

In Re: Govindaraj and ors.

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Court : Chennai

Decided On : Nov-24-1937

Reported in : 173Ind.Cas.417; (1938)1MLJ110

Appellant : In Re: Govindaraj and ors.

Judgement :

ORDER

Venkataramana Rao, J.

1. This is an application to revise the order of the learned District Magistrate of the Nilgiris ordering further enquiry into the case of the ten accused who are the petitioners before me and who along with nine others were charged by the police under Sections 147, 452 and 426, Indian Penal Code and tried by the Joint Magistrate of Coonoor in C.C. No. 10 of 1937 on his file. The Joint Magistrate, after examining all but two of the witnesses for the prosecution, came to the conclusion that the charge against the petitioners was groundless and that in regard to the remaining nine accused there was a prima facie case for a charge being framed. Accordingly on 18th March, 1937, he framed a charge in regard to the said nine persons and pronounced an order of discharge so far as the ten petitioners are concerned under Section 253(2) of the Criminal Procedure Code. On the 29th March, 1937, a revision petition was presented by the Crown before the District Magistrate, the Nilgiris, against this finding of discharge. He called for the records from the Joint Magistrate who, while submitting them, also sent a

memorandum containing the reasons for his order of discharge on the 6th April, 1937. The learned District Magistrate has taken the view that the Joint Magistrate's order of discharge without giving reasons as required by Section 253 was illegal and the subsequent memorandum wherein the Joint Magistrate stated his reasons would not cure the defect. He therefore ordered a further enquiry. Taking this view, he did not enter into the merits of the case and stated that he had no intention to go into the evidence and was solely concerned whether or not the Joint Magistrate's order of discharge was in accordance with the section.

2. The question now before me, is, was the order of the Joint Magistrate in not recording his reasons at the time he pronounced the order of discharge illegal or was it only a mere irregularity which can be cured by Section 537 of the Criminal Procedure Code? Under Section 253 of the Criminal Procedure Code, it is no doubt the duty of a trying Magistrate to examine all the witnesses tendered by the prosecution but power is also vested in him under Clause (2) to discharge an accused at any stage when he comes to the conclusion that the charge is groundless, but it must be for reasons to be recorded by the Magistrate. In this case almost all the witnesses for the prosecution have been examined and only two more remained to be examined. The Joint Magistrate thought that in the interest of justice the case against the petitioners should not be proceeded against and that it was not necessary to examine the other witnesses so far as they were concerned. In his memorandum dated 6th April, 1937, he observes thus:

There is therefore no point in waiting for their evidence and further victimizing these accused by keeping them in the position of accused while the case drags on.

3. On going through the memorandum which he submitted to the District Magistrate later, it is fairly clear that the Joint Magistrate refrained from giving his reasons at the time of the order of discharge because he would be entering into the facts of the case and any discussion in regard thereto might prejudice the case for the prosecution in regard to the rest of the accused. It is also clear that he intended to give his reasons for the order of discharge at the time when he made the final order in the case in respect of the other nine accused. The question is,

would the Joint Magistrate be acting illegally under such circumstances in withholding his reasons and postponing them until the final order in the case? I am inclined to think that it would be competent to the Joint Magistrate to do so. Till the charge against the remaining accused is disposed of by a final order, he must be deemed to be in seisin of the whole case and so long as he is in charge thereof, he can always give his reasons in regard to the order of discharge. There is nothing in the language of the section which precludes him from doing so. It may be that if he omits to give reasons when he passes a final order in the case, the question will arise whether his order would be legal. Of course the language of the section would plainly indicate that a Magistrate should give his reasons at the time he pronounces the order of his discharge and if it is the final order in the case, he is bound to give his reasons. The moment he pronounces the final order, he becomes functus officio and he is no longer in charge of the case. But in a case of this nature I am inclined to think that he has not become functus officio and it would be open to him to defer his reasons. Assuming that it was obligatory on him to give his reasons before he pronounced the order of discharge his omission to do so is only an irregularity which can be cured by Section 537, Criminal Procedure Code. It is not suggested before me that any failure of justice has been occasioned by the Joint Magistrate not giving reasons at the time he pronounced the order of discharge. I therefore set aside the order of the District Magistrate.

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