

In Re: S. Rengaswamy and ors.

In Re: S. Rengaswamy and ors.

SooperKanoon Citation : sooperkanoon.com/773755

Court : Chennai

Decided On : Feb-14-1964

Reported in : AIR1964Mad435

Judge : Kunhamed Kutti, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 251A(2), 251A(3) and 436; Madras Village Panchayats Act, 1950 - Sections 106

Appeal No. : Criminal Revn. Case No. 897 of 1961 and Cri. Revn. Petn. No. 863 of 1961

Appellant : In Re: S. Rengaswamy and ors.

Advocate for Pet/Ap. : J.S. Vedamanickam, Adv.;Public Prosecutor

Disposition : Petition dismissed

Judgement :

ORDER

Kunhamed Kutti, J.

1. The nine petitioners in this revision case are accused 1 to 9 in C.C. 25 of 1961 On the file of the Additional First Class Magistrate, Virudhunagar. They were charge-sheeted before the Sub Magistrate, Virudhunagar, for offences punishable Under Sections 147, 426 and 447, Indian Penal Code. But after recording the

evidence of P. W. 1, the Sub Magistrate found that an offence Under Section 148, Indian Penal Code had also been disclosed against them. He, there-, fore, submitted the records, Under Section 346, Cri. P. C. to the District Magistrate who, in turn, transferred the case to the Additional first Class Magistrate, Virudhunagar. The latter took the case on file; but he found that, since the first accused was the president of the Panchayat Board, the prosecution was not maintainable in the absence of sanction Under Section 106 of the Madras Village Panchayats Act, X of 1950. On this finding he struck out the charges framed by the Sub Magistrate and discharged the accused Under Section 251-A(2), Cri. P. C. The complainant, P. W. 1, then filed a revision petition out of which this revision arises Under Sections 435 and 436, Cri. P. C. to set aside the order of discharge. The learned District Magistrate, Ramanathapuram, allowed the petition, set aside the order of discharge and directed the Additional First Class Magistrate to take the case on file and dispose it off according to law.

2. The question for consideration is whether the order setting aside the discharge Under Section 251-A (2), Cri. P. C. and directing disposal of the case is liable to be interfered with.

3. I may at once state, that, for the moment I am not so much concerned with the merits of the prosecution case. I am more concerned with the question whether the order passed by the learned District Magistrate setting aside the order of discharge is liable to objection.

4. The point urged by the learned counsel for the petitioners is that since charges had been framed against them and the complainant had been examined as P. W. 1 in support of the charge on the denial of the offence by the accused, a stage had been reached when there could only be an order of acquittal and not of discharge; and, therefore, the order of the learned District Judge directing retrial after setting aside what purported to be an order of discharge was without jurisdiction.

5. In support of the above contention, the learned counsel for the petitioner relied on *Govindaswami v. State*, : AIR 1960 AP391 wherein Krishna Rao, J. held, on a consideration of the relevant provisions of the Criminal Procedure Code, that effect should be given to the plain meaning of the expression 'at the commencement of

the trial' used in sub-section (1) of Section 251-A and that if this is done, there is no scope for enquiry as trial must be deemed to have commenced. He, therefore, took the view that the Sessions Judge had no power to interfere with the order of discharge Under Section 251-A (2), Crl. P. C. and that if a Sessions Judge acting Under Section 435 finds that a trial should be conducted on charges in respect of which there was a discharge, the only course available to him is to report the matter Under Section 438 for the orders of the High Court. In that case, it was the Sessions Judge who had remanded the case for further enquiry. In the present case, the order of remand is made by the District Magistrate; but this circumstance does not make any difference as to the application of the principle.

6. : AIR 1960 AP391 was not followed by my learned brother Veeraswami, J., in Pakkirisami Pillai v. State, : AIR1962 Mad142 . He held that the proceeding preceding an order of discharge under sub-section (2) of Section 251-A, Crl. P. C. is not a trial in the strict sense; but is only in the nature of an enquiry and the discharge resulting from it does not amount to an acquittal; so that the District Magistrate has jurisdiction under Sections 435 and 436, Crl. P. C. to set aside an order of discharge under sub-section (2) of Section 251-A and remit the case for disposal afresh. Referring to : AIR 1960 AP391 the learned Judge observed at p. 172 (of Mad WN Cr): (at p. 144 of AIR):

'With due respect, I am unable to share that view which apparently was based more on the use of the word 'trial' than the substance of the nature of the proceeding. It may be that the provision for discharge under sub-section (2) of Section 251-A may not be decisive. What I consider to be more important in arriving at the nature of the proceeding under the first two sub-sections of Section 251-A is the scope and content of the proceeding which appears to be, as already indicated, of much narrower limits than even an inquiry under Sub-sections (1) and (2) of Section 252. I hold, therefore, that the proceeding preceding an order of discharge under sub-section (2) of Section 251-A is not a trial in the strict sense; but is only in the nature of an inquiry.'

7. In an earlier case reported in Fakruddin v. State Police Nirmal, : AIR 1962 AP236 , a Division Bench of the Andhra High Court consisting of Basi Reddi and

Munikanniah, JJ. had also dissented from the views expressed by Krishna Rao, J. The Bench held that an order passed under sub-section (2) of Section 251-A by the Sessions Judge exercising powers Under Section 436, Crl. P. C. should necessarily be considered as one falling under the latter part of Section 436 which pertains to 'the case of any person accused of an offence who has been discharged and that the earlier portion pertaining to a dismissal of a complaint Under Section 203 or sub-section (3) of Section 204 cannot be called in aid as it would not apply.' The learned Judges also pointed out that it is not as though an order of discharge cannot be passed after the charge is framed and that the word 'charge' has not been used in the Code in the only specific sense as meaning the charge on which the accused is asked to take his trial. Even in the enquiry stage of when, before the preliminary steps are over and an order of discharge is passed, the magistrate could consider the charge against the accused as groundless. Therefore, it is obvious that the word 'charge' in sub-section (2) of Section 251-A does not carry the same meaning as the word 'charge' in sub-section (3) of the same section. The learned Judges further pointed out that:

'the word 'charge' is also used in connection with the enquiry or preliminary steps. There it is not synonymous with the 'charge' framed to put the accused on trial. Indeed, no trial commences without a 'charge' being framed; and, therefore, the mere consideration of the accusation on charge before discharging the accused as required under sub-section (2) of Section 251-A or the use of the words 'at the commencement of the trial' does not, in our view, make the entire proceedings only for that reason 'trial'. There is nothing to show that the trial of warrant cases is denuded of the preliminary steps which are at least in the nature of an 'inquiry'. We, therefore, consider that these reasons impel us to hold that this 'discharge' under sub-section (2) of S.. 251-A cannot in any sense be equated or considered as an acquittal of the accused at a 'trial'.'

8. It is, therefore, clear that the petitioners' contention that the order passed by the learned Additional First Class Magistrate though, termed discharge, amounted to an acquittal, is unsupportable and that the order setting aside the said order of discharge by the learned District Magistrate is not open to any valid objection.

9. The learned District Magistrate has found that in the circumstances of this case, no sanction is necessary Under Section 106 of the Madras Village Panchayats Act, to call for a prior sanction. There must be a reasonable connection between the act complained of against the President and members of the Board and the discharge of his or their official duty. In this particular case, the evidence disclosed that the petitioners had demolished what purported to be an encroachment by a wall at dead of night and had also pelted stones on P. W. 1. The learned District Magistrate has found that the acts done by the petitioners which are prima facie culpable offences cannot form part of the duties cast on the President or members of the Panchayat Board. There is no valid reason to disagree with the above finding, and I am fortified in this view by a ruling of Ramakrishnan, J. in *Rajagopala Naidu v. Baby alias Kandasami Rowth*, Crl. R. C. No. 1444 of 1959 (Mad).

10. The order setting aside the discharge is, therefore, not liable to be interfered with and this petition has necessarily to fail. It is accordingly dismissed.