

In Re: Kuppammal

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Court : Chennai

Decided On : Aug-22-1958

Reported in : AIR1959Mad389; 1959CriLJ1085; (1958)2MLJ606

Judge : Somasundaram, J.

Acts : Suppression of Immoral Traffic in Women and Girls Act, 1956 - Sections 13;
[Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 190(1)

Appeal No. : Criminal Misc. Petn. No. 834 of 1958

Appellant : In Re: Kuppammal

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : P. Venkatachari, Adv.

Disposition : Application allowed

Judgement :

1. This is an application to quash the charge framed by the District Magistrate of Chingleput. Three charges have been framed against the accused; namely, for offences under Sections 3(1), 4(1) and 6(1) of the Suppression of Immoral Traffic in Women and Girls Act, 1956. There is no dispute about the fact that the police officer who investigated into this case is an Inspector of Police. In fact, nothing has been alleged against the Inspector of police as such, but the point that is raised is that under the above Act, the officer who can deal with an offence under Section

13 should be not less than the rank of Deputy Superintendent of Police in the moffasal according to the provisions of Section 13(2)(c) and inasmuch as this investigation has been conducted by an Inspector of Police, who is below the rank of a Deputy Superintendent of Police, the whole investigation becomes illegal and the court should not, therefore, proceed with the trial of the case based upon the illegal investigation.

Act CIV of 1956 under which the accused is sought to be prosecuted came into force on 1-5-1958. It is obvious that in the mofussal the police were not aware of this Act and they were proceeding under the prior Act which was in force in this State. But by the time they could conclude the investigation and file a charge-sheet, the coming into force of Act 104 of 1956 has come to their knowledge and, therefore, they filed a charge-sheet for offences under this Act.

2. Offences under the above Act have been made cognizable by Section 14 of the Act. Under the proviso to that section the arrest of the accused can only be made by the Special Police Officer or under his direction or guidance or subject to his prior approval. Similarly, under Section 15 it is only the special police officer that can make a search into the premises. As to who is a "special police-officer" is mentioned in Section 13 of the Act and that section says: "There shall be for each area to be specified by the State Government in this behalf a special police officer appointed by or on behalf of that Government for dealing with offences under this Act in that area."

By Clause (2) the special police officer shall not be below the rank of (a) an Assistant Commissioner of Police in the presidency towns of Madras and Calcutta; (b) a superintendent of police in the presidency town of Bombay, and (c) a Deputy Superintendent of police elsewhere. The offences in this case are alleged to have been committed at a place outside the limits of the original jurisdiction of Madras, and, therefore, the Special Officer shall be the Deputy Superintendent of Police. This section says that the appointment of a special police officer is for dealing with offences under this Act.

As stated earlier, the investigation in this case undoubtedly was conducted by an Inspector of Police about whose impartiality nothing has been alleged. But as a

point of law it is contended that Section 13 having provided that it is the special police officer that should deal with offences and the special police officer in this area being the Deputy Superintendent of Police appointed for the purpose, any investigation conducted by the Inspector of Police must be considered to be an illegal one, and, therefore, the charge framed on the report filed by the police under the provisions of Section 251(a) of the Code of Criminal Procedure is unsustainable.

3. The contention of the learned Public Prosecutor is that under Section 14 of the Act,

"Notwithstanding anything contained in the Code of Criminal Procedure, 1898, any offence punishable under this Act shall be deemed to be a cognizable offence within the meaning of that Code";

and, therefore, when once under Section 14, offences under this Act are made cognizable, it means that any police officer can investigate into this offence, subject to the limitations contained in the proviso and also under Section 15 of the Act, the limitation being that the arrest shall not be made except by the special police officer and also that the search shall not be except by the special officer.

Barring these limitations, the contention of the Public Prosecutor is that the powers of any police officer are still preserved and not taken away and therefore, the Inspector of Police can investigate into the case and file a charge sheet; it may be that the materials obtained by the search may not be placed before the court on account of the search being illegal; but the investigation and the filing of the charge-sheet cannot be rendered invalid. The further contention of the learned Public Prosecutor is that the appointment of a special police officer to deal with offences does not necessarily mean an investigation by the special police officer.

In fact, he tried to contrast the expression used in the section with the expression used in Section 5 (a) of Act II of 1947 where it is clearly stated that the investigation shall not be taken up by any officer below the rank of a Deputy Superintendent of Police.

4. It is true that in the Act to prevent corruption the expression "investigation" has been used and a similar expression is not used in Section 13 of the present Act. But I am unable to understand the expression "deal with offences" as meaning other than an investigation into the offence and filing a charge-sheet. The learned Public Prosecutor lays stress on clause (3) of Section 13 and contends that "dealing with offences" means what is contained in Section 3 (b), i.e., associating a non-official body with the special police officer which is not normally allowed or permitted under the ordinary investigation and it is for that purpose alone that Section 13 has been introduced; and that Section 13 read with Sections 14 and 15 does not prohibit an investigation by an ordinary police officer.

I am afraid I cannot agree with this contention. Section 13 no doubt enables a special police officer to associate a non-official body for the purpose of dealing with offences under this Act. But when the section says that a particular police officer alone shall deal with offences under this Act, it seems to me that it means that such particular officer alone shall investigate into the offence. There can be no "dealing with offences" without an investigation into the matter.

"Dealing with offences" is wider than "Investigation" and an investigation therefore is included in the expression "dealing with offences", and the offence must, therefore, be investigated only by one of the officers mentioned in the section and in this case it must be investigated by the special officer, namely, the Deputy Superintendent of Police, authorised for that area to investigate. If this interpretation is to be given then the question is what happens to the offence which has been taken cognizance of by the magistrate.

5. A magistrate can take cognizance in any of the ways mentioned in Section 190 CrP. C. There is no doubt, as pointed out by the Supreme Court, that nothing is illegal in the magistrate taking cognizance of the offence when it is brought to his notice either by police report or by complaint or in some other manner as mentioned in Section 190(1)(c). This police charge sheet though illegal on account of Section 13 of the Act cannot be worse than an ordinary complaint but then as pointed out by their Lordships of the Supreme Court in *H. N. Rishbud and Anderson v. State of Delhi*, ,

"It does not follow, however, that the invalidity of the investigation is to be completely ignored by the court during trial.' When the breach of such a mandatory provision is brought to the knowledge of the court at a sufficiently early stage, the court, while not declining cognizance, will have to take the necessary steps to get the illegality cured and the defect rectified, by ordering such re-investigation as the circumstances of an individual case may call for." (underlining (in single quotation ' ' in this report -- Ed.) is mine).

The illegality has been brought to the notice of the court during the trial and the court, while not declining to take cognizance will have to take the necessary steps to have the illegality cured and the defect rectified. The only manner in which such illegality could be cured and the defect rectified is by quashing this charge-sheet and the charge framed in this case and leave it open to the proper authority to re-investigate the case and file a charge-sheet.

I make it clear that notwithstanding this quashing the charge-sheet and the charge, it is still open for the special police officer within the meaning of Section 13 of the Act to investigate into the case again and file a fresh charge sheet and if such a fresh charge sheet is filed, the court will then proceed to dispose of it according to law. The charge sheet and the charge are, therefore, quashed. If the court takes cognizance of the offence on the filing of a fresh charge-sheet by the special police officer, the plea of autre fois acquit will not be available to the accused, as I am not acquitting the accused in this case.

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