In Re: Subbasari and anr.

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Court : Chennai

Decided On : Aug-13-1920

Reported in : AIR1921Mad453; 61Ind.Cas.228

Judge : Sadasiva Aiyar and; Napier, JJ.

Appellant : In Re: Subbasari and anr.

Judgement :
ORDER

Sadasiva Aiyar, J.

1. Sanction was granted by the Second Class Magistrate of Avanashi to prosecute the petitioners under Section 193, Indian Penal Code, because their evidence before him, as Committing Magistrate, in a murder case was opposed to what was alleged to have been their statements taken by the police at their investigation. There can be no doubt that, if the statements before the Police were properly proved either before the Magistrate when he performed the duty of a Committing Magistrate in the murder case or before him when he was inquiring into this sanction petition, he had sufficient materials on which to base a grant of sanction for the prosecution of petitioners for an offence under Section 193, so far as the statements made before him were concerned, no separate sanction being necessary to prosecute the petitioners for the perjury in the alternative committed by them in their statements to the Police. See Fakir Mohideen F. Hartnett 1

Ind.Cas. 547 .

2. There seems to have been an appeal from the Second Class Magistrate's order granting sanction to the District Magistrate who in a short order refused to revoke the sanction. There was an application to the Sessions Judge, as the Appellate Authority over the District Magistrate, to revoke the sanction which was taken to have been a sanction granted by the District Magistrate himself, because he refused to revoke the sanction granted by the Second Class Magistrate. The learned Sessions Judge evidently thought that the Second Class Magistrate did not Act upon sufficient materials because the statements alleged to have been made before the Police had not been legally proved to have been so made, so, he took the statement of the Police Officer who held the inquest and, on that Police Officer saying that he correctly recorded the statements as found in the Inquest Report, he ordered the prosecution of the petitioners. Then, as the Appellate Authority over the Session Judge, this application is now made before us to revoke the sanction which must be taken to have been granted by the Sessions Judge.

3. Only three questions were argued before us, the other points taken in the Revision petition being clearly unsustainable. Those three points are, (2) the Sessions Judge had no jurisdiction in cases under Section 195, Criminal Procedure Code to remand or take additional evidence;'

(5) The learned judge had no jurisdiction to grant a fresh sanction himself'; and (6) The second accused in Section C. No. 15 of 1919 having been acquitted and the learned Judge in that case having held that a substantial portion of the case was concocted and eyewitnesses substituted, that is not a fit case for sanction.

4. As regards the first point, the cases in Rama Aiyar v. Venkatachala Padoyachi 30 M. 311 and Krishna Reddy v. Emperor 5 Ind. Cas. 881 do seem to contain observations laying down the following propositions:

(I) That an application to the Appellate Court to grant or revoke a sanction refused or granted by the lower Court is in the nature of an appeal; (2) that in the inquiry into Such an application made to the Appellate Court, the Appellate Court has no power to call for fresh evidence (to be taken by the lower Court and sent op to the

Appellate Court) for consideration in deciding the so-called appeal and that the Appellate Court has not even got the power to take fresh evidence itself, as such power is granted to an Appellate Court only under Section 428, Criminal Procedure Code, in cases falling under the Chapter in which Section 428 criminal. I am myself inclined to hold, (1) that the application to the Appellate Court to revoke or grant a sanction granted or refused is not an appeal but an original application, (2) that it having been held that, though the Section 195, Criminal Procedure Code, itself does not expressly give power to the Courts to which an application is made for sanction to take evidence, that Court has an inherent power to take such evidence before granting or refusing sanction. The Appellate Court which is asked to grant or refuse sanction (as the case may be) has also the same inherent power to take the evidence which it considers necessary to satisfy its mind as to the propriety of granting or refusing sanction. It may be that it has got no power to ask the lower Court to take evidence in such cases and send it on to itself for consideration or to set aside the order of the lower Court without passing any definite order itself and merely to remind the case for fresh disposal by the lower Court. Such a power to give directions to the lower Court is not necessarily involved in its power to itself grant or refuse sanction. It is unnecessary, however, to deal with that question finally in this case, because the only point actually decided in these two cases in Rama Aiyar v. Venkatachala Padayachi 30 M. 311 and Krishna Reddy v. Emperor 5 Ind. Cas. 881 was that the Appellate Court cannot call for fresh evidence to be taken by a lower Court and to be sent on to itself. In the present case I shall, therefore, hold, as at present advised, that the Sessions Judge had power himself to talks additional evidence, but having considered the record as a whole, I do not think that this is a fit case for granting sanction for perjury against the petitioners and I would, therefore, revoke the sanction.

Napier, J.

5. I agree with my learned brother that this is not a fit case for granting sanction. I entirely agree with the views expressed by my learned brother on that paint of law and only wish to add a few word. J have examined the decision in Krishna Reidy v. Emperor 5 Ind. Cas. 881. very carefully, and I am satisfied that the learned Judges

did not intend to lay down anything more than that the Court he fore whom an application to grant sanction or refuse sanction was pending had no power to make an order Bailing for further evidence from the Court below. I do not think that the reference to Section 428, Criminal Procedure Code, and the words 'power to take or call for further evidence' was anything more than a reference to the section which gives power to sail for evidence for that it was intended to he a ruling on the point. It crimes to me that if the original Court has power to take evidence which proposition it is too late now to contest, it necessarily follows that the Court which under Sub-section 5 of Section 195, Criminal Procedure Code has power to revoke or grant sanction must have the same power to take fresh evidence, and it also seems to me that it might be very disastrous if the Court was not so empowered, The object of the petition is to prevent improper prosecution for offences in connection with the administration of justice and very rightly a certain power is vested in Courts to limit the wide powers given to the public generally of laying complaints under Section 190, Criminal Procedure Code. They fetters which are put on this power of complaining are generally discretionary and can conceive nothing more dangerous to the proper exercise of these discretionary powers than to tell the Court that it could not procure any further material it required, for the due exercise of its discretion. I am, therefore, quite clear that the Court has power to take fresh evidence and that the Sessions Judge was, therefore, entitled to do so.