

State Vs. Kesava Kurup and

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Court : Kerala

Decided On : Jan-12-1953

Reported in : 1953CriLJ1246

Judge : Koshi, C.J. and; Kumara Pillai, J.

Appellant : State

Respondent : Kesava Kurup and ;rama Kurup

Judgement :

ORDER

Koshi, C.J.

1. This is a reference by the learned District Magistrate of Quilon. He has recommended to this Court to set aside an order of discharge passed by the Division First Class Magistrate, Alleppey under Section 119, Criminal P.C., and to direct a fresh enquiry.

2. Proceedings were instituted against the counter-petitioner under Section 110(e), Criminal P.C., on the ground that he habitually commits or attempts to commit offences involving' a breach of the peace. When the enquiry had proceeded some way, that is to say, when the prosecution had examined three out of the nineteen witnesses mentioned in the police charge-sheet, the learned Division First Class Magistrate passed the impugned order. On revision before him by the prosecution the learned District Magistrate made this reference recommending the quashing of

the order and a direction for fresh enquiry.

3. The Division First Class Magistrate's order runs thus:

This is a proceeding under Section 110(e), Criminal P.C., started against the counter-petitioner by the preliminary order of this Court dated 15.6.1951. The prosecution examined 3 witnesses and filed Exs. A. and B.

The point to be proved is that the counter-petitioner is one who habitually commits offences involving breach of the peace. There is no such case for the prosecution. The immediate cause of action was the disturbance on 5.8.1951 for which there was a case and a counter-case for hurt caused to and by the counter-petitioner. These cases have already been discharged. On the date of the above incident there was a proceeding under Section 103 (now Section 107), Criminal P.C., against the counter-petitioner for wrongful acts done by him to his sister. The counter-petitioner has been discharged today in that case. All the complaints so far made against the petitioner are from his sister and other relations. Proceeding under Section 110(e), Criminal P.C., is, therefore, not warranted and groundless. I, therefore, discharge the counter-petitioner under Section 119, Criminal P.C.

The police will, however, watch the conduct of the counter-petitioner and report for fresh proceedings if necessary.

The order is open to exception in more ways than one. It is a perversion of truth to say that the prosecution has no case that the counter-petitioner is one who habitually commits offences involving a breach of the peace. Not only do the first information report and the police charge-sheet refer to Clause (e) of Section 110 but the substance of the accusation as set out in these documents clearly shows that the case which the prosecution undertook to prove against the counter-petitioner was that he was one habitually committing offences involving a breach of the peace. The enumeration of the points which the various prosecution witnesses are expected to prove also points in the same direction. It is hence a perverse statement which the learned Division First Class Magistrate made when he said that the prosecution has no case that the counter-petitioner is one who habitually commits offences involving a breach of the peace. The essence of a

charge under Section 110(e) is habitual commission of offences involving a breach of the peace.

4. In the second place the learned Magistrate would seem to have proceeded on the basis that unless there were previous convictions for commission of offences involving breach of the peace a charge under Section 110(e) could not be sustained. No doubt, he has not expressed that view in so many words but the only inference that could reasonably be drawn from the reference to the fact that some cases which were pending against the counter-petitioner when the present proceedings started ended in his discharge is that the Magistrate was of opinion that unless there were previous convictions it would be wrong to proceed against a person under the provision of law mentioned. This is an unwarranted assumption and opposed to what Section 117(4), Criminal P.C., expressly lays down that for purposes of enquiries held under Chap. 8 evidence of general repute is admissible. Reference may usefully be made in this connection to the decisions in- *Emperor v. Rachchu* AIR 1936 Oudh 238 (A), - *Emperor v. Khuda Bakhsh* AIR 1938 Lah 428 (B), and '*In re Shanmugham Asari* AIR 1938 Mad 482 (C). In such enquiries the Court is not considering whether the person proceeded against has or has not committed a specific offence, but whether his general reputation is such that security should be taken for his good behaviour. Evidence relating to instances of specific crimes need not in such proceeding be strong as would secure a conviction for any specific charge.

5. The Magistrate, also overlooked the fact that even on the date he discharged the counter-petitioner two other cases relating to commission of offences involving a breach of the peace were pending before him against the counter-petitioner.

6. Another unwarranted assumption which the Magistrate would seem to have made is that the complaints against the counter-petitioner were all from his sister and other relations. The police charge-sheet shows that the assumption is opposed to facts. Nor is there any warrant in law for the view that because the complaints against a person are all made by his relations action under Section 110(e) could not be maintained against him.

7. Further the order of discharge was passed without examining all the witnesses whose evidence the prosecution wanted to let in. The Magistrate did not even apply his mind to the evidence already on record. So far as relevant Section 119 states that if, on an enquiry under Section 117, it is not proved that it is necessary for maintaining good behaviour that the person in respect of whom the enquiry is made should execute a bond the Magistrate shall make an enquiry on the record to that effect and shall, discharge him. When the section states 'on an enquiry under Section 117' what it means is a full or complete enquiry. The question whether it is necessary to make the person in respect of whom the enquiry is made to execute a bond or not has to be decided on the evidence and not on the considerations 'de hors' the record as the Magistrate has done in this case. Unlike the order is the case reported in - Chatha Ittaman v. State AIR 195S Trav-C. 24 (D), the order in this case shows that the Magistrate was not satisfied that there were no just grounds to further proceed with the enquiry. It is not really a judicial approach; that has been made to the case by the Magistrate. We cannot, therefore, allow that order to remain.

8. We wonder how the learned Magistrate could have proceeded to dispose of the case without recording all the evidence. The police charge-sheet indicates that respectable people of the locality and responsible officers of the police were to give evidence in support of the prosecution. It is not stated that their evidence if believed will not sustain the charge. The procedure prescribed is that which the Code lays down for the trial of warrant cases and the Magistrate's action is not only perfunctory but also illegal.

9. The reference is accordingly accepted and setting aside the order of discharge we send the case back for further enquiry according to law. The Magistrate is directed to dispose of the case within a period of three months after he receives the records from this Court.