

In Re: Pavadai Goundan

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Court : Chennai

Decided On : Oct-24-1956

Reported in : AIR1957Mad292; 1957CriLJ517

Judge : Somasundaram and ;Ramaswami Goundar, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 5, 5(2), 173(1), 251A and 252; Madras Prohibition Act, 1937 - Sections 15, 48 and 53

Appeal No. : Criminal Revn. Case No. 313 of 1956 (Taken up No. 19 of 1956)

Appellant : In Re: Pavadai Goundan

Advocate for Def. : G. Gopalaswami, Adv.

Advocate for Pet/Ap. : V.V. Radhakrishnan, Adv. for ;Public Prosecutor

Judgement :

1. This is a reference by the District Magistrate (Judicial) of South Arcot. The reference is made under the following circumstances : On 31-12-1955 at about 10-30 p. m., there was a prohibition raid in a place called Vinayagpuram hamlet of Adanur village in South Arcot Dt. The raid was conducted by the head constable of Thambur out post with the aid of two constables and two mahazar witnesses. The accused was caught red-handed while distilling arrack. M. Os. 1 to 7 were seized. They included utensils and other vessels used for distilling arrack and fermented wash.

The accused was also arrested and sent to the Sub Inspector of Police at Khanjanoor within whose limits the offence took place with a special report by the head constable who conducted the raid. The head constable at Khanjanoor police station who received the accused as also the report and the material objects seized during the raid from the head constable of Thambur registered a case in Cri. No. 1 of 1956 under Section 4 (1) (b) of the Madras Prohibition Act and investigated the case. The Sub Inspector of Police supervised investigation and filed a charge sheet.

The case was taken on file by the Sub Magistrate at Ginjee as C. C. No. 201 of 1956 for an offence under Section 4 (1) (b) of the Madras Prohibition Act. Thereafter the accused was tried, and convicted and sentenced to three months rigorous imprisonment. The accused preferred an appeal against his conviction and sentence to the Assistant Sessions Judge (District Magistrate) of South Arcot.

In the appeal several grounds of fact and law, were taken. One of the points of law raised was that the trial Court erred in following the procedure prescribed in Section 251-A Cri. P. C., and that the correct procedure to be followed as regards cases under the Madras Prohibition Act is the one laid down in Section 252 Cri. P. C. This argument was based on the construction of Section 48 of the Madras Prohibition Act which runs as follows :

"When a police or prohibition officer forwards in custody any person accused of an offence under this Act to the Magistrate having jurisdiction to inquire into or try the case, or admits any such person to bail to appear before such Magistrate such officer shall also forward to such Magistrate a report setting forth the name of the accused person and the nature of the offence with which he is charged and the names of the persons who appear to be acquainted with the circumstances of the case, and shall send to such Magistrate any article which it may be necessary to produce before him. Upon receipt of such report the Magistrate shall enquire into such offence and try the person accused thereof in like manner as if complaint had been made before him as prescribed in the CrI." P.C."

2. The section authorises the police officer or the Prohibition officer to forward to the Magistrate a report who on receipt of such a report is to deal with the matter as

if a complaint had been made before him as prescribed in the Criminal Procedure Code. Complaint is defined in Sub-clause (h) of Section 4 of the Crl. P. C. It is as follows: "Complaint means the allegation made orally or In writing to a Magistrate, with a view to his taking action under this Code, that some person whether known or unknown has committed an offence but it does not include the report of a police officer."

It would be seen from the above definition that it does not include the report of a police officer. It was, therefore, contended that the report of the police officer referred to in Section 48 of the Prohibition Act is not charge-sheet filed under Section 173 Crl. P. O. but is treated as a complaint. If that is so then the procedure to be followed by the Magistrate is the one prescribed in Section 252 and not the one laid down In Section 251-A of the Crl. P. C. and that Section 251-A will apply only to reports forwarded by the police officers under Section 173 (1), Crl. P. C.

This contention raised by the advocate for the accused was upheld by the District Magistrate and he, therefore, set aside the conviction and sentence and ordered retrial with a direction to the Magistrate to follow the procedure prescribed in Section 252 Cr. P. C. In the retrial the case was renumbered as C. C. No. 508 of 1956 and the procedure prescribed in Section 252 Crl. P. C., was followed. The accused was again convicted of the offence with which he stood charged and sentenced to the same term of imprisonment.

3. The question for consideration now is what is the procedure to be followed in respect of offences under the Madras Prohibition Act, which are investigated by the police officers. Is it the procedure prescribed in S, 251-A or the one that is contained in Section 252 Crl. p. p., that has to be followed. It is needless to point out that the procedure prescribed by the two sections is different and varies very much. Sections 28 to 52 of Chapter v. of the Madras Prohibition Act relate to investigation of offences under the Prohibition Act by the officers who detect and deal with offences under the said Act.

Such officers include officers in the police service as also officers of land Revenue department. A common procedure is prescribed for all such officers. Still Section 53 of the Act lays down that nothing in this Act shall affect the operation of the

Criminal Procedure Code. According to Section 15 of the Prohibition Act all offences under that Act are cognisable and the provision of the Criminal Procedure Code with respect to cognisable offences shall apply to them. The procedure relating to cognisable offences is contained In Chapter XIV Criminal Procedure Code beginning with Section 154 and Section 156 et seq.

The closing of the investigation is marked by forwarding a report under Sub-section 1 of Section 173 Crl. P. C. to a magistrate who is empowered to take cognisance on a police report. This report is commonly known as "charge sheet" by the police. The charge sheet, therefore, presupposes an investigation by the police under Chapter XIV Crl. P. C. Investigation of prohibition offences by the police officers under Chapter XIV Crl. P. C. is not affected by virtue of Section 53 Prohibition ACE. But under Section 5 (1) Crl. P. C. all offences under the Indian Penal Code shall be investigated, inquired into tried and otherwise dealt with according to the provisions of the Criminal Procedure Code.

But offences under any other law shall be Investigated, inquired Into and tried and otherwise dealt with according to the same provisions but subject to any enactment for the time being in force regulating the manner or place of investigation, inquiring into, trying or otherwise dealing with such offences. We have already pointed out how in chapter V of the Prohibition Act a special procedure is prescribed to all offences under the Prohibition Act. From the provisions of the two enactments referred to above it would be seen that the provisions contained in Chapter V of the Prohibition Act are saved by Sub-section (2) of Section 5 of the Crl. P. C. and by Sections 15 and 53 of the Prohibition Act the provisions of Chapter XIV of the Criminal Procedure Code are not affected.

A police officer who investigates into an offence under the Prohibition Act may, therefore, either follow the provisions contained in Chanter XIV Crl. P. C. or he may adopt the procedure contended in Chapter V of the Prohibition Act. But in the case of prohibition officers who also investigate into offences under the Prohibition Act, the procedure that is to be followed by them is that contained in Chapter V of the Prohibition Act, (Ss. 28 to 52). Bearing this distinction in mind between the procedure to be followed by a police officer and a prohibition officer in respect of

offences under the Prohibition Act if we examine the provisions of Section 48 of the Prohibition Act the meaning of the expression "shall forward to such magistrate a report setting forth the names of the accused"..... and "upon receipt of such report the magistrate shall inquire into such offence and try the person accused thereof in like manner as if complaint had been made before him as prescribed in the Criminal Procedure Code will become clear.

The report referred to in Section 48 of the Prohibition Act may be forwarded either by a police officer or a prohibition officer. The police officer, as indicated already may send the report either under Section 173 (1), Cri. P. C., after his investigation in accordance with the provisions of Chap. XIV. Cri. P. C. or he may send the report like the prohibition officer who investigates into an offence under "the Act in accordance with the provisions of Chap. V of the Prohibition Act. In the latter case the report of the police officer is on a par with the report of the prohibition officer and that would be dealt with by the Magistrate to whom it is forwarded as if it were a complaint made before him.

That is to say. in such a case the provisions of Section 252, Cri. P. O. will apply. But in the former case, that is, where a police officer investigates into an offence under the Prohibition Act under the provisions of Chap. XIV, Cri. P. C. and send his report under Sub-section (1) of Section 173, Cri. P. C., It would then be a charge sheet as it is commonly known.. In such cases the procedure to be followed is the one prescribed in Section 251-A of the Cri. P. Code.

4. On the facts of this case it is clear that the police officer followed the provisions of the Chapter XIV Cri. P. C. Therefore what was filed by him was a charge sheet under Sub-section (1) of Section 173 Cri. P. C. and, therefore, the procedure to be followed is the one laid down in Section 251-A Cri. p. C. The procedure adopted by the magistrate in the first Instance, that is, in C.C. No. 201 of 1958 was the correct one and the order of the District Magistrate directing retrial was not justified. In pursuance of the order of the District Magistrate, the accused was again retried and again convicted and sentenced. This time the procedure followed by the trial court was the one prescribed under Section 252 Cr. P. C.

As the procedure followed by the magistrate on the second occasion, that is, subsequent to the order of the district magistrate directing retrial is not correct, the conviction and sentence will have to be set aside. The accused has already undergone two trials and has also been in jail for a few days. In these circumstances we do not think it necessary to order retrial. We, therefore, set aside the conviction and sentence passed on the accused in C. C. No. 508 of 1956 and order no retrial.

5. With regard to the reference by the District Magistrate when it came up for hearing before us the accused was not represented by any counsel. We, therefore, requested Mr. G. Gopalaswami, leading member of the Bar to act as *amicus curiae*. We are deeply grateful to him for his able and lucid exposition of the law on the subject and for the valuable assistance he has rendered to us.

6. Before we take leave of this case we would like to make the following recommendations to the State Government for introducing the necessary legislation in regard to the procedure to be followed by the investigating officers in respect of offences under the Prohibition Act.

7. A police officer who investigates into an offence under the Prohibition Act, as we have pointed out, either investigate the case under the provisions of Chapter XIV CrI. P. C. or follow the procedure prescribed in Chapter V of the Madras Prohibition Act. In the latter case also the police officer whenever he forwards the report may term it a charge sheet as that is the expression which is in daily use by them, though strictly it is not so.

8. The Court at the time of the filing of the report may not know whether the police officer had followed the procedure in accordance with the provisions of Chapter XIV CrI. P. C. in investigating the case or has followed the provisions of Chapter V of the Prohibition Act. It is possible that the procedure followed by the investigating officer may be known only at a later stage of the hearing of the case and if it turns out that the procedure followed by the magistrate was not correct then the accused may have to be tried again following the right procedure. This would mean not only harassment of the accused for no fault of his but also delay in the disposal of the case. There must be some suitable provision to avoid this.

9. Now that the police officers alone are investigating into these offences under the Prohibition Act and practically the Prohibition officers have ceased to exist at least so far as investigation of offences under the Prohibition Act are concerned it would be better if it is made obligatory on the part of the police officers to follow only the provisions of Chapter XIV Cri. P. C. in which case the provisions of Chapter V except Section 53 of the Prohibition Act may have to be deleted. This will then give no option to a police officer who investigates into a prohibition offence but only to follow the procedure in Chapter XIV Cri. P. C. No procedural difficulty will then arise.

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