

**Marutha Vs. Rajagopal and ors.**

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**Court :** Chennai

**Decided On :** Oct-28-1971

**Reported in :** 1972CriLJ1210

**Judge :** Somasundaram, J.

**Appellant :** Marutha

**Respondent :** Rajagopal and ors.

**Judgement :**

ORDER

**Somasundaram, J.**

1. The first respondent. herein is the Tahsildar and the second respondent is the Revenue Inspector. The third respondent is the village headman and the fourth respondent is the Karnam, The fifth respondent is the Thalavari and the sixth respondent was the procurins agent during the relevant period. The petitioner herein filed a complaint against them under Sections 147, 447 and 395 I. P.C. alleging that on 22-3-1969. at about 6-30 p. m. they all came to his house. entered inside and forcibly removed some bags of paddy. He further complained that the first respondent caught hold of his thulasimani and pulled it and pushed him down. Similarly, the wife of the petitioner was pushed down by the second respondent. Respondents 3 and 4 threatened him using some words. Respondents 5 and 6. with the assistance of the men they had brought. removed the bags to the street.

They refused to give any written order or receipt. This complaint was taken on file by the learned District Magistrate. Tiruchi rapalli. in C. C. No.31 of 1969 under Sections 147 and 352 I. P.C. He transferred the case to the file of the Sub Magistrate, Jayakondan for disposal. The latter numbered it as C. C. No. 850 of 1969, and on the objection taken by respondents, that under Section 15 of the Essential Commodities Act the prosecution was barred, he discharged them under Section 253(1) Crl. P.C. The correctness of this order is now canvassed in this revision petition.

2. The order of discharge under Section 253 (1) Crl. P.C. is not proper. Under Section 253 (1) Crl. P.C. the Magistrate can discharge the accused, if, upon taking all the evidence referred to in Section 252. and making such examination (if any) of the accused as the Magistrate thinks necessary, he finds that no case against the accused has been made out which, if unrebutted. would warrant his conviction. The learned District Magistrate has taken on file the complaint presented by the petitioner, and process was issued. None has been examined. The Magistrate had before him only the averments in the complaint and also those made in the sworn statement. Therefore, under these circumstances, he should not have discharged the accused under Section 253 (1) Crl. P.C.

3. Objection was taken by the respondents on the ground that they removed the bags in discharge of their official duties in good faith, and that as such the present prosecution is barred by Section 15 of the Essential Commodities Act. Observing that respondents 2 to 6 acted only under the directions of the first respondent, the Tahsildar, in good faith the learned Magistrate has discharged them. Then, as regards the first repon-dent the Tahsildar, he has invoked Section 197 Crl. P.C. and said that he hid gone there only for the purpose of procurement which is an official duty and that as such in the absence of any sanction from the State Government, the complaint was not sustainable. He has overlooked the other allegations and accusations levelled by the complaint against the respondents. The complainant has averred that his thulasi-mani was pulled and that he was pushed down. He has further complained that his wife also was pushed down in a similar manner. The District Magistrate has taken cognisance under Section 332 (352?) I. P.C. The question is as to whether these acts were done by the

respondents and for these offences no sanction under Section 197 (1) CrI. P.C. is necessary, Vide Sakuntala Bai v. Venkatakrishna Reddi : AIR1952 Mad667 ; Chinnasami Reddi v. Kuppuswami 1955 MWN 47 and It-tyavira Appan v. Md. Kunju. AIR 1953 TC183. There was no judicial evidence before him to arrive at a conclusion that these acts were not done by the respondents and that the complainant had come forward with these allegation falsely without any basis, This is a matter of evidence and if, after recording some evidence, the Magistrate finds that the allegations are baseless and groundless he can discharge the accused under Sub-section (2) of Section 253. Thus. without recording any evidence, he should not have discharged the respondents under Section 253 (1) of the Code. Even as regards good faith, it is a Question of fact which will have to be gathered after gathering information, to conclude in one way or the other.

4. The order of discharge is set aside and the District Magistrate is directed to have a further enquiry made by any competent Magistrate other than the Magistrate who disposed of this matter.

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