

M. Anbalagam Vs. State

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Court : Chennai

Decided On : Jan-30-1981

Reported in : 1981CriLJ1179

Judge : Maheswaran, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 171C, 171-F and 419

Appeal No. : Cri.R.C. No. 368 of 1979

Appellant : M. Anbalagam

Respondent : State

Advocate for Def. : T. Govindarajulu, Adv. for Public Prosecutor

Advocate for Pet/Ap. : K. Ramaswami, ;P. Somasundaram and ;N. Kannan, Adv.

Judgement :

ORDER

1. Anbalagam, the revision petitioner, was convicted of offences punishable under Section 29 of the Indian Telegraph Act and under Section 419 and Section 171C read with S. 171F of the Indian Penal Code, and was sentenced to rigorous imprisonment for six months under each charge by the learned Fifth Metropolitan Magistrate, Egmore. In appeal, the Sessions Judge, Madras Division, set aside the

conviction and sentence under Section 29 of the Indian Telegraph Act, but confirmed the convictions and sentences imposed in respect of other offences. The revision petitioner challenges the convictions and the sentences.

2. The facts : Mrs. Devatha Sampat-kumar, Phonogram Clerk, Central Telegraph Office, Madras, received an ordinary phonogram message on 7-1-1976 at about 9-20 p.m. That message from phone No. 75715 was intended for one Kannusami of Communist Party of India at Vedaranyam. The message was purported to be from one Kalyanasundaram and the content of the message was to 'boycott election'. The message, according to the prosecution, was not given by M. Kalyanasundaram who was the State Secretary of the Communist Party of India. The election referred to in the message was in respect of the office of the Chairman of Vedaranyam Panchayat Union Council. A letter, Ex. P. 7 was sent by Masilamani, Secretary of the party, Thanjavur district, enclosing the telegram, Ex. P. 4 to Kalyanasundaram, pointing out that a fraud has been played. Such a telegram was not sent by M. Kalyanasundaram. The Communist Party supported the Congress candidate, one Subramania Gounder. Ignoring the telegram, the Communist Party supported the Congress candidate who won the election. M. Kalyanasundaram lodged a complaint on 12-1-1976 and the law was set in motion.

3. The defence was that the phonogram message was given by one M. Kalyanasundaram between 9 and 9-30 a.m. on 7-1-1976 and that the accused was not present at the time when the phonogram was given

4. The trial Magistrate found the revision petitioner guilty of the offences charged. The appellate Judge, as pointed out already, set aside the conviction under Section 29 of the Indian Telegraph Act as that section was omitted by the Indian Telegraph (Amendment) Act 1971 (Act 33 of 1971) but confirmed the convictions in other respects.

5. The post of the Chairman of Vedaranyam Panchayat Union Council fell vacant on account of death of Venkatachala Mudaliar who was the Chairman. The persons who contested the election were one Subramania Gounder of the Congress Party and Meenakshisundaram of D.M.K. Party. The Communist Party

of India supported the Congress candidate. The evidence shows that the success of the candidates depended on the votes of the Communist Party of India. There is evidence in this case that the Communist Party supported the Congress candidate and the Congress candidate was elected. The revision petitioner had a phone bearing No. 75715, Ex. P. 2 and Ex. P. 3 prove that. The evidence of P.W. 1, Mrs. Devatha Sampathkumar, shows that she received phonogram message. She spoke about the message received. Her evidence also shows that the message was from phone No. 75715, and that she verified it. The message was numbered as Ap. 2123. The accused in his statement also admitted that he later learnt that one N. Kalyanasundaram has sent that phonogram. Though his admission is not evidence, yet, the admission can be taken into consideration. This N. Kalyanasundaram was examined as a defence witness and he admits having made the phonogram Ex. P. 4, from the residence of the accused, but would add that the accused was not present at the time when he gave the phonogram and that the accused is also his relative. This phonogram, according to D.W. 1, was given between 9 and 9-30 a.m. on 7-1-1976. But Ex. P. 4, has not been given on the morning of 7-1-1976, but at 9-20 p.m. For this reason, both the courts rejected the evidence of D.W. 1 and in my view rightly. It is therefore obvious that the evidence of P.W. 1 as well as the admission of the accused which can be taken into consideration and the evidence of D.W. 1 as also the evidence of P.W. 2, the Accounts Officer, Madras Telephones, that he collected the phonogram charges from the accused on 5-2-1976, would clearly indicate that the phonogram message evidenced by Ex. P4, was transmitted through the phone of the accused bearing No. 75715. The bill, Ex. P. 6, stands in the name of the revision petitioner. The bill has therefore been paid by the revision petitioner and there was no protest.

6. The question is whether the message was given by the accused himself. There is no direct evidence of the fact that this message was given by the revision petitioner and from the nature of things one cannot expect direct evidence of the phone call made by the accused. P.W. 3, M. Kalyanasundaram, State Secretary of the Communist Party of India, has clearly stated that he did not send any phonogram, that he received Ex. P. 7 from Masilamani, Secretary of the Communist Party of India, Thanjavur district, along with the telegram Ex. P. 4, that

he wrote a letter to F. V. Arul, the then Inspector General of Police, to investigate the matter and that there is no other person by name M. Kalyanasundaram in the Communist Party of India. There is no reason furnished by D.W. 1, for sending such a phonogram. Both the courts have stated that investigation revealed that the revision petitioner is the brother of Meenakshisundaram who is the rival candidate to the Congress candidate, Subramania Gounder, and that Meenakshisundaram is supported by the D.M.K. party. But this has not been taken note of by the Courts below and in my view rightly as this circumstance was not put to the accused in his statement. The message was therefore not sent either by D.W. 1 or by P.W. 3. From the circumstances, it is clear, that the accused alone could have sent this message. Therefore, the conviction under Section 419 I.P.C. is correct and is confirmed.

7. The next question is whether the revision petitioner is guilty of the offence under Section 171C read with S. 171F of the Indian Penal Code. What is contended before me by the prosecutor is that by sending a phonogram in the name of M. Kalyanasundaram to boycott the election to the post of the Chairman of Vedaranyam Panchayat Union Council the revision petitioner has voluntarily interfered with the free exercise of the electoral right of the voter belonging to the Communist Party of India. This contention requires examination. 'Electoral right' has been defined in Chapter IX-A under Section 171A of the Indian Penal Code. It reads -

'171-A(b) 'electoral right' means the right of a person to stand, or not to stand as, or to withdraw from being a candidate, or to vote or refrain from voting at an election'.

Under S. 171C, I.P.C. a person is said to commit the offence of undue influence at an election when he or she voluntarily interferes or attempts to interfere with the free exercise of any electoral right. The intended phonogram to P.W. 4, Secretary of Vedaranyam Unit of the Communist Party of India, is not with reference to the right of a person to stand or not to stand as a candidate or to withdraw from being a candidate. It was with reference to refraining from voting at the election to the office of the Chairman of the Panchayat Union Council. A reading of Section 171C,

I.P.C. would leave an impression that mere influence on a voter in making his choice to one candidate or another, will not amount to interference with the free exercise of electoral right, as canvassing in favour of a particular candidate is intended to influence the choice of a voter. It cannot be said that canvassing in favour of a candidate is exercising undue influence. In this case, there is clear evidence that the unit of the Communist Party of India at Vedaranyam had decided to vote and support the Congress candidate. So long as the leader of the party asked the electors to vote for a particular candidate belonging to his party or of an allied party, it will not amount to exercise of undue influence. So also a message by any person addressed to the Secretary of the Unit of the Communist Party of India at Vedaranyam to boycott the election would not amount to interference within the meaning of S. 171C, I.P.C. with the free exercise of the Communist Party, for the simple reason that the voters of that party would still be free to vote for the candidate they desire in spite of the telegram. There is no element of compulsion in the telegram. It may be an advice or a request which the voters of the Communist Party of India need not necessarily follow. I am therefore of the view that no offence under Section 171C read with Section 171F of the Indian Penal Code has been made out. The conviction, therefore, under S. 171C read with Section 171F, I.P.C., is set aside and the sentence passed thereunder is also set aside. The revision to that extent is allowed and dismissed in other respects.

8. The conviction under Section 419 I.P.C. is confirmed. In regard to the question of sentence, I must point out that the revision petitioner is a first offender and having regard to the circumstances of the case and the nature of the offence. I feel that the ends of justice would be met by invoking provisions of the Probation of Offenders Act, 1958. I therefore, instead of sentencing the revision petitioner to any punishment, direct that he be released on his entering into a bond for Rs. 1000/- (Rs. one thousand only) with one surety for a like sum to the satisfaction of the Fifth Metropolitan Magistrate, Egmore, and to receive the sentence when called upon during the period of one year and in the meantime to keep the peace and be of good behaviour.

9. Order accordingly.

