

In Re: S. Kuppuswami Aiyar

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Court : Chennai

Decided On : Mar-26-1915

Reported in : AIR1916Mad408; (1916)ILR39Mad561

Judge : Kumaraswami Sastriyar, J.

Appellant : In Re: S. Kuppuswami Aiyar

Judgement :

ORDER

Kumaraswami Sastriyar, J.

1. This is an application under Sections 435 of the Code of Criminal Procedure and 15 of the Charter Act praying that the charges framed against the petitioner by the Second-class Magistrate of Tranquebar maybe quashed.
2. The case for the accused is that he was charged under Sections 189 and 504 of the Indian Penal Code, that the evidence on record is insufficient to substantiate either of the charges and that the proceedings were instituted out of pure malice and with the object of harassing the petitioner.
3. A preliminary objection has been taken by the Public Prosecutor as to the maintainability of the petition and the power of the High Court to interfere. So far as the power of the High Court is concerned the point seems to be concluded by authority.

4. In *Chandi Pershad v. Abdur Rahman* I.L.R. (1895) Calc. 131, it was held that the High Court had power to interfere at any stage of a case if it considers that grounds have been made out for interference. Their Lordships, at page 138, observe as follows: 'We feel bound to say that Mr. Pugh did not attempt to contend that the charges framed against Chandi Pershad could be sustained. He rather confined himself to urging the impropriety of our interference at a time when the case is still pending before the Magistrate. There can be no doubt, however, that we have the power to interfere at any stage of the case, and when it is brought to our notice that a person has been subjected for over two months to the harassment of an illegal prosecution, we think it is our bounden duty to interfere.' In *Choa Lal Das v. Avant Pershad Misser* I.L.R. (1898) Calc. 223, it was held that the Court had power to interfere 'in any case' and at any stage and the above passage from *Chandi Pershad v. Abdur Rahman* I.L.R. (1895) Calc. 131, was approved. While admitting the general power of the High Court, their Lordships state that the interference should be rare and only in exceptional cases and that one safe practical test would be to see whether a bare statement of the facts of the case without any elaborate argument should be sufficient to convince the Court that it is a fit case for interference at an intermediate stage. In *Jagat Chandra Muzumdar v. Queen-Empress* I.L.R. (1899) Calc. 786 the power of the High Court to interfere in any case and at any stage was referred to and their Lordships found that in cases where there is some manifest and patent injustice apparent on the face of the proceedings calling for prompt redress the High Court has power to interfere. Their Lordships quashed the proceedings in the particular case as they were of opinion that 'it is clearly most unfair to the accused that he should now be called upon to rebut a charge which upon the evidence is baseless in so far as it affects him. In *Queen-Empress v. Nageshappa* I.L.R. (1896) 20 Bom. 543, it was held that the High Court could interfere with an interlocutory order passed by a Magistrate and Mr. Justice Ranade observed as follows: 'A preliminary objection was raised by the Government Pleader that, as the proceedings before the Magistrate were still pending, this Court could not interfere with an order passed by the Magistrate in an interlocutory stage, The words used in Section 435 of the Code of Criminal Procedure are, however, very general and empower the High Court to send for the record of a case not only when it wishes to satisfy itself about

the correctness of any finding, sentence or order but also as to the regularity of any proceedings in subordinate Courts. In *Abdul Kadir Khan v. The Magistrate of Purneah* (1873) 20 W.R. 23 the High Court of Calcutta expressly ruled that it had jurisdiction to revise interlocutory orders. This power was again exercised by the same Court in respect of an illegal Municipal prosecution: *Chandi Pershad v. Abdur Rahman* I.L.R. (1895) Calc. 131. We follow these decisions and overrule this preliminary objection urged by the Government Pleader.'

5. There can thus be little doubt that though the power has to be exercised with great care, the High Court has jurisdiction to interfere at any stage of the proceedings, if it considers that, in the interests of justice, it should do so. No hard-and-fast rule can be laid down as regards the class of cases in which the High Court will interfere.

6. In the present case the accused is charged with offences under Sections 189 and 504 of the Indian Penal Code.

7. A careful consideration of the evidence adduced by the prosecution and the exhibits filed in the case leads me to the conclusion (1) that the ingredients necessary to constitute an offence under Sections 189 and 504 have not been made out, and (2) that the case as presented to the Court bears considerable evidence of fabrication and that the development that the case has undergone from the date of the first report of the process-server, dated 21st April 1914, shows that this is not a bona fide prosecution but that the complainant is a tool in the hands of others.

8. As regards the charge under Section 504 mere abuse will not do without an intention to cause breach of the peace or knowledge that a breach of the peace is likely. There is nothing to show that the accused had any such intention or knowledge. The endorsement on the summons does not warrant any such inference.

9. It appears from the subpaena that it was to be served on the witness who is described as residing at No. 6, Pattamangalam Agraharam, kaspā Mayavaram. The process-server had power to enter that house in order to effect service. He

however went inside the house of the accused in Vellalarkoil Pettai Street without permission and the accused is said to have abused him and asked him to get out.

10. I do not think that the fact of a subpoena being entrusted to a process-server gives him a general right of entry into any house without obtaining the permission of the owner or person in charge. Such a general power to enter any house at any time is not given by any of the provisions of the Code and would in my opinion be a serious violation of private rights. The mere fact that the owner asked the process-server to go out of his house would not be an offence. Assuming that the request to go out of the house was accompanied by the words 'Badva, Rascal,' it cannot be said that the object or intention was to provoke a breach of the peace however improper the language may be.

11. The case was fully argued on both sides and giving it my best consideration I am of opinion that this is a case where I ought to interfere. It is easy to see what injury is likely to be inflicted on a respectable pleader by a vexatious and protracted criminal trial. It may be that after a protracted trial the accused will be acquitted but that does not appear to be a sufficient ground for not saving him from what I consider to be a groundless and vexatious prosecution.

12. I quash the proceedings in the lower Court.

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