

In Re: Venkataraman

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Court : Chennai

Decided On : Nov-30-1966

Reported in : 1968CriLJ417

Judge : Venkataraman, J.

Appellant : In Re: Venkataraman

Judgement :

ORDER

Venkataraman, J.

1. This is a petition under Section 561A Cri.P.C. to quash the proceedings instituted against the petitioner in C.C. 2179 of 1966 on the file of the Sub Magistrate, Tirukoilur. The petitioner Venkataraman was the Karnam of Alur group of villages in Tirukoilur taluk. For dereliction of duty, the Revenue Divisional Officer placed him under interim suspension, pending framing of charges against him, and directed the Karnam of Sholavandapuram to be in additional charge of Alur group vice the petitioner. The petitioner, however, refused to hand over the records to the Karnam of Sholavandapuram. That Karnam reported the matter to the Tahsildar. The Tahsildar filed a complaint before the learned Sub Magistrate under Section 175 I.P.C., That is C.C. No. 2179 of 1966. The objection which the petitioner took before the learned Magistrate was that in view of the provisions of Section 195(1)(a) Criminal P.C., the complaint filed by the Tahsildar was

incompetent and that only the Revenue Divisional Officer, who passed the order of suspension, or some higher authority could have filed the complaint. This objection was overruled by the learned Sub Magistrate. The same objection is repeated before me.

No court shall take cognizance of any offence punishable under Section 172 to 188 I.P.C., except on the complaint in writing of the public servant concerned, or of some other public servant to whom he is subordinate.

Section 175 I.P.C. reads thus:

Whoever, being legally bound to produce or deliver up any document to any public servant, as such, intentionally omits so to produce or deliver up the same, shall be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to five hundred rupees or with both.

Under Section 195(1)(a) Criminal P.C., the complaint had to be in writing of the public servant concerned or of some superior officer. Now the public servant to whom under Section 175 I.P.C., the petitioner was bound to hand over the records was the Karnam of Sholavandapuram. Hence the Karnam of Sholavandapuram or the Tahsildar to whom he was a subordinate could file the complaint, and it was the Tahsildar who has actually filed the complaint. The complaint is therefore competent.

3. The argument of Sri T.S. Arunachalam, the learned Counsel for the petitioner, that the complaint should have been filed by the Revenue Divisional Officer or some higher authority, proceeds on the footing that the public servant concerned, referred to in Section 195(1)(a) Criminal P.C., is the Revenue Divisional Officer. This is a wrong assumption, because the public servant concerned should be fixed with reference to Section 175 I.P.C., with which we are concerned, and turning to Section 175 I.P.C., the public servant concerned is only the Karnam of Sholavandapuram, because it was to him that the petitioner was legally bound to hand over the records. It may be that his obligation to produce the records arose from the order of the Revenue Divisional Officer. But all the same the public servant to whom the petitioner was bound to hand over the records was only the

Karnam of Sholavandapuram.

4. The learned Counsel for the petitioner has relied upon two decisions, In re Muse Ali Adam ILR(1877) 2 Bom 653 and Santilal Mehta v. Emperor : AIR1948 Cal108 . These cases are, however, clearly distinguishable. In ILR(1877) 2 Bom 653, the accused was charged under Section 183 I.P.C., with the offence of offering resistance to the lawful authority of a public servant by obstructing the execution of a warrant of the court of the Subordinate Judge. The charge was prosecuted by one Muse Ali Adam with the sanction of the Subordinate Judge, and was permitted to be withdrawn. It was held that the complainant spoken of in Section 210 Criminal P.C., must be deemed to be the court resisted and not the person injured through the resistance, and that consequently, it was the Subordinate Judge alone who was competent to withdraw. The complainant was the Subordinate Judge the execution of whose warrant was resisted. Here the public servant concerned is the Karnam of sholavandapuram to whom the records had to be handed over.

5. In : AIR1948 Cal103 , the accused was prosecuted under Section 188 I.P.C., for disobedience of a prohibitory order passed under Section 144 Criminal P.C., by the Commissioner of Police, prohibiting the carrying of daggers and other weapons. The proceedings were, however, initiated only by the Sub Inspector of Police. It was held that the public servant concerned within the meaning of Section 195(1)(a) Criminal P.C., who had to institute the complaint was the Commissioner of Police or some higher authority, That was because the public servant concerned was fixed in that case with reference to Section 188 I.P.C., which runs;

Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction, shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction annoyance or injury, to any person lawfully employed be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.

The public servant there, for the purpose of Section 195(1)(a) Criminal P.C., was the Commissioner of Police who promulgated the Order. The determination of the public servant concerned will vary according to the particular offence concerned.

(6) In the result, the petition is dismissed.

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