

In Re: Baggiam

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Court : Chennai

Decided On : Nov-05-1952

Reported in : AIR1953Mad507; (1953)IMLJ139

Judge : Somasundaram, J.

Acts : Madras District Police Act, 1859 - Sections 47; [Laws Local Extent Act, 1874](#) - Sections 4; [Indian Penal Code \(IPC\), 1860](#) - Section 211

Appeal No. : Criminal Revn. Case No. 264 and Cri. Revn. Petn. No. 247 of 1952

Appellant : In Re: Baggiam

Advocate for Def. : State Prosecutor for State

Advocate for Pet/Ap. : A.A.S. Mustapa, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

Somasundaram, J.

1. The petitioner in this case has been convicted by the Fourth Presidency Magistrate for an offence under Section 47, Madras District Police Act (Act 24 of 1859) and sentenced to a fine of Rs. 30 in default to three weeks' rigorous

imprisonment.

2. The facts of the case may be briefly stated' as follows: The petitioner sent a petition, Ex. P. 1, dated 28-5-1951 to the Inspector General of Police alleging therein that P.C. 2144 of B. 2 station was troubling her daily asking for a mamool of Rs. 10, that he was inducing her to run a brothel and that he was taking bribes. The petition was forwarded to the Sub-Inspector of B. 2 station for enquiry. P.W. 2, the Sub-Inspector of B. 2 station inquired into the matter and sent a report that the allegations are false and that they were made with a view to remove the police surveillance on her. Thereupon this complaint was laid in Court against the accused for an offence under Section 47, Madras District Police Act.

Both in the enquiry by the Sub-Inspector and before the Court beyond her statement no other evidence was let in support of her allegations in the petition. In the enquiry before me Sub Inspector a witness was cited, who did not speak anything more than that the police constable concerned used to come often to the house of the petitioner and question her in an authoritative manner. In the Court the witnesses cited by her spoke to the fact that, they saw the constable one day coming and talking to the accused. The prosecution examined P.C, 2144 in support of its case that the allegations made against him are false. He stated in his evidence that he had taken action against the petitioner under Section 4(1), Madras Prohibition Act and her brother Mari was also charged by him under Section 75, City Police Act and that he had also taken action against the accused under Section 75, City Police Act in respect of girls kept by her in her house, whom he arrested. He also stated that on account of his taking action against her, her brother and the girls kept by her, she has sent this petition against him. The Sub-Inspector who made the enquiry was also examined by the prosecution and he filed a report which was submitted to the Commissioner of Police. The Magistrate believed the evidence of the constable, P.W. 2 and as the allegations in the petition, Ex. P. 1, were not substantiated by the accused, the Magistrate came to the conclusion very rightly in my opinion that the allegations contained in Ex. P. 1 are false and that they were maliciously made by the accused. The petitioner was therefore convicted under the aforesaid section.

3. In revision two points of law were canvassed before me: (1) Section 47 is a provision in the Madras District Police Act and it is not applicable to the City as a separate City Police Act governs the conduct of the police officers in the City, and therefore Section 47 cannot be invoked in respect of the allegations made against the city constable; and (2) As under Section 16, Police (Madras City) Act any police officer appointed under the provisions of Act 24 of 1859 (Madras District Police Act), If employed in the City, shall have the same duties, powers and privileges as police officers under the Police (Madras City) Act, and as Section 47 confers a privilege only on a constable employed in the district and that this privilege is not conferred on a city constable by the Police (Madras City) Act this Section 47 cannot apply in respect of a city constable in the absence of a similar provision in the Police (Madras City) Act.

So far as the first point is concerned; it must not be forgotten that the Madras District Police Act is a Central Act passed in 1859 for the better regulation of the police within the territories subject to the presidency of the Fort St. George. Under Section 55 of the Act. It can be made applicable to any or every district by a notification of the Provincial Government published in the official gazette. By Section 2, Madras Act 8 of 1867, the provisions of Act 24 of 1859 (Madras District Police Act) have been made applicable to the persons, who at that time belonged to or would thereafter belong to the town police. By virtue of this provision, since 1-9-1867, when the Madras Act 8 of 1867 came into force, the District Police Act (Act 24 of 1859) is in force in the City of Madras. This is further clear from another Act of the Central Legislature, viz., Act 15 of 1874. That is an Act for declaring the local extent of certain enactments and for other purposes. Section 4 of the above Act is as follows :

'The enactments mentioned in the second schedule hereto annexed are now in force throughout the whole of the territories now subject to the Government of the Governor of Fort St. George in Council, except the scheduled district subject to such Government.'

Act 24 of 1859 is one of the Acts referred to in the second schedule (vide p. 257 of Vol. II of the Unrepealed Central Act, 2nd Edn.). Apart from the Madras Act 8 of

1867, the Central Act 15 of 1874 makes it clear that this Madras District Police Act is applicable to the police in the City of Madras. This covers practically the second point also, though I will deal with it separately.

4. As regards the second point about Section 16, City Police Act, I do not see how it takes away the right under the Madras District Police Act, which as stated already is applicable to the police in the City of Madras. Section 47 creates an offence in respect of not only allegations made against the police officer, but also for assaulting or resisting any police officer in the execution of his duty and for aiding or inciting any other person so to assault or resist any police officer. This has nothing to do with the privileges of a constable in the City. Even if it is considered as a privilege, I do not see how it can make any difference as the Madras District Police Act applies to the City also. There is therefore no substance in either of the two points raised by the learned advocate for the petitioner.

5. The only other question is whether the petitioner can be said to have preferred a false or frivolous charge against P.C. 2144. I have already held that the learned Magistrate was justified in coming to the conclusion that the allegations made are false and were maliciously made. The question is whether it is a charge against a police officer.

6. The word 'charge' is not defined either in the Act or in the Code of Criminal Procedure. The ordinary meaning given to it in Wharton's Law Lexicon is 'to prefer an accusation against one.' What exactly is meant by 'charge' has been considered by two decisions of this Court in connection with its meaning in Section 211, I.P.C. The two decisions are -- 'Rayan Hutti v. Emperor', 26 Mad 640 (A) and --'Sessions Judge, Tinnevely Division v. Sivan Chetti', 32 Mad 258 (B). It has also been considered by the Calcutta High Court in -- 'Abdul Hakim Khan v. Emperor : AIR1932 Cal511 . and : AIR1932 Cal511 have been considered by King J. in -- 'Aehayya Setti v. Emperor', AIR 1937 Mad 808 (D). As already stated the three decisions in 26 Mad 640 (A); 32 Mad 258 (B) and : AIR1932 Cal511 referred to by me deal only with the meaning of the word in 9. 211, I.P.C. But AIR 1937 Mad 808 (D) deals with the meaning of the word in Section 47, Madras District Police Act. I must say that in Section 211, I.P.C. the charge must be one against any person

with having committed an offence. The sense therefore in which the word is used in Section 211, I.P.C. is different from that in which it is used in Section 47, Madras District Police Act. I entirely agree with King J. that there is no identity of meaning between Section 47, Madras District Police Act and Section 211, I.P.C. with regard to the word 'charge' in the two sections. The rulings therefore in 26 Mad 640 (A); 32 Mad 258 (B) and : AIR1932 Cal511 will not apply to a case under Section 47, Madras District Police Act. I would therefore hold that the allegations by the petitioner against P.C. 2144 amount to a false and frivolous charge against him and that they were made maliciously. The lower Court is justified in convicting the petitioner for an offence under Section 47 Madras District Police Act and the sentence is not excessive-This petition is therefore dismissed.

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