

In Re: T.C. Nichodemus

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Court : Chennai

Decided On : Apr-23-1954

Reported in : AIR1955Mad561; 1955CriLJ1363

Judge : Chandra Reddy, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 4 and 195; Madras District Police Act, 1859 - Sections 53

Appeal No. : Criminal Revn. Case No. 211 of 1954 and Criminal Revn. Petn. No. 194 of 1954

Appellant : In Re: T.C. Nichodemus

Advocate for Def. : Public Prosecutor (Andhra)

Advocate for Pet/Ap. : V.L. Ethiraj, Adv. for ;A.S. Sivakaminathan and ;M. Narayanamurthi, Advs.

Disposition : Revision dismissed

Judgement :

ORDER

Chandra Reddy, J.

1. Accused 1 in P. R. C. No. 1 of 1954 is the petitioner. A complaint was filed against him and eleven others for offences under Sections 343, 348 and 330, I. P. C.

2. The petitioner who is the Inspector of Police Srikakulam, in the course of an investigation into a series of cases of house breaking and theft questioned P. W. 1 on 27-10-1952 in the police station regarding one of such occurrences. When P. W. 1 denied knowledge of it, he directed the subordinate officials, who were there, to investigate further into the matter. In pursuance to these directions P. W. 1 was taken to a corner and, after, further questioning, they handcuffed him and chained him to the iron bar of the door.

It is also the prosecution case that on the 28th October when the petitioner went to the police station and saw the plight of P. W. 1, he abused the constables for handcuffing him locking him up and directed that he should be released immediately. But this direction of the petitioner was not obeyed, and P. W. 1 continued in wrongful detention. Apparently the petitioner did not know about this. It also appears that later on P. W. 1 was ill-treated by the other accused in the case. It is in these circumstances that a complaint for offences under Sections 348 and 330, I. P. C. was filed before the Sub-Divisional Magistrate of Srikakulam.

3. A preliminary point was raised that the complaint was barred under Section 53, Madras District Police Act, 1859. To appreciate this point, it is necessary to state that the alleged offence was committed on 6-11-1952 while the complaint was filed on 26-3-1953. Instead of deciding this point of limitation, the lower court stated that it was not free from difficulty and that a circular of this court and a decision of Ramaswami J. in -- 'Umanatha Rao v. State', : AIR1953 Mad226 (A), precluded the Magistrate from giving his opinion on the point at that stage. The aggrieved first accused has filed this petition.

4. The first question that arises for consideration is whether the accused person is not entitled to raise an objection to the maintainability of the complaint either on the ground of limitation or of jurisdiction or any other analogous ground. In -- 'Innaisia Pillai v. Perumal Chettiar', : AIR1953 Mad1008 (B), Ramaswami J. referred to a circular issued by this Court on 10-1-1931 and observed that the case

before him illustrated the abuses pointed out by that circular. The circular is in the following terms :

'instances have come up to the High Court which disclose that a system of procedure not contemplated by the Code is developing in the subordinate criminal courts. In warrant cases, the accused persons, before they are charged and put upon their defence anticipate their defence by petitions raising preliminary points upon which the court passes judgment and these are then brought up on revision to the High Court pending which the trial of the case is adjourned. The High Court desires to impress upon the lower courts that this procedure is unwarranted and makes for delay and extra work. An accused person has no right to raise a preliminary point before he is charged. He must wait to defend himself till he is charged and if he is convicted, his first remedy is in most cases by way of appeal.'

It may be mentioned that the learned Judge dismissed the revision petition on the ground that the preliminary objection taken in that case had no substance. The objection raised there was that the complaint fell within the mischief of Section 195(1)(c) and was therefore unsustainable without the same having been filed by the civil court. The learned Judge held that a complaint by a civil court was not necessary as Section 476, Cr. P. C. had no application. It is only by way of introduction that the circular was quoted. Therefore, if at all, the observations are merely 'obiter'.

5. In : AIR1953 Mad226 (A), the same learned Judge laid down that the accused had no right to raise a preliminary point before he was charged; and that he must wait to defend himself till he was charged. The main basis of the decision was against the circular. With great respect to the learned Judge, I do not think there is any provision of law precluding an accused person from raising a preliminary point going to the very root of the case. In my opinion it is desirable that such preliminary points should be raised and decided at the outset so that the time of the court could be saved and the accused person would also be saved trouble and unnecessary expenditure.

There may be cases in which preliminary points should not be allowed to be raised. But there are cases where the objection goes to the very root of the

maintainability of the complaint and in such cases it is not only permissible but desirable that such objections should be raised at the earliest possible opportunity and decided so that unnecessary waste of time of the court and of the litigant public might be avoided. I do not think that the circular was meant to be of universal application and to prohibit an accused person from raising a preliminary point in every case.

In these circumstances, I express my respectful dissent from the two decisions of Ramaswami J.

6. In -- 'Kamath v. State', : AIR1954 Mad561 (C), Somasundaram J. referring to : AIR1953 Mad1008 (B), observed that Ramaswami J. would not have intended that such a point should not be taken at all, as a preliminary objection; nor could he have intended that if raised it should not be considered as a preliminary objection. The learned Judge's opinion seems to be that the accused person could raise an objection to the cognizance of the offence so that if decided against him, the aggrieved party could come up in revision to this court.

7. To the same effect is the decision of Lakshmana Rao J. in -- 'Parandhanayya v. Nagabhushanam AIR 1939 Mad 579 (D). It is unnecessary to multiply citation. In my considered judgment an accused person has a right to raise a preliminary objection to the maintainability of the complaint and to have it decided so that he may not be put to the necessity of undergoing a trial in case he succeeds on the preliminary objection. I must therefore hold that the Sub-Divisional Magistrate erred in refusing to give a decision on the point of limitation.

8. As regards limitation, no doubt the trial court has not gone into the matter but in view of the circumstance that the court felt that to be a matter of great difficulty, I thought that I could decide that point here. Further both the learned Public Prosecutor and the learned counsel for the petitioner desired that I should express my opinion on the point.

9. Section 53, Madras District Police Act, 1859, runs thus :

'All actions and prosecutions against any person, which may be lawfully brought for anything done or intended to be done, under the provisions of this Act, or under the provisions of any other law for the time being in force conferring powers on the police shall be commenced within three months after the act complained of shall have been committed and not otherwise....'

It is clear from this provision that all actions and prosecutions against a police officer for anything done in discharge of his duties, or the purported discharge of his duties, should be filed within three months after the act complained of. In this case it cannot be disputed that the alleged offence was committed by the petitioner in the course of his official duty as Inspector of Police, i.e., while he was investigating into several crimes that were committed in the town of Srikakulam.

There can be little doubt that the complaint falls within the purview of Section 53, District Police Act, 1859. This is an obvious case covered by Section 53, Madras District Police Act, 1859, and does not present any difficulty. I must therefore hold that so far as the petitioner is concerned, the complaint is barred under Section 53, Madras District Police Act, 1859.

10. Even on the merits I fail to see how this petitioner could be held guilty of any offence. On the prosecution case itself, the petitioner could not be said to have committed any offence. All that he is alleged to have done is that he questioned P. W. 1 with regard to a certain occurrence and when he denied knowledge of it, he merely directed the subordinate officials to investigate further into the matter. It is also the prosecution case that the next morning when the petitioner went to the police station and found P. W. 1 handcuffed and chained to the iron bar of the door he took the constables to task for having treated P. W. 1 in that fashion and instructed them to release him immediately.

If his instructions were not obeyed, and if the fact was not brought to his notice, the petitioner could not be blamed for it; much less could it be said that he has committed any offence. In these circumstances, the complaint, so far as the petitioner is concerned, will be dismissed.

11. In the result the revision petition is allowed.

