

In Re: T.R. Ganeshan

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Court : Chennai

Decided On : Mar-15-1950

Reported in : AIR1950Mad696

Judge : Govinda Menon ; and Krishnaswami Nayudu, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) 1898](#) - Sections 352

Appeal No. : Criminal Revn. No. 202 of 1950

Appellant : In Re: T.R. Ganeshan

Advocate for Def. : Asst. Public Prosecutor

Advocate for Pet/Ap. : N.S. Mani, Adv. of Row and Reddy

Disposition : Petition dismissed

Judgement :

Krishnaswami Nayudu, J.

1. This revision petition raises a question of some importance regarding the venue of trials in criminal cases. The petitioner, a communist detenu in the Central Jail, Vellore, was charged along with others for alleged offences of causing simple hurt etc. to the jail officials on 3rd August 1949 within the precincts of the said jail while the jail officials were acting in the discharge of their official duties. As many as 23

charge sheets were filed against this detenu with regard to the alleged occurrence. In pursuance of its request by the Inspector General of Prisons, Madras, that the trial of the petitioner and the other connected cases may be held in the recreation room of the Central Jail, Vellore, to which the public can be given access, the Government agreed to the proposal and directed the trial of the abovementioned cases as suggested by the Inspector General of Prisons. The District Magistrate after obtaining the approval of the High Court, Madras, issued a notice that the cases would be heard by him in the recreation room of the jail premises. The petitioner, thereupon, applied to the District Magistrate, North Arcot at Chingleput that the case should be tried in the regular court hall at Vellore and not in the recreation room in the jail premises. The District Magistrate held that there was no reason to shift the venue of trial to his regular Court and passed an order dismissing the application. Against the said order the present revision petition has been filed.

2. The relevant provision in the Criminal Procedure Code regarding the question that is raised before us is Section 352, Criminal P. C., which runs as follows :

'The place in which any Criminal Court is held for the purpose of enquiring into or trying any offence shall be deemed an open Court, to which the public generally may have access, so far as the same can conveniently contain them :

Provided that the presiding Judge or Magistrate may, if he thinks fit, order at any stage of any enquiry into, or trial of, any particular case, that the public generally, or any particular person, shall not have access to, or be or remain in, the room or building used by the Court.' The contention on behalf of the petitioner is that the holding of the trial within the jail premises is not legal as it would amount to holding the Court in the complainant's place inasmuch as in this case the complainants are the jail authorities, the offence arising out of certain acts alleged to have been committed by the petitioner and others within the jail premises against jail officials while they were on duty, and that such a trial in a place within the jail premises is not only not in accordance with law but would prejudice the petitioner by depriving him of a fair trial of the case. The language of Section 352 clearly presupposes the power in the presiding Judge or Magistrate trying a

criminal case to decide on the venue of trial and once he decided the place, that place where the Court is held must be deemed to be an open Court. The Judge or Magistrate hearing a criminal case has, therefore, to decide the place where the Court ought to be held. The only condition imposed is that, just like all Courts of law, it should be accessible to the public; that place where the Court is held by the presiding Judge or Magistrate shall be a place where the public may have access subject however to the condition that only such members of the public would be admitted as the place so selected could conveniently contain. The contention, therefore, of the learned counsel for the petitioner that the proper procedure has not been observed by the District Magistrate in fixing the place of trial within the jail premises appears to be untenable. As the Criminal Procedure Code empowers the Magistrate to select the place of trial, the Magistrate was competent to select, as in this case, the recreation room which, though within the jail compound, is strictly outside the jail premises proper, as the place for the trial of the cases. It is well established that the place where the trial is held should be open to the public and that all trials shall have that publicity which is required in order to create confidence in the parties that justice is being dealt with openly and publicly.

3. The decision in *Mopherson v. Mcpherson*, 1936 A. C. 177 : 105 L. J. P. C. 41 was relied upon in support of the proposition that the hearing of the case must be in open Court accessible to the public. In that decision which arose out of a divorce action, the trial took place during the luncheon interval in the Judge's law library in the court house and not in the regular Courts of the court house and, at the time, neither the Judge nor the counsel were robed. The Judge was attended by the assistant clerk and by an official shorthand writer and before taking his seat he announced that he was sitting in open Court. The only other persons present throughout the proceedings were the petitioner and his two witnesses, the action being undefended. The access to the Judge's law library was through a double swing door in the wall of a public corridor. One wing of that corridor was always fixed, the other, although swinging close, was usually unfastened. On the fixed wing was a brass plate with the word 'Private' in black letters. It was held that even though the actual exclusion of the public resulted only from the word 'Private' on the outer door, the Judge on the occasion of the divorce trial, albeit unconsciously, was denying his Court to the public in breach of their right to be present and,

therefore, it was held that the resulting decree nisi and absolute which were passed in pursuance of that trial were avoidable. Lord Blanesburgh delivering the judgment of the Privy Council observed as follows at p. 197 :

'It was in evidence that the word 'private' on the outer door did not in fact deter or hinder entry to the inner corridor by practitioners and other familiars of the building, and the door unfastened is not usually officially guarded. It was accepted, too, that the opening wing of the swing door was unfastened during the trial, and it was proved, as will later appear, that the inner door of the library was kept open throughout. But there remains the serious question to which their Lord-ships must return, whether these swing doors with 'private' marked upon one of them were not as effective a bar to the access to the library by an ordinary member of the public finding himself in the public corridor as would be a door actually locked.'

After referring to the observation of Lord Halsbury in *Scott v. Scott* (No. 1), 1913 A.C. 417: 82 L.J P. 74, that 'every Court of justice is open to every subject of the King, 'the learned Law Lord observed that the public must be treated as having been excluded from the library on the occasion and that, therefore, the trial was vitiated. Lord Halsbury L. C. in *Scott v. Scott* (No. 1), 1913 A. C. 417 : 82 L. J. P. 74, which again related to a divorce case and where it was held that the probate, divorce and admiralty division has no power either with or without the consent of the parties, to hear a nullity suit or other matrimonial suit in camera in the interest of public decency, observed that he was of opinion that every Court of justice was open to every subject of the King but that too with certain exceptions and the Lord Chancellor deals with the exceptions as where a Court can, in the interests of the fairness of trial to further the end of justice and under certain circumstances and in particular class of cases held the trial in camera.

4. Since the function of a Court was simply to do justice between the parties who came before it and if in the interests of the parties and for the satisfactory and proper adjudication of the disputes between the parties the restriction of the admission of the public to the Court when a particular trial was going on was really necessary, the Court was certainly competent to exclude the public in such cases. The principle, therefore, governing trials is that the trials must be conducted

publicly and in open view, so that the impression may not be created that the Court is doing something which it does not like the public to know, But there is also a further safeguard in the interests of justice and fair trial of the case itself that, in certain circumstances and in some cases, the public may be excluded. Section 352, Criminal P. C., is based on the well-known principle that the trial should be in open Court and a case must be heard publicly. The proviso to Section 352, Criminal P. C., also recognises the just exceptions to the general rule which, in the interests of justice, may become necessary. Since the trial of criminal cases are governed by the procedure laid down in the Criminal Procedure Code which is the law regulating the procedure to be followed in the conduct of the trial of criminal cases and such procedural law empowers the Magistrate to hold his Court in any place, provided it is done publicly and the court premises is made accessible to the public, there can be no reason why, in the present case, the holding of the trial within the jail compound in the recreation room could be objected to. The only right which the accused might claim is that the public must have access and the trial should be conducted in open view.

5. So far as this case is concerned, the Magistrate has stated that the building is not strictly within the enclosure in the jail where convicts are housed but the building is situated within the outer compound of the jail and is a suitable building for holding court with a fairly sufficient accommodation since, it is stated, that it consists of a hall, verandah on two sides and further that the building is a detached one lying outside at some distance from the prison walls proper. The Magistrate also states that it is accessible to the public and a notice to this effect was put up both outside the court hall of his regular court house, Vellore before the trial began and also a notice outside the prison court hall and that there was no sentry or other person at the gate of the compound or elsewhere to restrict the admission of the public, and that the press reporters and some members of the bar and public have been in fact attending and watching the trials. It was, however, suggested by the learned counsel on behalf of the petitioner that he was not in a position to testify as to the correctness of the statement of the Magistrate as regards the facilities that have been given to the public to attend the trial in that building and to the other statements made in the order of the Magistrate. Though the learned counsel was not in a position to deny the statements made by the

Magistrate in the order, he required time to file an affidavit, if necessary, to test the correctness of those statements; but we have no reason to doubt the truth or correctness of the statements made by the Magistrate in his order as to the location of the court hall, its suitability for purpose of holding the trial and to the fact that admission is not restricted, that it is open to the public, to the press reporters and to members of the bar. We, therefore, found it unnecessary to accede to the request of the learned counsel for the petitioner and we are satisfied that the present place where the trial is held is open to the public and that no restrictions have been placed by the Magistrate to justify the apprehension that the trial may not be conducted publicly. There is no violation by the Magistrate of the provisions of the Criminal Procedure Code in the holding of the trial at the present place. Malik J. in considering & case under similar circumstances in *Emperor v. Kailash Nath*, I. L. R. (1947) ALL. 657 : A. I. R. 1947 ALL. 486: (1947) 48 Cri. L J. 868 observed that there is no provision in the Criminal Procedure Code which compels a Magistrate to hold his Court in the usual court room. Section 352 probably contemplates that a Magistrate can hold his Court any where he likes. But the Magistrate wherever he may be compelled to sit by executive orders, is bound by the provisions of Section 352 and he must realise that the place where the trial is held must be something like an open Court to which the public generally may have access so far as the same can conveniently contain them. In that case, it may be pointed out, that the trial was held within the jail premises though, it has to be stated, that it did not relate to any offence committed within the jail premises.

6. We have still to consider whether, by reason of the trial being held in the present place, the petitioner is likely to be prejudiced. The condition that the trial should be open and that the public should have access having been satisfied we fail to see how the holding of the trial in a building which is within the jail compound would cause any prejudice as regards the trial by a Magistrate who is not in any way connected with the jail department. It is argued that the trial in the place practically amounts to having the trial of a criminal case in the house of a complainant and it is contended that the complainants in this case being the jail authorities, having the trial within the jail compound would tantamount to having the trial in the complainant's house. There is no force in this contention since apart from the fact that the trial is to be held outside the jail premises strictly where the

offences are alleged to have been committed, the building, which is the recreation room though within the jail compound has been placed under the control of the Magistrate, and, under his directions, the trial would be held where all facilities are open to the public to be present and no restriction is imposed as to the admission of the public. We fail to see how the jail authorities would be able to influence the trial by a Magistrate simply because the building in which the trial is held belongs to and is part of the Central Jail, Vellore. If the argument of the learned counsel is to be accepted, in every criminal case where a trial is held in a Government building where the accused is charge-sheeted by the public the trial would be in a place belonging to the prosecution, that is, to the Government and as such every trial that is held in a Government building could be said to be a trial in the complainant's place. This argument has no substance and we do not feel that there could be the least trace of the apprehension on the part of the accused that he would not have a fair trial on the sole ground that the trial is conducted in a building which belongs to the jail authorities.

7. Reliance was placed both in the lower Court and before us on a judgment of Panchapa-kesa Ayyar J. in Venkataraman v. The King : AIR1950 Mad441 where in similar circumstances when the trial was directed by the Magistrate to be held in the civil debtor's yard of the jail premises, the learned Judge held that the offences were admitted to have taken place against the jail officials and inside the jail premises, it was, in his opinion, desirable that some place outside the jail premises and outside the control of the jail authorities should be chosen for trying the case. If this decision is to be construed as laying down a general proposition of law that in respect of offences committed against jail officials and inside the jail premises, the trial by a criminal Court should not be held anywhere inside the premises but only outside the premises, we are of opinion that that proposition is not supported by the law governing the trial of criminal cases in the State. We therefore express our dissent with that proposition. The learned Judge further, however, states as follows in that decision:

'If the conveyance of prisoners and the accused to and from the Court house or other buildings, will be attended with serious danger of attack, and the rescue of the accused or the prisoners, or with heavy cost to the Government in providing an

armed escort, it may well be within the powers of the Judge or Magistrate, after due consideration of the public interests and after writing down the reasons in each case, to hold that the trials even inside the jail premises, where the accused are confined, let alone any building outside the jail premises, provided that the offences tried are not connected with those premises, and there is no apprehension, therefore, in the minds of the accused that they may not get a fair trial there.'

It will therefore be seen that cases similar to the one before us are the ones contemplated by the learned Judge where it would be permissible to hold the trial even in the jail premises. The reasons which persuaded the Government for directing the trial of the petitioner and the trial of the others in the connected cases within the jail premises are apparently identical to those which are contemplated by the learned Judge in *Venkataraman v. The King* : AIR1950 Mad441 as could be found from the order of the lower Court where the Magistrate says that the Government held that it would be risky and difficult to convey the detenu outside the jail and therefore it was suggested that the trial may be held within the jail premises. It may also be pointed out that the Magistrate himself personally selected the present building for conducting the trial. While we agree with the learned Judge that it would be open to a Magistrate to hold a trial in the jail premises we are however unable to agree with him with the condition added to it that such trials could be held within the premises only if the offences are not connected with those premises. There is no warrant for this proviso which the learned Judge has added and we think such a restricted interpretation of Section 352 is not warranted by the language or the spirit with which it was enacted. In criminal cases especially, sometimes it is advantageous and even desirable that the trials should be held near the venue of the offence in order to enable the presiding Magistrate and the counsel appearing in the case to have a personal inspection, if necessary, of the scene of the occurrences which may be useful for a proper disposal of the case. The order of the lower Court does not require any interference as we feel it has been correctly made. In view of the conclusion arrived at above, the decision in *Venkataraman v. The King* : AIR1950 Mad441 is overruled.

8. This revision case is, therefore, dismissed.

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