

State Vs. Karim Mamad

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Court : Gujarat

Decided On : Apr-12-1961

Reported in : (1961)2GLR643

Judge : V.B. Raju and; R.B. Mehta, JJ.

Appellant : State

Respondent : Karim Mamad

Judgement :

V.B. Raju, J.

1. This is a criminal appeal by the State against the acquittal of the respondent under Section 145(2)(b)(c) of the Bombay Police Act, by the Judicial Magistrate, First Class, Dhoraji.

2. The respondent was an unarmed Head-Constable at Dhoraji City Police Station and was suspended on 18-11-1959. The order of suspension also mentioned that his headquarters were fixed at Dhoraji during the period of his suspension, that he should not leave headquarters without the permission of the District Superintendent of Police, Rajkot District, Rajkot and that he should report daily in the morning as well as in the evening to the Police Sub-Inspector, Dhoraji City Police Station. He was also informed by the same order that he, a Police Officer, had not ceased to be such not been placed under suspension but the powers functions and

privileges vested in him as a Police Officer were in abeyance for the period of suspension. On 15-1-60 the respondent was granted permission to leave the headquarters for 15 days. On the expiry of the said period he did not return to Dhoraji. He made various applications to the superior Police Authorities for permission to leave Dhoraji. On 16-2-60 he was finally informed that his application for further extension of the period during which he could leave the headquarters was rejected and that he must carry out the order. But as the respondent did not return to Dhoraji he was prosecuted for an offence punishable under Section 145(2)(b)(c) of the Bombay Police Act. The learned Magistrate held that although the respondent made a willful breach of the order his act did not amount to an offence under Section 145(2)(b)(c) of the Bombay Police Act. He observed that Chapter VI of the Bombay Police Act provides for the executive powers and duties of the police which do not include the ordinary responsibility of a Police Officer as government servant but only his powers and duties as a Public Officer. The Police Officer under suspension has no such powers and duties. He therefore acquitted the respondent and the State has now come in appeal challenging that acquittal.

3. The facts that the respondent was an unarmed Head-Constable at Dhoraji and that he was suspended on 18-11-59 are proved by the prosecution and are not in dispute. When a Police Officer is suspended his powers, functions and privileges remain suspended; but notwithstanding such suspension he does not cease to be a Police Officer and continues to be subject to the control of the same authorities to which he would have been if he was not under suspension. (Vide Section 15 of the Act). Sub-section (1) of Section 28 of the same Act reads as follows:

4. Every Police Officer not on leave or under suspension shall for all purposes of this Act be deemed to be always on duty and any Police Officer or any number of body of police Officers allocated for duty in one part of the State may if the State Government or the Inspector-General so directs at any time be employed on Police duty in any other part of the State for so long as the services of the same may be there required.

5. This section clearly shows that it is only the officers who are on duty i.e. the officers who are neither on leave nor under suspension who are deemed to be officers on duty. This would imply that an officer on leave and an officer under suspension are not on duty.

6. In this case we are only concerned with Clause (c) of Sub-section (2) of penal Section 145 of the Bombay Police Act under which any person who is guilty of any willful breach or neglect of any provision of law or of any rule or order which as such Police Officer it is his duty to observe or obey is liable to the punishment mentioned in that section. In this case admittedly the order passed by the District Superintendent of Police requiring the respondent during his period of suspension not to leave the headquarters viz. Dhoraji without the permission of the District Superintendent of Police and to report daily in the morning as well as in the evening has been violated. The real question for determination is whether by disobeying this order the respondent is guilty of any willful breach or neglect of any provision of law or of any rule or order which as such a Police Officer it is his duty to observe or obey. Chapter VI of the Bombay Police Act refers to the duties of the Police Officers and for the purpose of this appeal it is sufficient to refer to Clauses (a) and (f) of section.

64 the relevant part of which runs as follows: 64 It shall be the duty of every Police Officer (a) promptly to serve every summons and obey and execute every warrant or other order lawfully issued to him by competent authority and to endeavour by all lawful means to give effect to the lawful commands of his superior;

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(f) to discharge such duties as are imposed upon him by any law for the time being in force.

The other sections of this Chapter are not relevant for the purpose of this appeal. Clause (a) of Section 64 refers to summons warrant or other order lawfully issued to a Police Officer by a competent authority. It is the duty of every Police Officer promptly to serve every summons and execute every warrant or other order lawfully issued to him by a competent authority. The question whether the words

other order have to be interpreted according to the principle of ejusdem generis having regard to the words summons and warrant is a point worthy of consideration but need not be decided in this case. As regards the next phrase to endeavour by all lawful means to give effect to the lawful commands of his superior it is contended the order of the District Superintendent of Police is lawful command of the superior of the respondent and that it is the duty of a suspended Police Officer to obey the lawful commands of the superior. But it is important to note that this clause does not use the word obey and the words used are by all lawful means to give effect to. It therefore contemplates the use by the Police Officer of means which are lawful to give effect to the lawful command of his superior. It excludes the use of unlawful means to give effect to the lawful command of his superior. One interpretation to be placed on this clause may therefore be that this clause refers to orders which are to be executed on other persons and not orders which are directly addressed So the Police Officer himself to obey without having them conveyed to other persons and without their having any result on other persons. But if the interpretation is put on the words other order that they are ejusdem generis the words summons and warrant and if we put the interpretation on the second part of Clause (a) that it does not refer to orders directly given to the Police Officer to be obeyed by him in a simple manner without being conveyed to others or without having any effect or result on others then the order in question issued by the District Superintendent of Police would not fall under Clause (a) of Section 64. The order would not fall under Clause (f) because there is no duty imposed on the suspended Police Officer by any law for the time being in force to obey any order such as the one issued by the District Superintendent of Police in this case. On this interpretation the order issued by the District Superintendent of Police would be outside the scope of Chapter VI which enumerates the duties of the Police Officers.

It is however contended by the learned Assistant Government Pleader that under Section 16 of the Act it is open to the District Superintendent of Police to pass an order like the one he issued. Section 16 reads as follows:

16 The Commissioner subject to the orders of the Inspector-General and the District Superintendent subject to the orders of Inspector-General and the District

Magistrate shall within their respective spheres of authority direct and regulate all matters of arms drill exercise observation of persons and events mutual relations distribution of duties study of laws orders and modes of proceedings and all matters of executive detail or fulfillment of their duties by the Police Force under him.

It is important to note that it speaks of regulating matters of arms etc. and does not refer to passing of any orders. It also refers to direction and regulation of matters of executive detail or fulfillment of their duties by the Police Force. Section also shows that the District Superintendent of Police is for the purposes of this section subject to the orders of the Inspector-General of Police.

At this stage it is also important to refer to Section 23 of the Act which reads as follows:

23 Subject to the orders of the State Government the Commissioner in the case of the Police Force allocated to Greater Bombay and other areas for which he has been appointed and the Inspector-General in the case of the Police Force allocated to other areas may make rules or orders not inconsistent with this Act or with any other enactment for the time being in force

- (a) regulating the inspection of the Police Force by his subordinates;
- (b) determining the description and quality of arms accoutrements clothing and other necessaries to be furnished to the Police;
- (c) prescribing the places of residence of members of the Police Force; (d) for institution management and regulation of any Police fund for any purpose connected with Police administration;
- (e) regulating subject to the provisions of Section 17 the distribution movements and location of the Police;
- (f) assigning duties of Police Officers of all ranks and grades and prescribing
- (i) the manner in which and

(ii) the conditions subject to which they shall exercise and perform their respective powers and duties;

(g) regulating the collection and communication by the police of intelligence and information;

(h) generally for the purpose of rendering the Police efficient and preventing abuse or neglect of their duties.

7. Clause (c) refers to prescribing of places of residence of the members of the Police Force. Even if a place of residence is prescribed that does not mean that a person cannot leave the place. Even if an order is issued prescribing a certain place as the place of residence that does not mean that a person concerned can never leave the place of residence. The word residence has a legal connotation. A person can be said to be a resident of Bombay although he is outside Bombay for 5 months in a year or even 7 months in a year. In fact in : AIR1932 Cal285 it was held that an order of the District Superintendent of Police issued to a Police Officer under suspension ordering him to live in the police lines and further not to leave the line without permission would amount to a wrongful confinement and that the order was ultra vires and illegal. The learned Judge of the Calcutta High Court relied on 3 Cr. L.J. 110 in which the same principle was enunciated. Although there is a good deal to be said in favour of it there is also something to be said against this view because an oral order will not amount to confinement which must be physical. But we need not finally decide this question because the prosecution has failed to show that the order which was passed by the District Superintendent of Police was within his lawful authority. As already observed Section 16 is relied upon as the source of authority for the District Superintendent of Police for passing orders like the one at issue. That section provides that the District Superintendent of Police is subject to the orders of the Inspector General of Police. Section 23 also provides that the Inspector General of Police can make rules and orders in regard to the matters enumerated in that section. In fact the learned Assistant Government Pleader relies on a Standing Order of the Inspector General of Police but without properly proving that Standing Order he refers to a note in the Police Manual on page 389 where a note is made of the Standing Order No. 71 dated 28-

1-56. A note made in a Police Manual which is compiled in the office of the Inspector General of Police is not a proof of the Standing Order. There are various methods of proving such Standing Orders and the Standing Order in question has not been proved by the Government inspite of the fact that the learned Assistant Government Pleader took an adjournment twice once for 14 days and a second time for 7 days to produce proper proof of the relevant rules and Standing Orders. In fact it is conceded that there is a Standing Order of the Inspector General of Police on the subject. We must know what exactly is contained in that Standing Order before we can decide that the District Superintendent of Police had authority to pass the order in question. Moreover as already observed the word used in Section 16 is regulate which does not give authority to the District Superintendent of Police to pass an order having the force of law or an order such as is referred to in Section 145 of the Bombay Police Act. This is also a difficulty in the way of the prosecution but we need not decide finally whether the word regulate includes an authority to issue such an order or not. But as the learned Assistant Government Pleader has not satisfied us that the District Superintendent of Police was within his lawful authority when he passed the order for the disobedience of which the respondent has been prosecuted we find no reason to set aside the order of acquittal passed by the learned Magistrate and we dismiss the appeal.