

In Re: Periasami Nadar

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SooperKanoon Citation : sooperkanoon.com/808240

Court : Chennai

Decided On : Dec-18-1963

Reported in : 1965CriLJ780

Judge : Kailasam, J.

Appellant : In Re: Periasami Nadar

Judgement :

ORDER

Kailasam, J.

1. This petition is filed for revising the order of the District Magistrate, Madurai, confirming the conviction of the petitioner under Section 182 I. P. C. and sentence of fine of Rs. 50 passed on him.

2. The petitioner sent through post a com-plaint against one Ramakrishnan P. W. 1, regarding the theft of his cycle to the Additional Sub-Inspector, Tirupparankundram. The complaint Ex. P. 5 was received on 17-7-1961, by the Sub-Inspector of Police, Tbimparankund-ram. He registered the case and transferred it to the Detective Sub-Inspector, P. W. 11, for investigation. P. W. 11 took up investigation and on enquiry found that the case was false and served a referred charge-sheet notice on the petitioner on 1st September 1961. He obtained a report from P. W. 1 Ramakrishnan against whom the petitioner gave the complaint of theft and registered a case under Section 211 I. P. C. against the

petitioner. He applied to the Sub-Magistrate praying for permission to investigate into the offence and obtained an order from him.

3. Both the courts have found that the petitioner gave information to the Sub-Inspector of police, Tirapparankundrarn, knowing that the information he was giving was false and intending that the public servant should cause annoyance to P. W. 1. The finding is a concurrent one and is not challenged by the learned Counsel appearing for the petitioner. Sri Venkatanarasimham, the learned Counsel for the petitioner raised two questions of law. Firstly, he contended that the complaint given by the petitioner was received by P. W. 10 and therefore under Section 195 Cr. P. C. it is only 'the public servant concerned' that may prefer a complaint. According to the learned Counsel, the public servant concerned in this case is P. W. 10 and the complaint given by P. W. 11 is not in accordance with law. P. W. 11 stated in his evidence that, after completing the investigation, himself and P. W. 10 laid the charge-sheet. The charge-sheet is signed by both P. W. 10, the Additional Sub Inspector of Police, and P. W. 11, the Sub-Inspector of Police, who investigated the offence and therefore this point does not arise.

4. The second point the learned Counsel raised was that the alleged complaint preferred by P. Ws. 10 and 11 was only a charge-sheet and that under Section 195 Cr. P. C., only a complaint should be filed by the public servant concerned and therefore the proceedings were illegal. P. W. 11 obtained orders from the Sub Magistrate for investigating into a non-cognizable offence and' after investigating it filed a charge-sheet. Section 195(1) Cr. P. C. provides that no court shall take cognizance of any offence punishable under Sections 172 to 188 of the I. P. C. except on a complaint in writing of the public servant concerned or some other public servant, to whom he is subordinate. The contention of the learned Counsel is that there is no provision for a police officer to file a charge-sheet under this section; he can only file a complaint in writing as any other public servant. Reliance was placed on the definition of the word 'complaint' in Section 4(1) (ii) of the Cr. P. C. 'Complaint' is defined as meaning an allegation made orally or in writing to a Magistrate, with a view to his taking action under the Criminal Procedure Code that some person, whether known or unknown, has committed an offence, but it does not include the report of a police officer. The definition having

specifically excluded the report of a police officer, it is submitted that a report of a police officer cannot be taken as a complaint under Section 195(1) Cr. P. C. Section 4 of the Cr. P. C. which defines various words and expressions, runs as follows:

In this Code the following words and expressions have the following meanings, unless a different intention appears from the subject or context....

From this section it is permissible to construe the 'words and expressions' differently from the definition, if a different intention appears from the subject or context. Section 195(1) Cr. P. C. is intended as a safeguard against frivolous prosecution regarding offences of contempt of lawful authority or public servants. The law provides a safeguard that no court shall take cognizance unless there is a complaint in writing by the public servant concerned. It is therefore necessary that the public servant concerned should exercise his mind and satisfy himself and then prefer a complaint in writing. This section deals with the complaint of all public servants in general. There is no separate provision for police officers. Where an offence against a public servant is committed under Chapter X the procedure for prosecuting in a court of law is by preferring a complaint as required under Section 195(1) Cr. P. C.

5. There is considerable divergence of opinion between several High Courts as to whether a report of the police officer in a non-cognizable case can be considered as a complaint under the Criminal Procedure Code. In *Mallikarjuna Prasada Rao v. Emperor* 1933 Mad WN Cri 138, Burn J. held that the report of a police officer in a non-cognizable offence could not be considered to be a police report. To construe otherwise, according to the learned Judge, would lead to the absurd conclusion that no police officer can ever make a complaint. The view of the learned Judge was referred to and approved by a Bench of the Andhra Pradesh High Court in *Public Prosecutor v. Ramiah* AIR 1958 AP 392 which held that when a police officer investigated a non-cognizable offence without the order of the Magistrate, and filed a charge sheet it should nonetheless be treated as a complaint and not as a police report. The court cited with approval the observations of Burn J. in 1938 Mad WN Cri. 138, referred to above. The decision

of the Full Bench of the Madras High Court in Public Prosecutor v. Ratnavelu Chetty AIR 1926 Mad 865 has not been referred to in 1933 Mad WN Cri. 138 or AIR 1958 AP 392. The Full Bench in AIR 1926 Mad 865 was in favour of the view that a report referred to in Section 190(1)(b) would also include a report in a non-cognisable offence by a police officer. The case cited above refer to a report filed by a police officer of a non-cognizable offence without obtaining the directions of the Magistrate. But in the present case, the police officer obtained the directions from the magistrate under Section 155(2) and purported to file a charge-sheet. The question that has to be considered is whether a report filed after investigation of a non-cognizable offence by a police officer after obtaining the permission of the Magistrate can still be regarded as a complaint under Section 195(1) Cr. P. C.

6. In Barkat v. Emperor : AIR1943 All6 Allsop J., was of the view that the term 'complaint' in Section 195(l)(a) was not used in a technical sense, in which it was defined under Section 4(1) (h) of the Code, and that the intention in Section 195 Cr. P. C, was only that the Magistrate should not punish a person except at the instance of the public officer concerned or his superior. According to the definition, it would be possible for any person to obstruct a police officer in the execution of his duty without rendering himself liable to punishment under Section 186 I. P. C. The same view was taken in State v. Nandalal Karunashankar AIR 1951 Sau 8. But this view was dissented from by a Bench of the Rajasthan High Court in Nathuram Atmaram v. State ; Wanchoo C. J. speaking for the court preferred the view of the Allahabad High Court in Lakhan v. Emperor : AIR1936 All788 and observed that the difficulty pointed out by Allsop J. (by Burn J. also in 1933 Mad WN Cri. 138) that, if strictly construed a police officer could not have remedy if he was obstructed in the execution of his duty, could be got over by the police officer making a complaint. In AIR 1926 Mad 865 a police officer filed a police report in a non-cognizable offence without obtaining the permission of the Magistrate under Section 195 Cr. P. C. The Full Bench took the view that it could be taken cognizance of by the magistrate as a complaint, and under Section 200(aa) Cr. P. C. the Magistrate need not examine him on oath. The present case is different in that the police officer obtained orders from the magistrate under Section 155 Cr. P. C. for investigating a non-cognizable offence.

7. A recent decision of a Bench of this Court in *State v. Ramaswami* : AIR1963 Mad160 may now be considered. In that case, one P. Ramaswami published in his paper certain objectionable articles, which amounted to an offence under Section 295-A I. P. C. The Government, according to the requirements of Section 196 Cr. P. C. ordered that a complaint be made against the aforesaid Ramaswami in respect of the offence punishable under Section 295-A I. P. C, and directed the Commissioner of police to depute a suitable officer to make the complaint. The Commissioner issued proceedings authorising Sri J. M. Ranjitham, Sub Inspector of Police, to register a case and investigate it. As the Commissioner is a Magistrate, it was taken that the direction to investigate a non-cognizable offence was issued by him by virtue of the powers as a Presidency Magistrate. Acting on the above directions the Sub Inspector of Police, registered a case, prepared the usual F. I. R. and recorded the statements of witnesses under Section 162(2) Cr. P. C. but at the conclusion of the investigation he did not file a charge-sheet, in the form prescribed under Section 173(a) Cr. P. C. According to the proceedings by the Commissioner of Police he preferred a complaint. The Magistrate took the case on file and construed it as a case instituted on a police report and proceeded under Section 251-A Cr. P. C. and framed a charge against the accused. At that stage, the Magistrate entertained some doubts and referred the following two points to the High Court for its opinion:

1. Whether the so-called complaint submitted by the Sub Inspector is a complaint within the meaning of Section 4(1)(h) Cr. P. C. or a police report forwarded under Section 173(1) Cr. P. C. and what is the procedure to be adopted on the complaint submitted by Sri Ranjitham in this case.

2. Whether the order of the Commissioner of Police directing the Sub Inspector to register and investigate the case and the subsequent investigation done by the Sub Inspector are null and void, and if so, whether this Court can take cognizance of the complaint on the report submitted by the Sub Inspector as a result of that investigation.

In answering the above two questions, the Bench observed:

The essential question for consideration which arises in this case is whether merely because the officer whom the State Government authorised to make the complaint happened to be the Commissioner of Police, and he in turn, conferred authority on a Sub Inspector of Police to file the actual complaint, the complaint falls within the scope of Section 19p(1)(b) Cr. P. C. which refers to a report in writing of such facts made by any police officer....But in regard to the complaint to be filed under the authority of the Government under Section 196-A Cr. P. C. no prior investigation by a police officer and no formal report as prescribed under Section 173 Cr. P. C. are necessary. The very fact that the Government authorised a particular officer to make a complaint to the court, presupposes the completion of a preliminary investigation on the basis of which the Government were satisfied that a prima facie case has been made out. Therefore, the complaint filed after an authorisation by the State Government under Section 196 Cr. P. C. should be treated as a complaint within the meaning of Section 190(l)(a) Cr. P. C. on which the Magistrate can take cognizance. That in a particular case it happens that a police officer was authorised by the State Government to make the complaint should not, in our opinion, make any difference in regard to the applicability of Section 190(l)(a) to such a complaint.

The Bench proceeded to observe:

It will be unreasonable to classify such complaints further into two categories, one under Section 190(1)(a) and the other under Section 190(1)(b) based merely on the circumstances whether the person making the complaints is a. police officer or not. The generality of the scope of Section 196 precludes any such differentiation.

In conclusion the Bench observed that the investigation made by the Sub Inspector under the orders of the Commissioner of Police, in that case, could at best be treated as a proceeding not strictly relevant for the purpose of the statutory complaint filed under Section 196 Cr. P. C. The Bench further observed:

That such an enquiry or investigation which was not strictly relevant happened to intervene before the actual filing of the complaint will not, in our opinion, alter the nature of the complaint for the purpose of taking cognizance by the Magistrate under Section 190(l)(a) Cr. P. C.

The decision is authority for the proposition that in a case where an investigation is not strictly relevant for the purpose of a statutory complaint, and in such a case if there was an investigation before the filing of the complaint, the nature of the complaint for the purpose of taking of the cognizance by the Magistrate will not be affected. In the present case it was unnecessary for the Sub Inspector of Police to have investigated the non-cognizable offence on the orders of the magistrate, for, while investigating the theft case, he was in possession of the full facts of the case. According to the above decision, the intervening investigation, which is not strictly relevant, could not be held to alter the nature of the complaint. That the Sub Inspector of Police called his report a charge sheet and filed it in the form prescribed will not make any difference. It would be unreasonable to classify the complaints of public servants under Section 195(1)(a) into complaints by public servants other than police officers and complaints by police officers and police reports by police officers and to exclude police reports by police officers from the purview of the section. The scope of the section is that before the court could take cognizance of an offence against a public servant, the public servant should himself prefer a complaint in writing. There is no justification for treating the police officer differently and excluding the complaint from the police officer which is preferred in the form of a police report. The context of Section 195 clearly warrants the construction of the word 'complaint' in Section 195(1)(a) to include even report of the police officer, when this is made by the police officer concerned as a public servant with a view to taking action against a person.

8. The contentions raised by the learned Counsel, therefore, fail and this petition is dismissed.