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Court : Rajasthan

Decided On : May-17-1956

Reported in : 1957CriLJ158

Judge : I.N. Modi, J.

Appellant : Mangilal and anr.

Respondent : The State

Judgement :

ORDER

I.N. Modi, J.

1. This is a revision by the petitioners Mangilal and Girdharlal against an order of the Sessions Judge, Balotra, dated 17th August, 1955, rejecting their application dated the 14th February, 1955, praying for their acquittal, and arises under the following circumstances,

2. The petitioner Mangilal is a Sub Inspector of Police and the other petitioner Kirdharlal is a head constable of police and both were posted at the police station Balotra at the relevant time. The case of the prosecution is that a report was filed by Purushottam and Kalu, residents of Ramdari, in the police station Balotra that a theft had been committed in the house of Purshottam and that the complainant Punamchand filing with certain other persons were responsible for that theft.

Thereupon the petitioner Mangilal sent for Punamchand, his mother, sister and sister's husband on the morning of the 7th April, 1950, and Insisted upon their appearance at the thana every day from the 8th April, 1950, to the 13th April, 1950 though they were allowed to go home at night.

It was alleged that on the 13th April, 1950, the Sub Inspector Mangilal and head constable Girdharlal gave Punamchand a beating and tortured him by subjecting him to third degree methods. The petitioner's mother, sister and sister's, husband are also alleged to have been beaten. It was further alleged that the Sub inspector Mangilal took possession of a certain Bahi of Punamchand and when the latter demanded it back, he was told by Mangilal that Punamchand should pay a sum of Rs, 300/- otherwise he (Mangilal) would; not give back the account-book.

The suggestion was (and this was later stated in so many words by Punamchand during his. statement in court) that the Sub Inspector Mangilal subjected him to all this torture with a view to extort a confession from him that he had committed the theft and to bring pressure upon to produce the stolen property and to extract money from him. This complaint was filed by Punamchand in the court of the District Magistrate, Bar-mer, on the 20th July, 1950.

The District Magistrate transferred it to the Sub Divisional Magistrate Barmer. The latter made a preliminary inquiry under Section 202 Cr. P. C. and issued process against two of the accused persons, namely, Purshottam and Kalu, but passed no. orders so far as the present petitioners were concerned. Thereupon, Punamchand, the complainant, went in revision to the Sessions Judge, Balotra, who ordered a further inquiry.

Thereafter the Sub Divisional Magistrate also registered a case against the present petitioners under Sections 323 and 504, I, P. C. & issued processes against both of them on the 23rd August, 1951. It appears that the petitioners evaded service for a long time and Sub Inspector Mangilal was served on the 4th, September, 1953, and Girdharlal was served some time in January, 1954.

3. The case of the petitioners is that on the 20th April, 1953, the complainant Punamchand had entered into a compromise with the petitioners and in an

application, signed by him, he stated that he did not want to prosecute the case against the petitioners. This application was supported by an affidavit, and both the application and the affidavit were got verified before the City Magistrate, Jodhpur, on the 20th April, 1953, and thereafter forwarded by post to the Sub Divisional Magistrate, Balotra, where they appear to have been received on the 21st April, 1953.

On the 22nd April, 1953, however, Punamchand presented an application in person to the Sub Divisional Magistrate, Balotra, in which he stated that he had gone to Jodhpur to have service effected on one of the accused but there he had been detained by Sub Inspector Mangilal and a Deputy Superintendent of Police (name not disclosed) and that he had been kept in jail for a period of two days and while he was in such detention, the petitioner Mangilal forced him to sign a compromise.

He, therefore, prayed that the compromise was entirely unlawful and that it should not be accepted and that suitable action be taken against Mangilal and the Deputy Superintendent of Police for contempt of court. The Magistrate appears to have inquired from Punamchand what the name of the Deputy Superintendent of Police was and this name was subsequently reported to the Magistrate but nothing further appears to have taken place so far as this aspect of the matter is concerned.

Thereafter the prosecution produced its evidence and the Magistrate framed a charge against the petitioners under Section 330 I. P. C. on the 11th November, 1954, and committed them for trial to the court of session by his order dated the 26th November, 1954. On the 14th February, 1955, the petitioners then came forward with an application, out of which the present revision arises, in which they raised two points.

The first is that the complaint was bad as barred by time under Section 42 of the Police Act inasmuch as the incident is alleged to have happened on the 13th April, 1950, and Punamchand filed his complaint before the District Magistrate on the 21st July, 1950, and was, therefore, barred by three months' limitation prescribed under that section, and the second ground is that the complainant Punamchand

had compounded the case under Section 345 Cr. P. C. and the effect of such compounding was that the accused petitioners stood acquitted under Sub-section (3) of Section 345, Cr. P. C., and, therefore, the entire proceedings taken after this compromise was received in the court of the Magistrate were without jurisdiction and should be quashed.

4. Now, so far as the first contention is concerned, let us look at Section 42 of the Police Act, the material portion of which is as follows:

All actions and prosecutions against any person, which may be lawfully brought for anything done or intended to be done under the provisions of this Act, or under the general police-powers hereby given shall be commenced within three months after the act complained of shall have been committed, and not otherwise; and notice in writing of such action and of the cause thereof shall be given to the defendant, or to the District Superintendent or an Assistant District Superintendent of the district in which the act was committed, one month at least before the commencement of the action.

The important words to notice in this connection are 'all actions and prosecutions... for anything done or intended to be done under the provisions of this Act or under the general police powers hereby given.' It is only with respect to actions or prosecutions falling within the mischief of the aforesaid expression that the bar of three months' limitation can be held to apply but not in the case of actions or prosecutions against police officers arising otherwise.

The present prosecution has not been brought for anything done or intended to be done under the provisions of this Act or under the general police-powers given under the Act. See Section 23 of the Police Act for general police powers. Section 23 runs as follows:

It shall be the duty of every police-officer promptly to obey and execute all orders and warrants lawfully issued to him by any competent authority, to collect and communicate intelligence affecting the public nuisances; to detect and bring offenders to justice, and to apprehend all persons whom he is legally authorized to apprehend and for whose apprehension sufficient ground exist : and it shall be

lawful for every police-officer for any of the purposes mentioned in this section, without a warrant, to enter and inspect any drinking shop, gaming-house or other place of resort of loose and disorderly characters.

The petitioners were obviously police officials connected directly or indirectly with the investigation of the theft case against Punarnchand, and I have, therefore, no manner of doubt that whatever they are alleged to have done in relation to such investigation was done by them not under the provisions of the Act or under the general police powers enjoyed by them under Section 23 but in pursuance of certain powers exercised by them under the Code of Criminal Procedure. Section 42 does not have any application with regard to prosecutions arising out of the exercise of such powers, I may invite reference to a few cases in support of the above view.

5. The first case in point is *Bachicha Singh v. Jafar Beg* 30 Ind Cas 173 : AIR 1915 All 358 (A), That was a suit which was filed against a police officer among other persons for damages for malicious prosecution. The trial court dismissed the suit as having been filed after three months of the unlawful act alleged. The lower appellate court up-held that decree though for a different reason which was that two months' notice under Section 80 had not been given to the defendant.

The plaintiff in second appeal contended that only one month's notice was necessary under the express terms of Section 42. The High Court repelled this argument and held that the plaintiff had brought his suit for damages not for something which had been done under the Police Act but for acts done in the exercise of the powers granted, to him by the Criminal P. C.

It was further observed that Section 23 merely laid down certain duties of the police officer such as to apprehend such persons whom he is legally authorised to apprehend (among other matters) or for whose apprehension sufficient ground exists, but this section does not give him any power to arrest and that Section 24 was also not attracted.

It was, therefore, held that Section 80 of the Civil P. C. applied and that a notice under that section was a condition precedent to the maintainability of the suit and

as such notice was not given, the suit was held to have been rightly dismissed. It is true that the case cited above was a civil suit and the precise question raised therein was as to the applicability of Section 80 C. P. C. but the decision of that point depended upon the correct interpretation of Section 42 and the applicability thereof to the facts of that case, and therefore, the principle underlying that case is clearly applicable to the case before me.

The same interpretation of Section 42 appears to have been upheld in *Md. Sharif v. Nasir Ali* AIR 1930 All 742 (B) and in *Hiralal v. Ramdulare* AIR 1935 Nag 237 (C) and that principle is that it is only with respect to actions and prosecutions against a police officer for something done or Intended to be done by him under the provisions of the Police Act or under the general police powers given by the Act that Section 42 can come into play and not otherwise.

6. It was faintly argued before me that the investigation in this case was really in the hands of an officer superior to the petitioners and the petitioners were merely carrying out his directions but to that the simple answer is that it was no part of the duty of the petitioners acting by themselves or under the instructions of anybody else to have subjected the complainant Punamchand (or his relations) to the alleged torture for the purpose of extorting any confession from him or for the purpose of production of the stolen property or for any similar purpose. I, therefore, overrule this contention and hold that the present prosecution is not barred under Section 42 of the police Act.

7. The next contention raised before me is that as soon as the complainant Punamchand entered into a compromise with the petitioners and compounded the matter with them on the 20th April, 1953, the Magistrate must have acquitted the accused by virtue of Sub-section (6) of B. 345 Cr. P. C. and all proceedings' taken by him after that date or by the Sessions Judge are without jurisdiction.

As I have already stated above, this compromise was sent to the Magistrate by post and on the next following date Punamchand filed an application in person before the Magistrate saying that his signature on the compromise had been obtained under duress and that no compromise had been made with his consent.

It may be mentioned here that no inquiry into the factum or the lawfulness of the compromise was made in the court of the Magistrate, because, so far as it appears to me, the accused petitioners did not raise any contention with respect to it in the court of the Magistrate throughout the period the case was pending there and up to the time the commitment order was made against the accused.

I was referred on behalf of learned Counsel for the petitioners to a number of authorities in support of his contention such as Mahomed Kanni Rowther v. Inayathulla Sahib AIR 1916 Mad 854 (D), Kumarasami Chetty v. Kuppusami Chetty AIR 1919 Mad 879 (2) (E), Hem Chandra Dutt v. Girindra Chandra AIR 1921 Cal 403 (2) (F), Dharichhan v. Emperor AIR 1939 Pat 141 (G), Mt. Rambai v. Mt. Chandra Kumari AIR 1940 Nag 181 (H), Godfrey Meeus v. Simon Dular AIR 1950 Nag 91 (I) and Amrit Lal v. Rex AIR 1952 All 363 (J).

I do not, however, consider it necessary to examine these cases in detail because, for one thing, in almost all of these cases it was assumed that the compromise which was made in the first instance was a lawful one and that a subsequent residence on the part of one of the parties to the compromise from it was of no avail; but they do not deal with a case where the contention raised on behalf of one of the parties to the compromise was that the compromise had been extracted from him by the other party by coercion or under duress.

I have no hesitation in saying that where such a contention is raised, it must be the duty of the Magistrate before accepting the compromise and acquitting the accused to inquire into the circumstances under which the compromise is alleged to have been made, and it is only where the court comes to the conclusion that it was a lawful compromise not made under coercion or duress or similar other circumstances vitiating the compromise that the compromise can be accepted and acquittal can follow in accordance with Sub-section (6) of Section 345.

But such acquittal cannot take place where the compromise itself is proved to be vitiated because of force or coercion or similar other factors. The view taken in the cases cited above is also distinguishable on another ground, namely, that there the accused were sought to be proceeded against under the same offences in relation to which the compromise was alleged to have taken place or in some

other cases they were sought to be prosecuted for a minor offence.

In the present case the accused have been charged and committed by the Magistrate under Section 330 I. P. C. and are being tried by the Sessions Judge for that offence and not for offences under Sections 323 and 504, the latter offences being distinct from the one under Section 330. The mere circumstance that the Magistrate had initially registered the case, as it is said, under Sections 323 and 504 I. P. C., does not affect this position because it is always open to the Magistrate to charge an accused person for an offence which may be disclosed in the complaint and the evidence produced before him, and he can even alter a charge if necessity should so arise and the powers of the Sessions Judge in this respect do not stand on a lower footing than those of the Magistrate.

The charge against the accused on which they are being tried is, broadly speaking, voluntarily causing hurt to a person to extort confession from him or to compel restoration of property. This offence is clearly distinct from an offence under Section 323 or 504 I. P. C. Now, so far as I understand, the Criminal Procedure Code contemplates compounding of offences and not of cases as such (See Section 3451 Cr. P. C.) which classifies offences into certain categories and makes those falling in one category as compoundable without more and certain others as compoundable with the permission of the Court.

So far as Sections 323 and 504 are concerned, they are certainly compoundable without the permission of the court by the person injured or insulted; but so far as Section 330 is concerned, it is not compoundable at all.

Having regard to this aspect of the case, therefore, I do not consider it necessary for purposes of the present revision to order any inquiry as regards the lawfulness of the alleged compromise, and consider it sufficient to say that even if the story of compromise is taken for granted, it cannot affect the trial of the accused under Section 330 I. P. C, which is quite a distinct offence from and a more serious offence than those under Sections 323 and 504 I. P, C.

All that I need say further in this connection is that the question of the lawfulness of the compromise or its precise effect will have a bearing if the petitioners are

eventually punished under Sections 323 and 504 only,

8. I feel greatly supported in the conclusion at which I have arrived above by looking at the matter from another angle. Let us look at Sub-section (4) of Section 403 Cr.P.O. That sub-section runs as follows:

A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for any other offence constituted by the same acts which he may have committed if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

According to this provision, even if it were assumed that the petitioners were acquitted under Sections 323 and 504 after trial, their further trial for an offence under Section 330 I, P, C. would, in my opinion, not be barred, in spite of the circumstance that the right arose out of the same acts, for the important reason that the court, by which the petitioners were to be first tried and acquitted, namely, the court of the Magistrate, was and is not a court competent to try them for the offence with which they stand subsequently charged and this latter offence under Section 330 is exclusively triable by a court of session.

In this view of the matter, I am clearly of opinion that the commitment of the present petitioners under Section 330 I. P. C. and their trial for that offence is not, in any way, affected by the alleged circumstance that offences under Sections 323 and 504 I. P. C. were earlier compounded by the complainant Punamchand with the petitioners and I hold that the proceedings taken in the courts below subsequent to the alleged compromise are not without jurisdiction. This ground, therefore, also fails and I reject it.

9. I may add, however, that if the Sessions Judge should come to the conclusion that the conviction of the present petitioners is sustainable only under Section 323 or 504 or any other compoundable offence, it will be his duty to go into the question of the validity of the compromise and to arrive at a definite finding whether there was any lawful compromise or not, and in the event of a lawful compromise having been established, he will give effect to the provisions of

Section 345 Cr. P. O.

10. For the reasons mentioned above, this revision fails and is hereby dismissed.

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