

In Re: Mani and ors.

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Court : Chennai

Decided On : Jul-20-1966

Reported in : 1967CriLJ1528

Judge : Venkataraman, J.

Appellant : In Re: Mani and ors.

Judgement :

ORDER

Venkataraman, J.

1. The 20 petitioners herein were charged by the police before the learned Special Sub-Divisional Magistrate, Tiruchirapalli for offences under Sections 147, 148, 454, 454 read with Sections 149, 427, 435 and 435 read with Section 149 I.P.C. The main allegation against them was as follows : On 10-2-1965 at about 11 a.m. at Jawahar Bazar, Karur Town, the petitioners were members of an unlawful assembly, that in prosecution of the common objects of such assembly, viz, in resisting the execution of law by defying the order passed under Section 144 CrI. P. C. in breaking open Kalyani Ready made Stores belonging to Govindarujulu Pillai and causing mischief and mischief by fire, committed the offence of rioting, that at that time accused 10 was armed with a crowbar and accused 7 and 21 with iron rods and that thereby accused 1 to 6,8. 9, 11 to 20 and 22 to 26 committed an offence punishable under Section 147 I. P C. and that accused 7, 10 and 21

committed an offence punishable under Section 148 I, P. C. After ten out of the 68 prosecution witnesses were examined, the petitioners filed an application before the Magistrate for dropping the proceedings on the ground that they were void for want of a complaint from the Deputy Tahsildar Magistrate who had passed the prohibitory order under Section 144 Crl. P. C. prohibiting meetings and demonstrations for a period of 15 days from 3-2-1965. The learned Magistrate overruled this objection. This revision case has been filed against that order.

2. Mr. P. R. Gokulakrishnnn, the learned Counsel for the petitioners, points out that the charge sheet filed by the police itself proceeds on the basis that the offences were committed in the course of defying the order passed under Section 144 Crl. P. C, and accordingly the defiance of that order would amount to an offence under Section 188 I.P.C. which could be taken cognisance of by the court under Section 195 (1) (a) Crl. P. C, only on the complaint by the Deputy Tahsildar or some other superior officer. The learned Counsel urges that the other offences attributed to the petitioners are only incidental and that the provisions of Section 195 (1) (a) Crl. P. C. cannot be allowed to be evaded by omitting the offence under Section 188 I.P.C.

3. There are two decisions of the Supreme Court which lay down the principles to be observed in such cases. The first is *Basirul Huq v. State of West Bengal* : 1953 CriLJ1232 and the other is *Chandrika Sao v. Slate of Bihar* 1963 MWN Cri 49 . In the first case, the appellant Nurul Hilda gave false information to the police that one Dharendra Nath had murdered his mother and he brought the police to the cremation ground. The corpse was removed when it was found that the complaint was false. Thereupon, Dharendra Nath filed a complaint against Nurul Huda and others under Section 297 : I.P.C. (trespass upon cremation ground) and Section 500 I.P.C. (defamation). Nurul Huda and other objected that the proceedings were void because the offence under Section 182 I.P.C. had been committed in laying false information to the police and the offence under Section 182 I.P.C. could be taken cognizance under Section 193 (1) (a) Crl. P. C. only on the complaint of the particular police officer. This contention was negatived. In respect of the offence under Section 297 I.P.C. it was pointed out that the offence was committed after the false information was given and was therefore a distinct offence : So far as the

offence under Section 500 I.P.C. was concerned, it was recognised that it was contained in the very false complaint made to the police. Nevertheless, it was held that the case under Section 500 I. P. C could be taken cognizance of separately, though there was no complaint to the police in respect of the offence under Section 182 I.P.C. The decision of the Full Bench of this Court in Narayana Aivar v. Veerappa Pillai : AIR1951 Mad34 was approved. The first principle laid down was that Section 195 Cr. P.C. does not bar the trial of an accused for a distinct offence disclosed by the same facts and which is not included within the ambit of that section. The second principle was that the provisions of Section 195 Cr. P. C. could not be evaded by resorting to devices or camouflages. It was observed:

The test whether there is evasion of section or not is whether the facts disclose primarily and essentially an offence for which a complaint of the court or of the public servant is required. In other words, the provisions of the section cannot be evaded by the device of charging a person with an offence to which that section does not apply and then convicting him of an offence to which it does, upon the ground that such latter offence is a minor offence of the same character, or by describing the offence as being one punishable under some other section of the Indian Penal Code, though in truth and substance the offence falls in the category of sections mentioned in Section 195 Cr. p. C. Merely by changing the garb or label of an offence which is essentially an offence, covered by the provisions of Section 195 prosecution for such an offence cannot be taken cognizance of by misdescribing it or by putting a wrong label on it.

4. In 1963 Mad WN 49, the accused caused obstruction to the Assistant Superintendent of Commercial taxes, when the latter wanted to take his books of accounts. This was an offence under Section 26 (1) (h) of the Bihar Sales Tax Act 1947. The accused also assaulted the officer and that was an offence under Section 853 I. P. C. The prosecution of the offence under Section 26(1) (h) of the Sales Tax Act required the previous sanction of the Commissioner of Commercial taxes and no such sanction had been obtained and there was no complaint in respect of that offence. It was held that the conviction under Section 353 I. P. C. could stand. Their Lord-ships proceeded on the footing that the same act of the accused amounted to an offence under Section 26(1) (h) of the Sales Tax Act and

also an offence under Section 353 I. P. C. They stated-

He could be prosecuted for either or both these offences at the discretion of the prosecution. It may be that he was not prosecuted in respect of both the offences and the prosecution was restricted to the offence under Section 353 I.P.C. only to obviate the necessity of obtaining the Commissioner's sanction. Even so, the prosecution cannot be said to have done something which is unwarranted by law. An offence under Section 353 I, P. C. is a graver offence than the offence under Section 26 (1) (h) of the Act.. ..

5. Reference may also be made to *Jogi Mahato v. Anantalal Ghosh* ILR 1951 Cal. 367. There, the accused along with some others had been restrained by a Magistrate by order under Section 144 Cr. P.C. from going upon a particular plot of land. They went to the land and did something further, with which the Magistrate's order had no concern, namely, they stole the crops of the complainant. It was held that the offence under Section 379 I.P.C. could be enquired into even though there was no complaint by the Magistrate for disobedience of the order under Section 144 Cr. P. C. At page 369, the following illustration is given:

A man may be enjoined by a police order under Section 144 of the Code from going with five or six persons through the streets of Calcutta and if that order is violated by a body of hooligans and they commit mass murders, then in the interpretation of that is now sought to be put upon Mr. Justice Sen's decision, the magistrate would be precluded from going into the case of mass murder simply because of the violation of the order of the Commissioner of Police which is also an offence under Section 188 I.P.C. The present case is a good illustration. Theft has nothing to do with trespass. Even if there had been no order by the magistrate under Section 188 I.P.C., the offence would still be theft in the present case for taking away the complainant's crop if the facts are proved.

6. Sri K. A. Panchapakesan has referred also to some other decisions, namely. *Chandra Rao v. Sambayya* AIR 1958 Andh Pra 718, *Kashinath Paihak v. Kitu Rajwar* : AIR1964 Cal436 and the decision of *Sadasivam* in Cr. M. P. 799 of 1965 (Mad).

7. Sri P. R. Gokulakrishnan has, for his part, relied on the following decisions : Ramwarup v. State AIR 1962 Gua. 68, Maganbhai v. State of M.P. AIR 1953 Nag 290, Mukarndhwaj Sahu v. State AIR 1954 Nag 290 and In re, V. V. L. Narasimhamurthi. : AIR1955 Mad237 .

8. I am clearly of the opinion that the circumstances of the present case bring it within the ambit of the decisions cited by Sri Panchapakesan and that the decisions cited by Mr. P. R. Gokulakrishnan are distinguishable. The offences under Sections 147, 148, 454, 427 and 435 I.P.C. are distinct offences from the alleged violation of the prohibitory order. In fact. I doubt whether there was any violation of the prohibitory order to constitute an offence under Section 188 I.P.C. Even on the footing that an offence under Section 188 I.P.C. had been committed, the want of complaint by the Tahsildar relating to that would not bar the magistrate from taking cognizance of the other offences which are distinct and separate offences, and in fact graver offences. Those offences could stand independently, whether there has been an order under Section 144 Crl. P. C. or not. There is no attempt by the prosecution to circumvent the provisions of Section 195 (1) (a) Cr). P. C. Accordingly, the revision case is dismissed.

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