

In Re: Govindan Nair

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Court : Chennai

Decided On : Nov-18-1958

Reported in : AIR1959Mad544; 1958CriLJ777

Judge : Ramaswami, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 103, 165 and 165(5);
[Post Office Act, 1898](#) - Sections 52

Appeal No. : Criminal Appeal No. 137 of 1958

Appellant : In Re: Govindan Nair

Advocate for Def. : V.V. Radhakrishnan, Adv. for ;Public Prosecutor

Advocate for Pet/Ap. : K.K. Venugopal, Adv.

Disposition : Appeal dismissed

Judgement :

Ramaswami, J.

1. This appeal is preferred against the conviction and sentence by the learned Sessions Judge of Chingleput Division in Sessions Case No. 2 of 1958.
2. The accused was a Class IV Officer of the Postal Department working in the Meenambakkam Air Port Sorting Office. His duties were to open the mail bag,

keep the postal articles on the sorting table and take the preliminary sorted letters for detailed sorting and keep them in the detailed sorting rack. There is no dispute that this accused was employed on the 17th, 18th and 19th February, 1957 on this work. This is proved by P.W. 3, the clerk of that office, the accused's admission and his signatures in the attendance register Ex. P-3.

3. In this case three postal articles are concerned. M.Os. 1 to 3 are the envelopes. M.O. 1, Air Mail Envelope was posted at Jaffna on 17-2-1957 and M.Os. 2 Air Mail Envelopes and 3 were posted at Ipoh and Batubahat on the 15th February, 1957. They should have in the normal course reached the Air Port at Meenambakkam on 18-2-1957. M.Os. 1 was addressed to P.W. 5, M.O. 2 was addressed to P.W. 6 and M.O. 3 to P.W. 4. None of these letters reached P.Ws. 4 to 6 as they ought to have reached.

4. It is seen from the complaint made under Ex. P-1 as early as 19-7-1956 by P.W. 1 Madhava Menon, who was then the Air Mail Inspector at Meenambakkam, that postal articles were intercepted and torn. The accused was one of the persons suspected in this connection. This complaint was registered as Crime No. 8/56 of B-4 Air Port Meenambakkam Police Station and was endorsed to P.W. 8, Inspector, Crime Branch, C.I.D., Madras, whose office is at Mylapore, for investigation. He commenced investigation on 21-11-1956.

5. On information received on 19-2-1957 P.W. 8 searched the house of the accused on 20-2-1957 at Kilpauk. The Inspector recovered M.Os. 1 to 3, Two demand drafts for Rs. 350 and Rs. 772-8-2 (M. Os. 4 and 5) were found inside M.O. 1. Inside M.O. 2 was the letter Ex. P-8 written by one M. E. Abdul Mohammad to P.W. 6. M.O. 3 contained Ex. P-7, the letter to P.W. 4 from his brother and two photographs (Exs. P-5 and P-6) of P.W. 4's brother's daughter and son-in-law and P.W. 4's son taken on the occasion of their marriage and thread marriage ceremony respectively. P.W. 8 prepared a search list Ex. P-9 which was attested by P.W. 7 Abdul Latiff and another Doraiswami, not examined. On 20-2-1957 itself P.W. 8 arrested the accused.

6. P.W. 8 went to Ipoh and Batubahat in connection with this investigation and a Sub Inspector was sent to Ceylon for investigation. On the completion of the

investigation a charge-sheet was laid on 30-11-1957.

7. The accused admitted in the committing Court that his house was searched but they did not seize anything. He agreed that the three concerned letters ought to have reached Meenambakkam on 18-2-1957 in the ordinary course. In the Sessions Court the accused admitted that his house was searched but denied that any of the articles concerned in this case were recovered. In the Sessions Court the accused also went to the extent of denying the presence of P.W. 7 which he had indirectly admitted in the committal Court stating that when they searched his house the articles were not recovered. The accused stated that he had been falsely implicated. The accused did not examine any D.Ws.

8. On this evidence the learned Sessions Judge came to the conclusion that the prosecution has affirmatively and satisfactorily proved its case against the accused for an offence under Section 52 of the Post Office Act and sentenced him to undergo rigorous imprisonment for four years and in addition to pay a fine of Rs. 100/- in default to undergo R. I. for three months. Out of the fine amount of Rs. 100/- if collected, Rs. 60/- was made payable as compensation to the Postal Department.

9. On the evidence set out above, proved by the 9 witnesses examined by the prosecution, there can be no doubt that the prosecution has affirmatively and satisfactorily established its case against the accused, as concluded by the learned Sessions Judge. The motive for the commission of this offence was, as the contents of the M. Os. recovered from the accused show, a desire to abstract valuables. These sorters know from the feel of the envelopes the possibilities of their having inside worthwhile objects to be abstracted. Greed in short was the motive for the accused to commit this offence.

That the accused alone had the opportunity to commit the offence has been proved beyond all doubt, through the clerk P.W. 3, the admission of the accused and the entries in the attendance register. On definite information being received through an informant, whose name the investigating officer rightly refused to disclose, the house of this accused, who had been suspected by the Postal Inspector in his report Ex. P-1, had been searched by a high-ranking officer like

the C.I.D. Inspector, Mylapore, in the presence of respectable witnesses and articles mentioned above were recovered.

It is not the case for the accused that his house was not searched. On the other hand, his case is that those articles were not recovered from his house. There is no reason to accept this statement. It is a kind of statement which can naturally be expected to be made by a postal official who has been caught redhanded with the stuff. There is no motive for the C.I.D. Inspector to falsely implicate or for the search witness P.W. 7 to falsely testify against the accused. Thus, the offence under Section 52 of the Post Office Act has been affirmatively and satisfactorily brought home to the accused beyond doubt.

10. The learned advocate for the accused pressed two points of law. First of all, that the search vitiates the trial in that it was accompanied by the following irregularities according to the learned advocate for the accused :

(a) In that the only search witness who was examined was, a Police camp-follower residing four or five miles from the appellant's house and who admittedly on that day itself had assisted the same Police Officer in searching four houses in Madras City and in Meenambakkam in Chingleput District.

(b) In that as a result the search was not conducted in the presence of two respectable inhabitants of the locality thus violating Section 103(1) Cr. P. C.

(c) In that no search-list was furnished to the appellant.

(d) In that the search-list docs not specify the place or places from which the articles seized were obtained.

(e) In that the search was carried out with a warrant.

(f) In that the report and records were not sent to the Magistrate having jurisdiction within the limits of the Madras City but to the Sub-Magistrate at Saidapet, thus contravening Section 165 (5) Cr. P. C.

Secondly, that M.Os. 1 and 2 are not transmissible articles and hence not 'postal articles' within the meaning of Section 2(1) of the Post Office Act.

11. Point 1 : -- On the facts it is found that these allegations are totally incorrect. P.W. 7 is found to be a respectable witness. He owns three houses worth Rs. 6,000/- to Rs. 7,000/-. The Inspector has explained how he took P.W. 7 as a search witness. When P. W. 8 was proceeding along Popathy Narayanasami Chetti Road, he saw P.W. 7 standing outside a shop near the Sun Theatre and requested him to accompany him for the search. In the case of Doraiswami he is found to be a neighbour of the accused. Inasmuch as one search witness had been examined, the Police did not examine the other search witness.

Doraiswami was not examined in the committal court because though summons was sent to him by the committal court, he was not available. Therefore, his examination had been dispensed with and no point was made by the accused that he should be summoned. In the Sessions Court also there was no request by the accused that he should be examined as a Court witness. P.W. 8 has positively stated that because of the non-availability of Dorai-swami he was not examined and not because he would not support the prosecution.

In fact when the learned Sessions Judge suggested whether it was the desire of the accused that Doraiswami should be examined as a Court witness, the learned advocate for the accused stated that he was not suggesting that he should be examined as a Court witness. Therefore, there is no substance in stating that the search was not witnessed by two respectable witnesses of the locality.

12. It has been repeatedly laid down that the accent is on the word 'respectable' and not on the word 'locality', *Ghandalal Kalidas v. Emperor*, AIR 1934 Sind 159 : (1934) Cri LJ 704; *Gopimahto v. Emperor*, : AIR1932 Pat66 ; *State v. Rang Rao Bala*, : AIR1952 Bom327 ; *Ram Rao Ekoba v. The Crown*, AIR 1951 Nag 237; *Simon Kaitan Fernandez v. State*, : AIR1951 Bom468 ; *Emperor v. Darshan Singh*, AIR 1941 Lah 297, and that even if witnesses from a different locality are examined, it will not make the search invalid or make the evidence of the search witnesses inadmissible. The respectability of a witness does not connote any particular status or wealth or anything of that kind : *Ashfaq v. Emperor*, : AIR1936 All707 . Any person is entitled to claim respectability, provided he is not disreputable in any way.

The Legislature has made this provision to ensure fair dealing and a feeling of confidence and security amongst the public in regard to a sometimes necessary invasion of a private right regarded as almost sacred under the British System. But in construing Section 103 which applies to searches even under other Acts it must be construed in the light of the object of the section in accordance with the maxim *unut res magis valeat quam pereat* that an act may avail rather than perish. In this case both P.W. 7, and Doraiswami are certainly respectable persons and one of them is a person of the locality and the other is living within four miles of the locality.

The word locality is not restricted to mean the same quarter. If owing to circumstances like a thinly populated locality or where on account of the fact that the quarter is occupied by the accused's kinsmen and caste-men or where on account of the terror and influence he inspires impartial men who are above being tampered with later would not be forthcoming, there is nothing wrong in the police taking the assistance of respectable men living at a distance as a search witness : *Mahadev Prasad Vishnu v. Emperor*, ; *Emperor v. Bachcha*, : AIR1934 All873 ; AIR 1941 Lah 297. It has also been laid down in several decisions, and for which no citation is required, that the fact that P. W. 7 has assisted the Police in another search on another occasion, is not sufficient to deprive him of his respectability. *Mukh Ram v. State*, 1953 R LW 165.

On the other hand we ought to congratulate ourselves that there are at least persons of civic consciousness like P. W. 7 who are prepared to cooperate with the Police in this unpleasant and in the metropolitan city the dangerous task of searches of houses when the use of knife and violence is far too rampant and later retaliation against such witnesses is far too rife and of which judicial notice can certainly be taken, and which make people reluctant to take part in searches: (See exhaustive and analytical discussion in AIR commentary of the Criminal Procedure Code Fifth Edition page 2681 and foll.; and also MLJ Commentary on the Criminal Procedure Code, Third Edition, pp. 183-184; B. B. Mitra's Criminal Procedure Code, Twelfth Edition pages 202-205; S. Ranganadha Aiyar, Criminal P. C. 7th Edition, page 212 and foll.; S. C. Sarkar's Criminal Procedure Code, pages 108-110.)

13. There is no substance in the contention that copy of the search list was not furnished to the accused. P. W. 8 stated in cross-examination that he had furnished a copy of the search list, Ex. P-9, to the accused. He was questioned about whether he had made any entry regarding the copy of the search list in the personal register, the entry relating to the accused, before locking him up. P. W. 8 promptly stated that the accused had given that copy to his wife. During the course of the examination of the accused the learned counsel for the accused stated for the first time that in the copy furnished to the accused under Section 173(4), Criminal P. C. the fact that the accused has signed Ex. P-9 in token of his having received the copy, had not been disclosed in the copy granted to him.

The accused filed the copy given to him along with his statement. The accused admitted his signature in Ex. P-9 itself over which it has been written 'Received copy of the search list'. The signature of the accused also was not copied in the copy given to the accused.

P. W. 8 did not secure a warrant for the search from any of the Presidency Magistrates or other officers competent to do so at Madras, who alone had jurisdiction over Kilpauk. He reported on 20-2-1957 about the search, mentioning the reasons for his not being able to get a warrant previously, to the Sub-Magistrate, Saidapet. The learned advocate for the accused perused the copy of the said report in the case-diary but did not want to put any further question about the reasons for not obtaining a search warrant previously.

Section 165(5), Criminal P. C. requires that copies of any record made shall forthwith be sent to the nearest Magistrate empowered to take cognizance of the offence. P. W. 8 conceded the point taken by the learned counsel for the accused that he could well have sent his report to the Presidency Magistrates or the higher Police Officials at Madras who had power to issue search warrants. The witness stated that he sent a report to the Sub-Magistrate, Saidapet, because Meenambakkam at which Police Station the case was registered was within his limits. The provisions of Sub-section (5) have been introduced only as an additional safeguard to protect individuals against general or roving searches.

Whatever the true legal position might be, the bona fides of P. W. 8 in sending the report to the Sub-Magistrate, Saidapet, can hardly be doubted, as pointed out by the learned Sessions Judge. No unfairness and prejudice to the accused has resulted and which is the accepted test for holding whether an irregularity vitiates the conviction or not: *Willie (William) Slaney v. State of M. P.*, : 1956 CriLJ291 . In these circumstances there is no substance in the contention that the search in this case was full of irregularities.

To sum up after *Slaney's Case*, : 1956 CriLJ291 the present swing is away from technicality and a greater endeavour is made in regard to the substance rather than the shadow and to administer justice fairly and impartially as it should be administered viz., fair to the accused, fair to the State and fair to the vast mass of the people for whose protection penal laws are made and administered.

14. But apart from the unfoundedness of these allegations regarding the alleged irregularities of the search, reference may be made to the decision of the Supreme Court in *Sunder Singh v. State of U. P.*, (S) : 1956 CriLJ801 , where it was pointed out that the non-compliance with the provisions of Section 103, Cr. P. C. would not render the search illegal. It was argued in that case that the witnesses to the search were not respectable inhabitants of the locality. The Supreme Court pointed out that the circumstance would only affect the weight of the evidence in support of the search and the recovery and that it would not affect the legality of the search itself. The weight to be attached to the evidence depends on the circumstances of each case. If the court is satisfied as to the finding of articles irregularity of search is no bar to conviction. Evidence found in illegal search is not inadmissible in evidence. In the instant case in the context no weight need be attached to the allegations.

See also *Public Prosecutor v. Venkatachalamiah*, 1956 AWR 915: AIR 1957 A 286; *In re, Johnson*, 1956 AWR 676: AIR 1957 A 829; *State v. Raoji Kaloji Kandan*, : AIR1956 Bom528 ; *Koli Ganda Malu v. The State*, AIR 1956 Sau 25: 1956 Cri LJ 775; *Romesh Chandra v. Emperor*, ILR (1941) Cal 350: AIR 1914 Cal 456; *Mahomed Bashir v. Emperor* : AIR1932 All185 ; *Barindra Kumar Ghose v. Emperor*, ILR 37 Cal 467; *Bonomalli Bhattacharjee v. Emperor* : AIR1940 Cal85 ;

Abdul Hafiz Khan v, Emperor : AIR1926 All188 ; Dinkar Nhanu v. Emperor, AIR 1930 Bom 169; AIR 1951 Nag 237, Point 1 fails.

15. POINT 2: The term 'transmissible' cannot bear the interpretation sought to be put on it by the learned advocate for the accused. Transmissible means nothing more than that it is capable of being transmitted or conveyed from one person or place to another or having the quality of being transmissible, like the transmission of freight across a river. This is the meaning given to the term in the Shorter Oxford English Dictionary, Funk and Wagnalls, Ballentine, Murray and Stroud.

This is also the interpretation which can be gathered from the case-law relating to Section 52 of the Post Office Act: Neelacanta Iyer Vaidyanatha Sarma v. State, AIR 1955 Trav-Co 247: 1955 Cri LJ 1407; In re, S. A. Sattar Khan, AIR 1939 Mad 283: 1938 MWN 962: (1938) Cri LJ 483; Emperor v. Faizul Hassan, AIR 1930 Lah 460: (1930) Cri LJ 461 (alternative charges under Sections 52 and 201, I. P. C., do not contravene the provisions of Section 236, I. P. C.); Public Prosecutor v. Kunhiraman Nayar : AIR1941 Mad392 ; See also AIR Manual, Civil and Criminal Vol. 6, Indian Post Office Act pages 3526 and foll., Section 52 and of which very useful publication, an up to date edition is long over due.

Point 2 also fails.

16. The net result of this analysis is that the conviction of the accused under Section 52 of the Post Office Act is irreproachable and it is confirmed. The sentence, having regard to the gravity of the offence committed by a well paid postal official on whose integrity the economy and Social Welfare of this country largely depends a sharp period of imprisonment is not excessive. But in this case having regard to the fact that this offence took place in 1957the sentence is reduced to three years. The fineand default sentence are maintained. This appealis dismissed.

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