In Re: Mare Gowd

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Court : Chennai

Decided On : Mar-20-1913

Reported in : AIR1914Mad613; (1913)25MLJ459

Appellant : In Re: Mare Gowd

Judgement :

Arnold White, C.J.

1. I have had the advantage of reading the judgment which has been written by Sankaran Nair J., and I agree with the onclusion at which he has arrived.

2. I think the view taken by the Full Bench of the Calcutta High. Court in Nabu Sardar v. Emperor I.L.R. (1907) C. 1, was right.

3. I am of opinion that the Magistrate was wrong in holding that ' he had no power to entertain the petition,' and I would answer the question which has been referred to us in the negative.

Sankaran Nair, J.

4. The question for consideration is whether a bond to keep the peace executed by a person in pursuance of an qrder of a First Class Magistrate under Sections 107 and 118, Criminal Procedure Code, can be cancelled by the District Magistrate under Section 125, Criminal Procedure Code, on the sole ground that

the evidence before the Magistrate did not justify him in passing such an order.

5. An order under Sections 107 and 118 is passed to prevent any person from committing a breach of the peace or from disturbing public tranquillity. It is based upon evidence recorded as in summons cases. The amount of the bond must be fixed with due regard to the circumstances of the case and should not be excessive. The period for which security is required is to commence on the date of such order unless the Magistrate fixes a later date. Sureties also may be required, by the Magistrate if he thinks it necessary; and in default of such security, the person against whom the order is passed may be committed to prison until he gives it or till the period of one year expires. Under Section 124, the District Magistrate may release any person who has not given such security, if he is of opinion that it may be done ' without hazard to the community or to any other person.' Then comes the important section--Section 125--which runs in these words: ' The Chief Presidency or District Magistrate may, at any time, for sufficient reasons to be recorded in writing, cancel any bond for keeping the peace or for good behaviour executed under this Chapter by order of any Court in his District not superior to his Court.' Mr. Justice Benson held that, if the District Magistrate is of opinion that the order is not supported by the evidence on the record, it is open to him to cancel the bond. Mr. Justice Sundara Aiyar, on the other hand, held that such bond can be cancelled only on the ground of something occurring after the execution of the bond which makes it right that it should be cancelled or on some other grounds which would not impeach the correctness of the order passed by the inferior Magistrate, but that a District Magistrate has no power to cancel the bond on the ground that the order for its execution was made on insufficient grounds.

6. If we give the words ' for sufficient reasons' in the above section their natural meaning, then it would seem that the District Magistrate may set aside the order if he thinks that the evidence did not support the conclusion arrived at by the Subordinate Magistrate. That the evidence adduced does not warrant the conclusion is surely a sufficient reason for interference. If anything had happened after the date of the passing of the order which made the continuance of the bond unnecessary, that also would be a sufficient reason. If, again, the District

Magistrate considered from any other information which was not placed before the Deputy Magistrate that any bond was unnecessary, then also the section gives him the power to cancel the bond. Is there any reason, then, to restrict or qualify the ordinary meaning of the words used It was argued that Section 125 refers to orders for security to keep the peace as well as to orders for security for good behaviour; that Section 406 gives a right of appeal against the latter class of orders; no such right of appeal is given in the former class of cases by any section of the Code, nor is any right of the District Magistrate to revise in terms recognised; it is therefore unlikely that Section 125 was intended to confer such powers. Now the power of interference with orders for security for good behaviour was given by the Criminal Procedure Code, Section 125, only recently. No inference can therefore be drawn from that provision and the right of appeal given by Section 406. The fact that no right of appeal is given does not show that the District Magistrate may not exercise the powers usually vested in an Appellate Court. In revision for instance such powers are often exercised, though the party has no right to be heard. Sections 435 to 438 which refer to the revisional powers of the District Magistrate do not refer to the security cases, as they have been already dealt with under Section 125. Moreover it has to be noticed that Section 125 admittedly enables the District Magistrate to interfere on grounds other than those disclosed by the evidence before the Magistrate who passed the order. A Court in the exercise of its appellate or revisional powers is confined to the evidence recorded. The section therefore conferred far larger powers than those of an appellate or revisional Court. The object of Section 107 indicates probably why it was considered inexpedient to give a right of appeal to the party, while, as the Chief Magistrate responsible for the peace of the District, it may have been considered advisable to give him ample powers of interference. The order under Sections 107 and 118 may result in simple imprisonment for one year. It is hardly likely that such an order would be intended to be final. The High Court's power of Revision when the evidence is recorded only as in summons cases will seldom be invoked with success, and as no right of appeal is given, it is probable that Section 125 was intended to give the District Magistrate the right to review the evidence. An argument was based on the fact that Section 125 enables the District Magistrate only to cancel the bond, not to set aside the order. The bond may be

cancelled not only for the reason that the order is wrong, but, though the order is right on the evidence before the Subordinate Magistrate, for other reasons the District Magistrate considers its continuance unnecessary. The order in such cases cannot be set aside. Again the order under Sections 107 and 118 is not to keep the peace, but to execute a, bond to keep the peace. With the execution of the bond the order may be said to have spent itself. It is the bond then that remains to be cancelled.

7. 124 also supports this conclusion. It enables the District Magistrate to release any person imprisoned for failing to give security when he is satisfied that he might do so ' without hazard to the community or to any other parson,' or, in other words, when there is no apprehension of any breach of peace or disturbance of public tranquillity as stated in Section 107. It is obvious that the District Magistrate may arrive at this conclusion on the evidence taken by his Subordinate Magistrate. If this power can be exercised only in the nature of original jurisdiction, it is probable it would have been conferred also if not solely on the Magistrate who originally passed the order. If he could do so under Section 124, he surely could do the same under Section 125.

8 It is also argued that ths District Magistrate can interfere only after the bond has been executed or the party has been committed to prison. This is true. But it has to be pointed out that the period for which the security is required commences at the date of the order unless the Magistrate for sufficient reasons fixes a later date--Section 120. Therefore the party must execute his bond with or without surety at once, in which case the District Magistrate can deal with the matter under Section 125, or he is committed to prison in default, When the jurisdiction of the District Magistrate conferred on him by Section 124 may be invoked. The power to fix a later date was only given recently. I see no reason therefore to depart from the natural meaning of the words, and agreeing with Benson J. and the Full Bench of the Calcutta High Court answer the question in the negative, i.e., that the District Magistrate is entitled to entertain a petition to set aside the order of the Deputy Magistrate as having been passed on insufficient grounds.

Tyabji, J.

9. The question we have to determine is whether the District Magistrate was right in declining to assume jurisdiction under Section 125 of the Criminal Procedure Cods. The section is as follows : - ' The Chief Presidency or District Magistrate may, at any time, for sufficient reasons to be recorded in writing, cancel any bond for keeping the peace or for good behaviour executed under this Chapter by order of any Court in his District not superior to his Court.'

10. According to the view of the section taken by the District Magistrate, in cases where it is contended that the bond should be cancelled and such contention is based on the same materials as those on which the order was originally made, there cannot be ' sufficient reasons ' within the meaning of the section for cancelling the bond.

11. It is not suggested that there is anything in the section itself, or in any other part of the Code, to give a restricted meaning to the words ' sufficient reasons.' But my learned brother, Sundara Aiyar J., was of opinion that, when Section 1'25 is read with the rest of the Code and due consideration given to its context, it appears that the nature of the powers conferred by the section is different from that which would result, if the section were read in its more liberal, and, what seems to me to be, its' natural sense. I shall refer to the construction of the section which would permit the Magistrate to cancel the bond without fresh material on the ground that the bond should never have been ordered to be executed, as the more liberal construction; and by the more restricted construction I mean the construction which has been put upon it by the District Magistrate and accepted by my brother, Suntara Aiyar J., and supported before us by the learned Government Pleader.

12. The first head of argument before us was that, if the section is read in its more liberal sense, it will have the effect of providing for an appeal from an order requiring a bond to be executed, and it is argued that it is indicated sufficiently by the Code that there is an intention on the part of the Legislature not to permit of an appeal from such an order, This argument seems to me to assume, without sufficient grounds, that the jurisdiction that would arise if Section 125 were read in its more liberal sense was considered by the Legislature to be exactly in the nature

of a power to entertain an appeal. It seems to me that it could not have been so considered. It is admitted that, whatever construction is placed on the section, the Chief Presidency or the District Magistrate may, if he chooses, cancel the bond on a consideration of fresh materials which were not before the Court ordering the execution of the bond. This is not generally associated with appellate powers. It is true that Courts with appellate jurisdiction have, in exceptional cases, the power to take fresh evidence, but they are, as a rule, required to give their decision on the same materials as were present before the Court of first instance. Hence, if the powers conferred by the section are liberally construed, they would not assume the form of appellate powers.

13. The argument above referred to seem to me equally to be incapable of withstanding a careful examination from another point of view: for, assuming that the section should be read in its more restricted sense, and if, therefore, it is taken as providing for a review on fresh material, then it would bs more in conformity with the usual and recognized principles of the law of procedure to empower the Court that has made the order in the first instance to review that order; whereas in Section 125 it is contemplated that the Court which is asked to cancel the bond is, in most cases, different from the Court initially making the order. In other words, even if the section is read in its more restricted sense (as contended for by the Government Pleader), the powers created by it do not coincide with powers of review. The fact that, in the great majority of cases the powers under Section 125 would be exercised by the District Magistrate coupled with the nature of the functions annexed to the office he holds seems also to furnish an indication that, whatever interpretation is given to Section 125, it cannot have reference to a jurisdiction exactly similar to that of a Court of appeal or of revision, Neither construction makes the powers created by the section conform exactly to the powers of a Court of appeal or of revision: in either case, they are powers of a special and rather of an exceptional nature.

14. But assuming that the more liberal construction of Section 125 converts the jurisdiction conferred by it into that of an appellate Court, I fail to see that there is anything in the Code which would constrain us to hold that Section 125 ought necessarily to be so construed as to prevent its giving rise to powers of

entertaining appeals. Section 404 of the Criminal Procedure Code which has been referred to in this connection lays down that ' No appeal shall lie....except as provided for by this Code or by any other law....'.It is not stated that' no appeal shall lie except as provided by Chapter XXXI of the Code (which deals with appeals,) or even by Part VII (which deals generally with appeals, reference and revision,') Hence, it would seem that the Legislature did not contemplate the rest of the Code to be so interpreted that no appellate or revisional powers should arise under any portion of the Code except under Part VII thereof.

15. The learned Government Pleader also argued that, if Section 125 is read together with Sections 124 and 126, it will appear that the power under each of these sections does not arise unless the original order to. give security has been given effect to, either by the obedience of the person against whom the order is made or by imprisonment as a punishment for disobedience. Hence it is argued that it follows that the Court acting under Section 125 must proceed on the basis that the order requiring the bond to be executed was rightly made and the section markedly omits to say that the Chief Presidency or the District Magistrate may set aside the order; and yet, if the said Magistrate cancels the bond on the same material that was before the first Court, it is evident that he, in effect, sets aside the order. This argument fails to convince me for two reasons. In the first place, it seems to me that, for the reasons I have already indicated the Legislature in Section 125 contemplates a kind of jurisdiction which is different from that of an appellate Court or a Court of review In the second place, it seems to me that, if I am right in the conclusion that the powers are different, and perhaps, in some respects, more extensive, and if T am right in assuming that the general nature of the function? exercised by the District Magistrate throws light on the nature of the powers conferred by Section 125, then it would be more in accordance with the scope of the section, as I interpret it, that the Legislature should save the Magistrate from the necessity of expressing any opinion as to the correctness or the incorrectness of the original order where he is of opinion that the bond which had already been executed should be cancelled. In other words, in the view I take of the true construction of the section, the Legislature intended the Magistrate to exercise the powers quite independently of the necessity to pronounce on the correctness or the incorrectness of the original order. This view, it seems to me, is

supported by the nature of the jurisdiction created by Section 107 of the Criminal Procedure Code (under which the bond is originally ordered to be executed) and by the mode in which the Legislature deals with orders passed under the Section It will be observed that these orders are not subject to appeal in the ordinary way (see Section 406 of the Code). The Legislature, apparently desired that no person should complain of an 'order to execute a bond for the purpose of preventing a breach of the peace or disturbance of public tranquillity; but what it does provide is that, if the exigencies of public peace and tranquillity have been sufficiently safeguarded, the authorities responsible for seeing that there is no breach of the peace, or disturbance of public tranquillity may have the power of bringing about a cessation of the operation of the measures which they find to be no more necessary.

16. Both the learned Counsel who argued the case before us sought to found an argument on the words at any time' which form part of the Section I accept the interpretation put on those words by 'each of the counsel and think that the words in question mean 'however early or however late.' Mr. Adam may make the application as he suggested, half an hour after the order is passed, and the Government Pleader may make it when there is only one day left for the expiration of the period for which the bond had been executed; but neither can prevent the application of the other. If I am right that this is the effect of the words ' at any time', it is plain that no argument can be founded on the basis that the meaning to be annexed to them can only be one of the two mentioned by the learned Counsel to the exclusion of the other, and that, if they mean ' however early,' they imply that there is no time for fresh material being brought; if, on the other hand, they mean however late then they imply, in the first place that the delay in obtaining fresh material is not to prejudice the applicant; and secondly, that the section cannot have reference to an appeal time for which would ordinarily be limited.

17. For these reasons, I am of opinion that under Section 125 of the Criminal Procedure Code, the Chief Presidency or District Magistrate may cancel the bond therein referred to, if the said Magistrate is of opinion that the Court ordering the execution of the said bond ought never to have so ordered.