

In Re: P. Ramaswami Mudaliar

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Court : Chennai

Decided On : Nov-24-1937

Reported in : (1938)1MLJ810

Appellant : In Re: P. Ramaswami Mudaliar

Judgement :

ORDER

Venkataramana Rao, J.

1. This is an application to revise the order of the learned Joint Magistrate of Negapatam, framing a charge of defamation against the petitioner. It seems to me that on the materials placed before him he ought not to have framed the charge. On 3rd May, 1937, one Panchapakesa Aiyar preferred a complaint to the Joint Magistrate alleging that the petitioner is a man of dangerous character and that it is the duty of the police and the magistracy to protect the law-abiding citizens to lead their lives peacefully and to afford them protection in the discharge of their lawful duties and rights. In support of the allegations which he made in this petition, he referred to six gentlemen who according to him were in hourly peril of their person and expecting assaults from the petitioner. One of the persons referred to therein is Swaminatha Mudaliar the respondent herein. There can be no question that when he mentioned the names of these gentlemen, it was his evident intention that they should be invited and examined in support of the allegation made in the petition. This complaint was sent to the police for

investigation and necessary action and thereupon the Sub-Inspector, P.W. 5 sent for the petitioner and called upon him to explain with reference to the various allegations made in the petition. The Sub-Inspector seems to have shirked his duty of examining orally the petitioner and taking his detailed answers apparently because the petition was very long and the allegations were numerous. He accordingly drafted a statement to be signed by the petitioner wherein it is distinctly stated that a detailed statement with reference to the allegations would be submitted to him. No doubt the letter is worded in such a manner that the petitioner offered to send a detailed statement, but I have absolutely no doubt that it was-intended by the investigating officer that he should send a statement giving detailed answers to the various allegations in the petition. In pursuance thereof the petitioner submitted a petition Ex. B. It is on the strength of the allegations against the respondent contained in Ex. B a complaint of defamation was lodged against the petitioner out of which the present revision petition arises.

2. There can be no doubt that Ex. B must be deemed to have been made in answer to the requisition by the investigating officer under Section 161 of the Criminal Procedure Code. After the receipt of Ex. B the investigating officer summoned Swaminatha Mudaliar and showed a copy of Ex. B to him. It is rather surprising that the investigating officer should have done this indiscreet act and committed this irregularity in the teeth of Section 162 of the Criminal Procedure Code. He ought notto have shown this copy to him or allowed him to make notice from it. It is still more surprising that he should have furnished a copy to him. If this copy had not been furnished to the respondent, this unfortunate litigation would never have arisen. However, the question still arises whether the Joint Magistrate was right in framing a charge. The statements made by the petitioner relating to the respondent were made in response to the requisition made under Section 161 and there were therefore made on a privileged occasion. They were certainly made for the protection of his own interest to refute the allegations which he conceived were unfounded and made against him. Mr. Sivakaminathan urged that there was no necessity to refer to Swaminatha Mudaliar at all for the purpose of answering the allegations in the petition presented by Panchapakesa Aiyar. I do not agree with him. Swaminatha Mudaliar was one of the persons referred to by him in the petition with the evident object of his being examined by the police in

corroboration of the statements contained in his-petition. The petitioner was therefore quite right in believing that he would be examined and therefore he wanted to apprise the police of the character of the person so that any statements made by Swaminatha Mudaliar might not be accepted as correct. Prima facie therefore, the statements having been made on a privileged occasion under Section 161 of the Criminal Procedure Code they would certainly come within the exception of Section 499 of the Indian Penal Code. Before the Joint Magistrate the petitioner has placed all the materials which he could possibly place in support of the statements which he, made against the respondent and every one of the statements is borne out by documentary evidence. No doubt, the High Court ought not to interfere ordinarily by way of quashing a charge, but when all the necessary materials are available and the charge, appears to be prima facie groundless, it is an obvious duty to interfere without subjecting a person to the unnecessary harassment of a trial. This is the principle enunciated In re Kuppuswami Aiyar : (1915)28MLJ505 . I think this is a fit' case in which I ought to interfere and quash the charge and I accordingly do so.

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