

Narapureddigari Narayanareddi and ors. Vs. State and anr.

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Court : Chennai

Decided On : Dec-05-1951

Reported in : AIR1952Mad821; (1952)IIMLJ7

Judge : Ramaswami, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 154, 162, 172, 215, 367 and 437; [Indian Penal Code \(IPC\), 1860](#) - Sections 391

Appeal No. : Criminal Misc. Petn. No. 2255 of 1951

Appellant : Narapureddigari Narayanareddi and ors.

Respondent : State and anr.

Advocate for Def. : Public Prosecutor and ;R.V. Raghavan, Advs.

Advocate for Pet/Ap. : V.C. Gopalaratnam and ;L.V. Krishnaswamy, Advs.

Disposition : Petition allowed

Judgement :

ORDER

1. This is a petition filed against the order of committal made by the learned District Magistrate, Nandyal, as against the order of discharge made by the Sub Magistrate of Cuddapah in P. R. C. No. 2 of 1951.

2. The short facts are: There is a bitter faction in the village of Bidinemacherla in Pulivendla Taluk between two parties headed by P. W. 1 and accused 1. There have been several criminal cases between them and security proceedings were launched against both the parties. On 17-3-1950 the security case stood posted before the Sub Divisional Magistrate of Jammalamadugu at Pulivendla Camp.

3. The case for the prosecution is that accused 1 and his partisans deliberately absented themselves from this hearing and that while the opposite party was at the camp, formed themselves into an unlawful assembly numbering about 100 and armed at about 8 A.M. and that they trespassed into the house of prosecution witnesses 1 to 4 and caused damage to, the property and caused hurt to prosecution witnesses by stone pelting.

4. The chequered career of the first information in this case can now briefly be alluded to. P. W. 13 the Sub -Divisional Magistrate, is said to have passed on Ex. P. 8a with a covering note Ex. P-8 to the Sub Inspector of Police, Simhadripuram (P. W. 11). P. W. 11 received Exs. P-8 and P-8a according to himself at Ankalamagudur village and proceeded to Bi-deenam via Simhadripuram at 8 P.M. on 17-3-1950. There P. W. 11 is said to have recorded a complaint petition Ex. P-1 on the morning of 18-3-1950 though dated as 17-3-1950, which has been registered as the first information report in this case.

5. P. W. 11 inspected the damaged houses in the night of 17-3-1950 itself though the Panchayatdars assembled in the next morning and Mahazarnama had been drawn up. P. W. 11 proceeded to the house of accused 1 and arrested six accused therein and recovered spears , and other weapons of offence. He saw some injuries in the persons of accused 6 and 13 as also on the persons of P. Ws. 1, 2, 3 and 4. P. W. 12, the Circle Inspector of Police arrived at 9 a.m. on 18-3-1950 and took up further investigation in the case. The investigation in this case has been completed on 18-3-1950 itself. But the charge-sheet in this case was laid on 30-3-1950 in the Court of the Sub-Magistrate of Pulivendla against 19 persons for offences under Sub-section 147, 448, 427 and 323 read with Section 149, Indian Penal Code.

6. This case was taken on file as a calendar case on 31-3-1950 under Sub-section 147, 448, 426 and 323, Indian Penal Code, by Mr. Yusuf Naick who was then the Sub Magistrate of Pulivendla. This Magistrate examined 12 prosecution witnesses in the case and the prosecution evidence was practically completed but for the examination of the formal witness P. W. 13, the Revenue Divisional Officer of Jammalmadugu, for the purpose of filing Exhibits P-8 and P-8a. Then Mr. J. Chandrasekharam took charge as Stationary Sub Magistrate, Pulivendla, on 15-8-1950 and examined P. W. 13 on 4-9-1950 and had Exhibits P-8 and P-8a filed. On 5-9-50 Mr. Chandrasekharam felt that the evidence of two court witnesses 1 and 2 was vital and therefore summoned them and examined them on 10-9-50. C. W. 1 is the person who stated that he was present at the scene of offence and conveyed the information to C. W. 2 who presented Exhibit P-8a to P. W. 13 Major Ratnam.

The case was adjourned to 22-9-50 for the further examination of P. W. 11 under Section 540, Criminal Procedure Code. On 22-9-50 on his own motion and without any request from the prosecution side conducted by the Assistant Public Prosecutor the Sub Magistrate, Pulivendla, converted the case into a preliminary Register case as he seems to have come to the conclusion that there is evidence for an offence of dacoity under Section 395, Indian Penal Code. The reasons for adopting such a course are not patent. On 6-10-50 after the examination of the accused the Sub Magistrate, Pulivendla, on the application of the accused inspected the scene of offence, drew up plans regarding the location of the houses and made his own notes of inspection and which later he has stated must form part of his committal order.

On 12-10-50 the Sub Magistrate on his own motion after the accused had stated that they had no defence witnesses recalled P. Ws. 3, 4, 5 and 6 under Section 540, Criminal Procedure Code, and the purpose of which and the direction in which it went will be indicated later. It is sufficient for our purpose to state here that the Sub Magistrate fished out some evidence to support the theory of dacoity and got it on record. Then finally on 25-10-50 charges were framed against accused 1, 3, 6, 8, 10, 11, 13, 15, 17 and 19 under Sub-section 147, 427, 451 and 395, I. P. C., and against accused 4 under Sub-section 147 and 427 read with Section 149,

I. P. C. and against the rest of the accused under Sub-section 147 and 427, I. P. C. and all the accused were committed to the sessions.

7. There was a revision petition to the High Court & it was held here that the accused should have been given an opportunity to cross-examine the P. Ws. after the Magistrate decided to treat it as a Preliminary Register case and the committal order was set aside and it was directed that the accused should be given an opportunity to cross-examine the witnesses and if they desired to examine defence witnesses they should be allowed to do so and that the Magistrate should then dispose of the case according to law.

8. Thereafter the accused persons applied for a transfer of the case from the Sub Magistrate, Pulivendla to some other Court and the District Magistrate of Cuddapah transferred the case to the Sub Magistrate, Cuddapah. The Sub Magistrate, Cuddapah came to the conclusion that the evidence was such that no impartial tribunal could ever accept it and cancelled the charges framed by his predecessor under Section 213(2), Criminal Procedure Code, and discharged the accused. There was a revision therefrom and the learned District Magistrate, Cuddapah, set aside this order of the Sub Magistrate, Cuddapah and directed the committal and committed the accused to take their trial in the Sessions Court of Cuddapah for the offences charged against them as set out in the order of the Sub Magistrate, Pulivendla, dated 31-10-50. The present petition is filed against it.

9. The orders of both the lower Courts constitute in parts unpleasant reading because the learned Sub Magistrate, Cuddapah, who felt a righteous indignation against the Sub Magistrate, Pulivendla, Mr. Chandrasekharam for several gross irregularities has written his order as if he was sitting in appeal over Mr. Chandrasekharam's order. The learned District Magistrate, Cuddapah, who has felt a righteous indignation against the Sub Magistrate, Cuddapah for criticising in strong terms a co-officer has written his order as if he was an administrator reviewing and non-judicially revising the discharge order of a subordinate Magistrate.

10. Before entering into a discussion of the grounds put forward by the learned advocate Mr. V. C. Gopalratnam I must indicate the scops of the enquiry before

me. The learned District Magistrate of Cuddapah having committed the accused to the Sessions under Section 437. Criminal Procedure Code, the High Court can interfere and quash the commitment only on a point of law.

11. The term point of law has been construed by High Courts in various decisions and includes an order of commitment rested upon no acceptable and valid evidence.

12. There can be no doubt in this case that the order of commitment by the learned District Magistrate is based upon no acceptable and legally valid evidence and here are my reasons.

13. This case may legitimately be described as a symposium of all the irregularities and illegalities that can be thought of in connection with a criminal case both under the Criminal Procedure Code and under the Indian Evidence Act. To begin with the first document treated in this case as the first information report, namely, Exhibit P-1 is not a valid first information report at all. On the other hand, it is a statement recorded after investigation had started and coming within the mischief of section 162, Criminal Procedure Code. The learned Sub Magistrate, Cuddapah, has pertinently pointed out that information of a cognizable case setting the Police in motion was received by the Sub Inspector under the shape of Exts. P-8 and P-8a in Ankalamagudur village on 17-3-1950. Exhibits P-3 and P-8a contained definite information about the rioting, unlawful assembly, mischief and looting. On receiving information of a cognizable offence the Sub Inspector has started for Bideenamcherla in order to investigate the cognizable case.

It was not therefore open to him after starting investigation to collect information and then select and collate and bring into existence Ex. P-1 on the morning of next day in order to suit the theory which he has formed in the case. This disguising of a statement under Section 162, Criminal Procedure Code, as a first information report is condemned both under the Madras Police standing orders as well as by repeated decisions of this court of which the latest is - 'Gurusami Naidu v. Guruswami Naidu', 1951 M. W. N. Cr. 83.

14. The information in Exhibit P-8 is not mere gossip or hearsay. It is conveyed by C. W. 1 who came to Pulivendla from the scene of offence and was of a person whose house was also damaged and of P. W. 2 who is the son of P. W. 6 whose house also was damaged. P. W. 6 herself is stated to have come from the scene of offence, to Pulivendla and conveyed the information to C. W. 1. Then Exhibit P-8a was passed on by P. W. 14 to P. W. 11 with the note Exhibit P-8 for moving the police in the matter. This first information has naturally got much importance because it represents the earliest version in the case before there was time to concoct and shape the evidence in a particular fashion. There is no dispute that the information in Exhibits P-8 and P-8a has no resemblance whatsoever to the case which has been developed and for which these accused persons have been committed to the Sessions, in my opinion, this complete variance between the first information report and the present case for which the accused have been committed not in regard to minor details or unimportant matters or side issues but in regard to main charges is enough to throw out this case as an unreliable one which will not commend itself to any tribunal.

15. The investigation at the earliest stage, namely, on the morning of 18-3-50 shows that faction leaders had been at work to give the present shape to this case, whereas what really seems to have happened was entirely different, namely, that there was a trouble in the village involving about 100 persons and in which both factions took part and some pelting of stones and minor injuries have been caused. P. W. 1's evidence is that as soon as the Galatta started, he closed his doors and remained indoors till P. W. 11 arrived and which is in the natural and probable course of events. But when he is said to have given the statement Exhibit P-I to the Sub Inspector, treated as the first information report in this case, there is a meticulous description of several damages to the houses of the partisans of P. W. 1 and other details.

On being pressed as to how while he was immured in the house till P.W. 11 arrived he came to know of this unless he had x-ray eyes, P. W. 1 unabashingly mentioned that some boys told him all these and that he could not mention the names of these boys. In other words, the first information is not the product of the truthful information given by any one but the composite picture resulting from the

imagination of factionists busy at work on that morning of 18-3-1950 under the aegis of the Sub Inspector of Simhadripuram. The learned Sub Magistrate of Cuddapah was fully justified in holding

'It looks quite probable that Exhibit P-I was got up at the instance of P. W. 11 on the morning of 18-3-1950 after he had surveyed the damages on the night of 17-3-1950 and had consultations with P. Ws. 1 and 2.'

16. It is singular that the Sub Inspector has not chosen to examine according to himself P. Ws. 3 and 4 because he says he sent them to the Hospital along with P. Ws. 1 and 2. There was no reason to do so and the only inference is that at an earlier stage P. Ws. 3 and 4 could not give any information and have toed the line only later.

17. Though P. Ws. 4 and 5 are important witnesses it is found that the case diary merely mentions that P. W. 4 corroborated P. W. 3 in all respects. It is singular that it should be so because P. Ws. 3 and 4 are stated to have been examined on the way-side and P. W. 5 is stated to have been examined in the village Bideenamcherla. It is quite clear as pointed out by the learned Sub Magistrate that the entries in the case diary were not made contemporaneously with the examination and have been fudged. The failure to record separately the statements of P. Ws. 4 and 5 who are the most important eye-witnesses in the case is a serious irregularity considerably prejudicing the accused and is by itself enough to make the evidence tainted.

18. Though the investigation has been completed on 18-3-50 and after which not a tittle of evidence has been recorded, the charge-sheet has been filed on 30-3-50 at the conclusion of the remand period of 14 days showing a vindictiveness inconsistent with impartial enquiry and a desire to gratify the ill-feelings of P. W. 1 and his partisans.

19. To these irregularities of investigation the learned Sub Magistrate, Mr. Chandrasekharam, has added his own quota in full measure. The said Sub Magistrate without rhyme or reason converted a calendar case into a Preliminary Register Case. The present learned Sub Magistrate, Cuddapah, rightly points out:

'I have read the evidence on record by 22-9-50 and am unable to understand how and why this peculiar course was adopted. The evidence of P. Ws. 3, 4 and 5 in their Chief examination is to the effect that some persons on the top of the house of P. W. 9 got into the house through the skylight and carried away some bags.'

That could not obviously be construed as evidence sufficient for sustaining a specific charge dacoity of which the police had not even thought of.

20. The learned Sub Magistrate, Pulivendla, after the accused had stated that they had no defence witnesses recalled P. Ws. 3, 4, 5 and 6 under Section 540, Criminal Procedure Code, and has adopted a procedure clearly showing that he did so in order to build up a case of dacoity. This aspect of the case has been dealt with fully on pages 11 and 12 of the typed order of the Sub Magistrate, Cuddapah, which need not be repeated. But in spite of this prompting, prodding and probing the net result of the analysis of the evidence to show the offence of dacoity is that the dacoity is false.

21. The learned Sub Magistrate, Pulivendla, has carried out his local inspection, plan-drawing and making of notes to lengths which are not permissible at all and beyond the limits laid down by the various High Courts' decisions. They were not for the purpose of understanding the evidence but to collect fresh evidence and build up a new case. The learned Sub Magistrate, Cuddapah, bluntly remarks and rightly that the elaborate plans and notes made by the Sub Magistrate on 8-10-50 and the manner in which the prosecution witnesses 3, 4, 5 and 6 were recalled on 12-10-50 and the way in which they were examined were all plainly designed to prop up the prosecution case of dacoity. Therefore, there has been gross misuse of the beneficial provisions of Section 539-A as well as Section 540, Criminal Procedure Code, vitiating the entire enquiry and making the evidence worthless.

22. The Herculean labours of this Sub Magistrate of Pulivendla proved in vain however because as pointed out by the learned Sub Magistrate, Cuddapah, the evidence given by these P. Ws. was incredible as pointed out by him at page 13 of his typed order and which need not be repeated.

23. Then finally on unimpeachable evidence it is found that accused 1, the leader of the faction was not present at all at the time of the Galatta and he has been falsely implicated because he is the leader. On the other hand, apparently anticipating this Galatta this leader has created an excellent alibi for himself and which is in the natural and probable course of conduct of these faction leaders in the Ceded Districts.

24. I have therefore no hesitation in holding that the commitment not being based on any acceptable or valid evidence, ought not to have been made at all, and it is quashed.

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