

State of Kerala Vs. Markose

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Court : Kerala

Decided On : Nov-17-1961

Reported in : AIR1962Ker78b

Judge : S. Velu Pillai and; P. Govinda Menon, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 182, 201 and 203; Code of Criminal Procedure (CrPC) - Sections 154

Appeal No. : Criminal Appeal No. 327 of 1960

Appellant : State of Kerala

Respondent : Markose

Advocate for Def. : S. Govinda Pillai and; M. Krishnan Nair, Adv.

Advocate for Pet/Ap. : Public Prosecutor

Disposition : Appeal dismissed

Judgement :

Govinda Menon, J.

1. This appeal has been filed by the State challenging the legality of the order of acquittal passed by the Additional Sessions Judge of Mavelikara in Sessions Case No. 12 of 1958. The accused one Dr. Markose was charged for giving false

information to the police, offence punishable under Sections 201 and 203 read with Section 114, I. P. C.

2. The case against the accused was that with the intention of screening his son Sunny from punishment for the offence of murder he gave false information to the police in respect of the occurrence and instigated his servants Pws. 2 and 5 likewise to give false information in a manner calculated to induce the police to believe that Sunny's wife Ammal, committed suicide by shooting herself and that it was not a case of murder.

3. Ext. P 30 is the case diary statement of the accused taken by Pw. 16 the Circle Inspector of Police and Ext. P. 37 is the statement given by the accused before the Deputy Superintendent of Police Pw. 17. The two main things stated by the accused in these statements were that he saw Ammal going into the car shed and that he immediately heard a gun shot; and secondly that he went to the car shed and found the revolver lying by her side and removed it. According to the prosecution the accused had deliberately suppressed the fact that the deceased had only followed Sunny into the car shed and that after the gun was fired the accused removed the revolver from Sunny's hands. The charge under Section 203 is for instigating Pws. 2 and 5 to give similar statements Exts. P-31 and P-32 to the Circle Inspector of Police.

4. The learned Additional Sessions Judge who tried the case came to the conclusion that Sunny did shoot and cause the death of Ammal and thereby committed the offence of murder, he has also found that the accused had known that murder was committed by his son and gave a false version of the occurrence when questioned by the police and induced Pws. 2 and 5, his servants, to do so and that it was done with the intention of screening the offender from legal punishment. These findings have not been seriously challenged in appeal. The learned Judge acquitted the accused, because in his opinion, statements given by a person in the course of an investigation by the police cannot amount to an offence under Ss. 201 and 203, I. P. C. as these sections contemplate 'information' which is 'volunteered', information that falls under Section 154 Cr. P. C. It is the correctness of this view that is canvassed in this appeal by the State. The case

was referred to a Bench by one of us as the question that arises for decision is one of considerable importance and there is no unanimity of judicial opinion.

5. Sections 201 and 203, I. P. C., contemplate giving information respecting an offence which the accused person knows or believes to be false. For the offence under Section 201, IPC., the false information should also be furnished with the intention of screening the offender from legal punishment. Unlike Section 182 of the Penal Code which deals with giving false information to any public servant, Sections 201 and 203 do not refer to whom false information should be given; it would take in private persons as well as public servants including the police. This position is not disputed. It is also not disputed that if any person gives the first information statement to the police which is recorded under Section 154 Cr. P. C., and if it ultimately turns out to be false it would amount to giving false information and the offender would be punishable under Section 201 IPC., provided the requisite intention is proved.

6. In the case in *Kalawati v. State of Himachal Pradesh*, AIR 1953 SC 131 the accused Kalawati made a statement to the Head-constable that some unknown dacoits had invaded her house, killed her husband and robbed her of her jewels. This statement which was treated as first information statement was found on investigation to be false and it was proved that she knowingly gave the false information to screen the real offender who was her paramour. She was therefore, convicted under Section 201 IPC. It, therefore, follows that if the first information statement given to the police is proved to be false it would amount to an offence under Section 201, I. P. C.

7. The question for determination in this appeal is whether in a case where the first information had already been laid and investigation had already been started, the witnesses who are questioned by the police could be proceeded against under Section 182, 201, or 203, I. P. C. There is conflict of judicial opinion whether information referred to in these sections if given to the police would refer only to information under Section 154, Cr. P. C., or whether they would refer to statements recorded by the police during the course of investigation also. Various decisions have been cited by the learned counsel for the defence. We shall refer

to these decisions first.

8. The earliest case is that of *Emperor v. Nga Aung Po*, 2 Cr. LJ 474 (UB) before the Judicial Commissioner, Upper Burma. There in the course of an investigation of a case of dacoity Nga Aung Po was examined as a witness by a police officer. Some articles were shown to him which he said he could not identify, but when pressed by the police officer he did identify them. When later examined by the Magistrate he said that he could not identify them and that he had made the contrary statement to the police to avoid being detained longer. On this admission he was convicted of giving false information to a public servants, an offence punishable under Section 182, Penal Code. It was held:

'Persons examined by the police are not bound by law to speak the truth, and therefore cannot be punished under Section 193 for making false statements to the police. If the accused Aung Po had been legally bound to speak the truth, it is evident that he would have been prosecuted for giving false evidence, and it seems to be a mere evasion of the law to make him liable under Section 182'.

It was also held that 'giving information' within the meaning of Section 182 is 'to volunteer information' and not to make statements in answer to question put to him.

9. The next case to which reference may be made is the case in *Sarju Sarun v. Emperor*, 11 Cri LJ 438 (All). In that case the house of one Musammat Rahni was broken into and certain property stolen during her absence. The matter was reported to the police who commenced the inquiry. In the course of the inquiry Sarju was questioned and in answer to questions put by the police officer, he made certain statements suggesting that Nandu and Kundan had committed theft and that they had melted down certain stolen property in their house that same night. In respect of this statement he was prosecuted and convicted of the offence of defamation. On appeal the Sessions Judge held that the facts did not constitute the offence of defamation, but convicted him under Section 203 IPC. The question raised was whether the facts found, constituted an offence under Section 203 IPC., when the statement was given by the accused in answer to questions by the police during the course of investigation. It was held that Section 203 clearly was

not intended by the legislature to apply to the case of a person who gives false evidence as a witness to the police in the course of investigation and that only in reply to questions put to him. His Lordship also went to the extent of saying that it contemplates information volunteered by some person.

10. Emperor v. Akhtiar, 19 Ind Cas 508 (Sind) was a case where two accused were prosecuted, under Section 203 IPC., for giving false information about an offence of murder. Their Lordships of the Sind Judicial Commissioner's Court stated:

'We do not think that these statements or that statements made by witnesses to the police amount to 'information' within the meaning of the word as used in Section 203 Indian Penal Code. If it did then the policy of the Legislature in omitting the word 'truly' from Section 161 Cr. P. C., would be frustrated and every witness who made a false statement to the police could be punished, under Section 203 for giving false information'. They agreed with the opinion expressed in the case in Queen v. Joy Narain Patro, 20 Suth WR Cr. 66 that the expression 'gives information' means 'volunteers information'.

11. In Mangu v. Emperor, AIR 1914 Lah 360 three persons were prosecuted for giving false information under Section 182 of the Penal Code. One of the accused Mangu gave information at the police station that his house had been broken into and certain property stolen and implicating four persons. On the basis of that statement a case was registered and when the police officer came to the village the two other accused Mangal and Nihali made statements corroborating Mangu's story and gave details of the incident. The statements were evidently made under Section 161, Cri. P. C., in answer to questions put to the accused by the investigating officer, and the question for determination was whether the making of a statement under Section 161 Cr. P.C., in answer to questions Put to the accused by the investigation Officer, amounted to giving information within the meaning of Section 182 IPC. It was held:

'A person making a false statement to the police is not liable to be prosecuted for perjury and Section 162 Cr. P. C., lays down in clear terms that the statement if taken down in writing, shall not be used as evidence. It therefore seems to me to

be an evasion of law if that statement could be made the basis of a charge under Section 182 IPC'.

12. The reasoning in this case receives support from the ruling of the Madras High Court in *Chinna Ramana Gowd v. Emperor*, ILR 31 Mad 506. In that case the accused complained to the Village Reddi that, as he was returning to his house, he was robbed by certain persons, whose names were mentioned by him. The Village Reddi embodied this information in his reports to the Sub Magistrate' (Ext. B-1) and to the Inspector (Ext. B). The Inspector took up investigation and took a statement from the accused (Ext. C) which was read over to the appellant and signed by him. The complaint was found On investigation to be false and he was charged under Section 211, IPC., for having instituted criminal proceedings by falsely charging the persons named by him in his statement (Ext. C) to the Inspector, It was held:

'A statement made under Section 162 of the Code of Criminal Procedure in answer to questions put by a police officer making an investigation under Section 161 of the Code of Criminal Procedure cannot be made the basis of a prosecution under Section 211 of the Indian Penal Code'.

13. To the same effect is the decision in *Subba Reddi v. Emperor*, AIR 1936 Mad 160 where it was held:

'Where a complaint of a cognizable offence had been made by a person other than the accused, any statement made to the police officer by the accused after that complaint had been received, however false it might have been, is a statement made in police investigation and cannot be made the foundation of a prosecution under Section 211 because it is not this statement which set the law in motion nor can the prosecution be said to have been instituted by it'.

14. The case in 2 Cri LJ 474 (UB) was followed by the Rangoon High Court in *Sultan v. C. De. M. Willbourne*, AIR 1925 Rang 364. In that case the accused Sultan was prosecuted for an offence under Section 182 for having given a public servant false information. It was contended that he did not give information, but only made a statement to a police officer who was making an investigation under

Chapter 14 of the Criminal Procedure Code and that for that reason he has committed no offence punishable under Section 182 of the Penal Code. First information had already been laid. The question for decision was whether the statement made by the applicant to the C.I.D. Inspector can be considered as information relating to the commission of a cognizable offence given to the police within the meaning of Section 154 of the Criminal Procedure Code or whether it should be considered merely as a statement made to an investigating officer under Section 161 of that Code. It was held:

'A statement by a witness to the police officer in the course of an investigation under Ch. 14 of the Criminal Procedure Code and recorded under Section 161 Cr. P.C., is not information given to the police under Section 154 and, therefore, even if it is false, the witness is not liable to be prosecuted under Section 182 of the Penal Code.'

15. This was followed in *Bo Ni Mating v. Emperor*, AIR 1935 Rang 97 a case where a person was prosecuted under Section 182 of the Penal Code, where Dunkley, J., has taken the same view that a statement made by a witness to the police under the provisions of Section 161 Cr. P. C., is not 'information given to a public servant' within the meaning of Section 182 IPC.

16. This decision was followed in a later case of the same High Court in *U Hlaing v. R. P. Abigail*, AIR 1937 Rang 232 where referring to the case in AIR 1914 Lah 360 and AIR 1935 Hang 97 the learned Judge has observed that the trend of opinion is that statements made by witnesses to police officers under Section 161 Cr. P.C., cannot be regarded as 'giving information to a public servant' within the meaning of Section 182 Penal Code.

17. The learned Public Prosecutor has on the other hand submitted that there is no justification for restricting the meaning of the word 'information' to first information recorded under Section 154 Cr. P. C., and that it would apply to statements given by witnesses examined by the police in the course of their enquiry. It was also stated that the interpretation of the word 'give' to mean 'volunteer' in the cases referred to cannot be accepted, as there is nothing to justify the insertion of the word 'voluntarily' before the word 'gives'.

18. The first case referred to by the learned Public Prosecutor is the decision in *Queen Empress v. Ramji Sajaba Rao*, ILR 10 Born 124. In that case information from the accused was elicited by a forest Range Officer in the course of his enquiry. It was there held that;

'Any false information given to that forest officer with the intent mentioned in Section 182 of the Indian Penal Code is punishable under that section, whether that information is volunteered by the informant, or is given in answer to questions put to him by that officer'.

This view was followed in the case in *In re Pattammal*, AIR 1940 Mad 898, where the accused a dancing girl stood charged with the murder of her paramour Murugesu Mudali. She was acquitted of murder[^] but convicted under Section 201 I. P. C., for giving false information with intent to screen the offender from legal punishment. The allegation was that she gave false information about the manner of death of Murugesu Mudali to Pw. 4 who was a relation of his. On these facts Lakshmana Rao, J., observed that the information need not be given to the police or Magistrate under Section 201 I. P. C., and it is immaterial whether that information is volunteered or given in reply to enquiries.

19. In a recent case in *In re Kottayan Thever*, AIR 1960 Mad 9 a Division Bench of the Madras High Court followed the view taken in AIR 1940 Mad 898 and held that the information need not be volunteered. But in all these cases there was no occasion to consider the operation of Section 161 Cri. P. C.

20. We are not inclined to give that restricted meaning of 'volunteer' to the word 'give'. For instance if a police officer has reason to suspect the commission of a cognizable offence he can investigate the case under Section 157 for the discovery and arrest of the offender. During such investigation he may find a person who gives him the required information in answer to questions put by him. There is nothing to prevent that officer from recording that information under the provisions of Section 154 and proceeding with the investigation of the case and if that information is proved to be false the person can be prosecuted. That was what happened in *Kalawati's case* AIR 1953 SC 131 and their Lordships of the Supreme Court found her guilty of the offence under Section 201 I. P. C.

21. Reference was then made to the case *Bishwanath Singh v. Emperor*, AIR 1928 Pat 56. The statement there, was made out before the police but before an enquiry officer & the argument raised was that it was not a voluntary information as is contemplated under Section 182 I. P. C. Reliance was placed on the decision in ILR 31 Mad 506 and 25 Ind Cas 978: (AIR 1914 Lah 360), where it was held that a statement made under Section 162 Cr. P. C. in answer to questions put by the police officer making an investigation under Section 161 cannot be the basis of a prosecution under Sections 201 and 182 I. P. C. Allanson, J., expressed the opinion that:

'Answers given to questions put by a police officer in the course of an investigation may not be punishable under Section 182 but I am of opinion that the words 'give information' should not be interpreted as necessarily meaning 'volunteer information' that is, that it must be information on some matter which is not already under inquiry by the public servant'.

This decision was followed in *Emperor v. Lachman Singh*, AIR 1929 Pat 4 a case where a driver of a motor car driving without a licence when asked for his name by the Superintendent of Police gave a wrong name and he was prosecuted for giving false information. Adami J., took the view that he could be prosecuted under Section 182 of the Indian Penal Code. Dealing with the case in AIR 1914 Lah 360 the learned Judge observed:

'What was actually decided in 25 Ind Cas 978: (AIR 1914 Lah 360) was that Section 182 does not cover an answer giving false information to a police officer during investigation under Section 161 Cr. P. C. Where an answer is given to a police officer in the course of an investigation into an offence, Section 162 of that Code would save the person conveying false information by that answer from prosecution under Section 182. It is clear that when the learned Judge who delivered judgment in the case of AIR 1914 Lah 360 said 'The expression gives information' in Section 182 means to volunteer information and was not, in my opinion, intended to apply to a statement made in answer to questions put by a public servant,' he was referring to the facts of the case with which he was dealing, that is to say, a happening during the investigation of an offence by the police and

did not intend to cover answers given to the police under other circumstances. There is nothing to justify the reading in the word 'voluntarily' before the word 'gives' in Section 182.'

The learned Judge relied on the decisions in ILR 10 Bom 124 and AIR 1928 Pat 56 and held that the word 'gives information' should not be interpreted as necessarily meaning 'volunteers information.'

On the facts of the case it was held that the Superintendent of Police was not holding an investigation and that the questions put to Lachman Singh were not put under Section 161 Cr. P. C., so as to give Lachman Singh the benefit of Section 182 Cr. P. C.

So in both these cases even though it was held that there was nothing to justify the reading in of the word 'voluntarily' before the word 'gives' in Section 132 of the Pnal Code still their Lordships were of opinion that answers made to questions put by the police under Section 161 Cr. P. C., will be protected.

22. The learned Public Prosecutor however has pointed out other decisions which go to the extent of holding that even statements made during the course of investigation under Section 161 Cr. P. C., would amount to information punishable under Section 182 of the Pnal Code. In *Bodhan Garain v. Emperor*, AIR 1933 Pat 555 a Single Judge of the Patna High Court held that the meaning of the word 'information' in Section 182 of the Penal Code should not be restricted to first information recorded under Section 154 Cr. P. C. The only reason given for sa holding is that the word is so used in the section with reference not to a police officer in particular but to any public servant and therefore Section 182 is applicable to a statement made during the investigation of a case. The earlier cases in AIR 1928 Pat 56 and AIR 1929 Pat 4 do not seem to have been brought to the notice of the Court.

23. This dcision has bcn foilowed in *Emperor v. Gopaldas Khemehand*, AIR 1936 Sind 94 where it is stated that Section 182 Penal Code includes information even if it is given to a police officer in the course of an investigation under Section 161 Cr. P. C. in reply to questions put by him and it is not confined to statements under

Section 154 Cr. P. C. Here again the earlier decision of the same court in 19 Ind Cas 508 (Sind) was not considered. With respect we find ourselves unable to agree with the view expressed in these decisions.

24. Section 161 provides for the recording of statements of persons acquainted with the facts and circumstances of the case by the police officer making the investigation. A statement so recorded must be distinguished from one constituting the information which starts the investigation, and it has been distinguished in Section 162 by being described as a statement made by any person to a police officer in the course of an investigation. Under the Criminal Procedure Code of 1882 the public were no doubt bound to answer 'truly' all questions put to them by the police while investigating a cognizable case. If therefore, they answered falsely they could have been then prosecuted under Section 193 of the Code. But this obligation of answering 'truly' no longer exists, and if they could be punished under Sections 182, 201 or 203 I. P. C., it would render nugatory the policy which dictated the amendment of the Criminal Procedure Code by the removal of the word 'truly' from Section 162 of the Criminal Procedure Code. That is why Irwin, C. J., in the case in 2 Cr LJ 474 (UB) observed that as persons examined by the police can no longer be punished for giving false evidence it would be mere evasion of law to hold them liable under Section 182 I. P. C. It also seems to us unfair that a man should be liable to be convicted of giving false information on the strength of a statement given to a police officer which is not given on oath, which he has not signed, and which he has had no opportunity of verifying. As is well known such statements are hurriedly taken down as rough notes and the police officer is not trained in taking evidence. We are aware of the force of the argument of the learned Public Prosecutor of not imposing a liability on persons who give false information to the police with the object of laying false trails Or causing the enquiry to be burked or weaken the prosecution and thereby injuriously interfere with public justice but justice as well as expediency demand that a ban be placed on prosecutions based on statements made to the police during investigation.

25. In the result, we hold that the learned Sessions Judge was right in the view that he hastaken and in acquitting the accused of the offences charged against him. The Appeal filed by the State is, therefore, dismissed.

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