

Sivadasan Vs. State

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Court : Kerala

Decided On : Nov-26-2004

Reported in : 2005(2)KLT225

Judge : K. Thankappan, J.

Acts : [Railway Protection Force Act, 1957](#) - Sections 10 and 20(3); Indian Railways Act, 1890; [Railways Act, 1989](#) - Sections 2(34); Code of Criminal Procedure (CrPC) - Sections 197 and 239; Indian Penal Code (IPC) - Sections 34 and 392

Appeal No. : Crl. R.P. No. 313 of 1995

Appellant : Sivadasan

Respondent : State

Advocate for Def. : K. Thavamony, Public Prosecutor,; P.S. Sreedharan Pillai and John Varghese, S.C.G.S.Cs.

Advocate for Pet/Ap. : G. Janardhana Kurup, Adv.

Disposition : Petition allowed

Judgement :

ORDER

K. Thankappan, J.

1. The revision petitioners are members of the Railway Protection Force working in the Railway Police Station, Shornur. They seek to set aside the order dated 31.1.1995 in C.C.No. 150 of 1994 and to discharge them under Section 239 Cr.P.C.

2. The revision petitioners were made accused in C.C.No. 150 of 1994 on the file of the Judicial First Class Magistrate's Court, Ottapalam on the basis of a complaint filed by one C. Radhakrishnan (CW1). The allegation against them is that they committed offences punishable under Section 392 read with Section 34 IPC. The prosecution case was that on 12.3.1994 at about 9.95 hours the revision petitioners assaulted CW.1 and snatched away his ticket and a sum of Rs. 1500/- and thereby committed the above mentioned offence. After investigation, the Sub Inspector of Police attached to the Railway Station, Shornur laid the charge sheet. The learned Magistrate took cognizance of the charge and proceeded against the revision petitioners.

3. A preliminary objection was raised on behalf of the revision petitioners before the Court below that prior sanction as provided under Section 197 Cr.P.C. was not obtained before taking cognizance of the offence and that the charge was laid without prior notice in writing to the person concerned and to the superior officer as contemplated under Section 20(3) of the [Railway Protection Force Act, 1957](#) (hereinafter referred to as 'the Act'). The learned Magistrate after hearing the preliminary objection held that prior sanction under Section 197 Cr.P.C. and prior notice in writing as provided in Section 20(3) of the Act are not required as the allegation against the accused are not in connection with the discharge of any official duty.

4. The learned counsel appearing for the revision petitioners submits that the view taken by the learned Magistrate is against the provisions of the Act and the Rules framed thereunder. The charge levelled against the revision petitioners is that they caught hold of CW.1 while he was crossing the railway lines, assaulted him and snatched; away his ticket and a sum of Rs. 1500/-. Admittedly, the petitioners were on duty at the relevant time. They are railway servants as defined under Section

10 of the Act which reads as follows:

'Officers and members of the force to be deemed to be railway servants.-- Director-General and every member of the Force shall for all purposes be regarded as railway servants within the meaning of the Indian Railways Act, 1890 (9 of 1890) other than Chapter VIA thereof, and shall be entitled to exercise the powers conferred on railway servants by or under that Act'.

Section 20(3) of the Act reads as follows:

'Notwithstanding anything contained in any other law for the time being in force, any legal proceeding, whether civil or criminal, which may lawfully be brought against any member of the Force for anything done or intended to be done under the powers conferred by, or in pursuance of, any provisions of this Act or the rules thereunder shall be commenced within three months after the Act complained of shall have been committed and not otherwise; and notice in writing of such proceeding and of the cause thereof shall be given to the person concerned and his superior officer at least one month before the commencement of such proceeding.'

5. A reading of the above provisions would clearly indicate that the revision petitioners are empowered to discharge the duties of railway servants. The prosecution has no case that the revision petitioners were not on duty on the day of the incident. Section 2(34) of the [Railways Act, 1989](#) defines 'railway servant' as any person employed by the Central Government or by a railway administration in connection with the service of a railway. This definition would indicate that the revision petitioners are bound to do all the duties of a railway servant and it was as part of their duty that they questioned CW.1. Hence, the prosecution ought to have complied with Section 20(3) of the Act before filing the Charge sheet.

6. Learned counsel for the revision petitioners further contended that the provisions contained in Section 197 Cr.P.C. was also not complied with before taking cognizance of the offence. According to the counsel, sanction under Section 197 Cr.P.C. should to be obtained before taking cognizance of the charge. This point was rejected by the Court below. Sanction contemplated under Section 197

Cr.P.C. is required only when a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty. But the impugned order requires interference for non-compliance of the provisions contained in Section 20(3) of the Act. The impugned order is, therefore, set aside. It is made clear that this order will not stand in the way of the prosecution filing fresh charge sheet in accordance with the provisions contained in the Act.

The CrI. Revision Petition is allowed to the extent indicated above.

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