assaulted the head-constable on duty there. The member of the jatha rioted in the said court-yard insulting the honourable ministers and the honourable members of the Legislative Council with the intention to provoke a breach of peace and with the object of coercing the assembly from not considering the bill called the 'Criminal Law Amendment Bill'. The petitioner was the leader of the jatha. For this he is being prosecuted now. Some other members of this jatha had been tried and convicted and the appeals by them had also been disposed of. Miscellaneous proceedings were started because this petitioner was stated to have delivered four seditious speeches so as to incite the people to disobey law. One of those speeches was on 27th Kanni 1123 in the Rajendra Maidan. Mentioning these speeches and also the part played by the petitioner in leading Jatha and creating trouble in the Legislative Council premises the police requested the Magistrate to start proceeding against him for an order to the petitioner to give security for keeping peace for one year. It is a fact that the security proceedings before the Magistrate ended in a direction to the petitioner to give security. In order to substantiate the order thus passed, it was true that the happenings on 27th Kanni 1123 had also been taken into account after taking evidence on the same.

3. The petitioner's case was that he had been tried for what took place on 27th Kanni 1123 in the security proceedings so that he was not to be tried once again for what took place that day. He stated that under Article 20, Constitution of India, no person could be prosecuted and punished for the same offence more than once. This is the principle laid down in Section 403 of the Indian Code. It had been laid down that a person who had once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remained in force, not be liable to be tried again for the same offence, nor on same facts for any other offence for Which a different charge from the one made against him might have been made Section 212 or for Which

he might have been convicted under Section 213, Cochin Criminal P.C. If it is taken that in the security proceedings the petitioner had been tried for the offences said to have been committed by him on 27th Kanni 1123, then he could not be tried again for offences arising out of the same occurrence.

4. The proceedings under Section 92, would not constitute a trial for what was done by the offender. The object of the provisions of Section 82 corresponding to Section 107 of the Indian Code is prevention and not punishment of offences. It is not intended to punish persons for anything that they have done in the past, but to prevent them from doing in future something that might occasion a breach of the peace. The wording of the section is clear on this point and it has been so laid down in - Srikantha Nath v. Emperor 2 Cri. L.J. 554 (Cal), - Emperor v. Jivan Singh AIR 1930 All 408, - Shadi Lal v. Emperor AIR 1931 Lah. 191 and - Sukhlal Karnani v. Emperor AIR 1938 Cal 583. What was done by the counter-petitioner in the security proceedings in the past was taken into account only for the purpose of determining what his future course of conduct would be so that in case he is likely to create a breach of the peace, he was to be prevented from doing so by appropriate proceedings. It is seldom practicable to give evidence to show that a person is intending to commit a breach of the peace or to do an unlawful act that may probably occasion a breach of the peace unless the person concerned chooses to give previous intimation of what he is proposing to do. In these circumstances what the prosecution does is to give evidence to show that the acts committed by the person proceeded against under the section are of such a nature that the continuity of these acts or the Commission of similar acts by him is apprehended as tending to a breach of the peace. When this is so it is incumbent on the Magistrate who deals with the security proceedings, to find in the first place as to whether these past acts are true or not, in order that he may be able to draw the inference that the commission of similar acts will occasion a breach of the peace. This would necessarily indicate that in the security proceedings under Section 92, the person proceeded against was not tried for what he did in the past and so it could not be held that he had been tried for the offences committed. His previous acts were taken into account only to make an inference as to what his future conduct would be and to say that he is tried for the offence said to have been committed on account of those acts could not be correct. In this view it would

be clear that in the security proceedings the petitioner had not been tried for what was said to have been done by him on 27th Kanni 1123. The provisions of Article 20, Constitution of India and of Section 317, Cochin Criminal P.C. would not therefore stand in the way of the petitioner being tried for what he did on 27th Kanni 1123. This petition is therefore not sustainable.

5. Proceedings under Section 92 are not trials for offences though they may result in the imprisonment of the offender in case he does not give security as ordered by the Court. There was the view expressed by a single Judge in - *Nga Mya Gyi v. Emperor* AIR 1928 Rang. 135 that where accused persons were sent to jail for failure to furnish security under Section 108, Criminal P.C. (Indian) on a charge of sedition they were not to be subsequently convicted under Section 124(A) for the same offence. With all respect I cannot agree with the view expressed or the reasoning adopted. The object of Section 107 and the procedure adopted, in proceedings started under that section were wholly lost sight of by the Learned Judge who decided that case and so I do not follow the same. In the proceedings under Section 92, Cochin Criminal P.C. the counter petitioner against whom the proceedings are started is not accused in the strict sense of the term, for he is not accused of any offence and he is not tried for any offence committed by him. As already mentioned the enquiry is started to see whether he is to be prevented from doing any act tending to a breach of the peace. The detention provided for in Section 107 could not also be regarded as a term of imprisonment, for if he did not give security, and if he was not in custody, he was taken to custody and committed to prison until the expiry of the period for which security was ordered, or until such period he gave the security to the court which made the order requiring it. It is not a term of imprisonment though he is kept in custody. Thus in proceedings under Section 92, the person against whom the proceedings are started is not considered to be an accused charged with any offence, nor is he tried for any offence said to have been committed by him. The ruling in - *Subeg Singh v. Emperor* AIR 1942 Lah 84 is also helpful in this respect. It was pointed out there that Section 403, Indian Criminal P. C. which embodies the principle of *Autre Fois Acquit* would not apply to proceedings for taking security under Section 107 or Section 110 as there was no conviction of any offence. It is therefore my view that the proceeding's taken in M.C. 32 of 1123 against the petitioner in the Anjikaimal

First Class Magistrate's Court would not bar the Mattancherry Magistrate in proceeding with the case before him. The petition is therefore dismissed.

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