

In Re: V. Veerappan

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Court : Chennai

Decided On : Feb-15-1971

Reported in : 1971CriLJ1397

Judge : K.N. Mudaliyar, J.

Appellant : In Re: V. Veerappan

Judgement :

ORDER

K.N. Mudaliyar, J.

1. These proceedings were initiated on a complaint filed by one Chelliah of T. A. S, Rathnam Brothers, The averment found in the complaint is that the accountant of T. A. S. Rathnam Brothers, V. Veerappan, the petitioner, has embezzled their business funds for over several thousands of rupees and that the correct amount is being investigated into and that he should make good any loss that may be determined on account of his handling cash and cheques belonging to the firm. The further allegation is that he has embezzled to the tune of about Rupees 20,000, It is casually stated that the exact embezzlement of amount will be intimated immediately after the final audit is over. The objection raised by the learned Counsel for the petitioner is that the indictment against the petitioner is that he has misappropriated the funds of the firm to the tune of about three lakhs of rupees by resorting to the modus operandi of falsifying the accounts by forging

the signatures of the partners of the firm in the cheques and, therefore, the learned Counsel argued that in the present case where predominantly the offences alleged against the petitioner are non-cognisable, investigation conducted by the Inspector of Police is against law, that he has not been specially empowered by the Magistrate to take cognisance of the non-cognisable offence, namely, the offences Under Sections 467 and 477-A, IPC In otherwards, the learned Counsel argued that under the colour of investigating into the cognisable offence Under Section 408, IPC the investigating officer investigated into non-cognisable offences and the absence of empowering of the investigating officer by the Magistrate vitiates the entire investigation. The papers in these proceedings appear to have been filed in the early part of 1970. In one sense these proceedings have even become infructuous as it were. But inasmuch as the question of law raised is of a general public importance, I have chosen to deal with it at some length.

2. The learned Chief Presidency Magistrate has summarised the respective contentions in paragraphs 2 to 5 of his judgment with conspicuous perspicacity. The learned Judge has dealt with this vital aspect of the argument advanced in this Court in paragraph 6 of his judgment. The learned Counsel argued that the two offences Under Sections 467 and 477-A, IPC were not even mentioned in the earlier complaint and, therefore, the charge sheet filed as a result of such an illegal investigation would vitiate the subsequent criminal proceedings against the petitioner. Undoubtedly the case was originally registered against the petitioner as one involving cognisable offence Under Section 408, IPC but in committing and completing the offence Under Section 408. IPC it is the case of the prosecution that the petitioner has resorted to forge some cheques and falsify accounts in support of the forged cheques. But the ultimate end is one of criminal breach of trust by a clerk or servant. Therefore, while investigating a cognisable offence, the police will have to stop the investigation, and seek the permission of the court Under Section 155 (2), Criminal P.C., so the argument ran. Undoubtedly the offences Under Section 408, IPC Sections 467 and 477-A, IPC are all integrated offences on the basis of the facts investigated by the concerned investigating officer; they cannot be split into minute parts, for these offences, in my view, get commingled as it were into one another. It would not be possible for any investigating officer to know as to exactly where he ought to stop for seeking

permission of the court Under Section 155 (2), Criminal P.C. I am in entire agreement with the conclusion of the learned Chief Presidency Magistrate, in paragraph 7 of his judgment. The learned Counsel for the petitioner relied on a decision in Labh-shankar v. State, and contended that Section 155, Criminal P.C. prohibits a police officer from investigating a non-cognisable offence, unless authorised by an order of a competent Magistrate. His further argument is that an investigation of such a non-cognisable offence, without a valid order, would be without jurisdiction and a report submitted of such an investigation is not a report on which the Magistrate can validly take cognisance of the offence Under Section 190 (1) (b), Criminal P.C. But the authority on which the learned Counsel for the petitioner relied contains a mention of the offence of extortion which is a non-cognisable offence. The learned Judges were justified in holding, as they did, that if the Legislature had intended to treat unauthorised police investigation of such offences as a mere irregularity it would have added a proviso to Section 155, Criminal P.C. similar to Section 156 (2), Criminal P.C., but as this is not done it is not open to the court to apply by analogy the provisions of Section 156 (2) Criminal P.C. and cut down the scope of Section 155, Criminal P.C. and that to do so would be to permit the police to investigate non-cognisable offences and take shelter under the plea that the want of authority to investigate was merely an irregularity. In my view, according to the complaint filed against the petitioner the pith and substance, the heart and core of the the gravamen of the complaint is that the petitioner has committed an offence Under Section 408, IPC The other acts alleged to have been committed are found to be so integrated with the offence Under Section 408. IPC that I consider that the police officer is, in law, justified in conducting the investigation into non-cognisable offences along with the principal offence of criminal breach of trust said to have been committed by the petitioner, and, in view, Section 155 (2), Criminal P.C. does not act as a blanket ban in totally disabling the investigating officer from investigating into the other offences Under Sections 467 and 477-A, IPC I am fortified in my conclusion by the reasons found in B. Patnaik v. K. A. A. Brinnand, : AIR1970 Cal110 ; Vad:- lamudi v. State of A. P. : AIR 1961 AP448 ; Safdar Hussain v. Abdul Rahim : AIR1967 Mad4 ; Pravin Chandra v. State of A. P. : 1965 CriLJ250 ; Ram Krishna v. State that there is no illegality that vitiates the investigation into the offences' Under Sections 467 and

477-A, I, P.C. when the investigation into the principal offence Under Section 408, IPC has also proceeded apace.

3. A complaint has been made by the learned Counsel for the petitioner that the investigating officer has been seizing the properties and the jewels of the petitioner in reckless disregard of the connection of the ownership of the properties with the alleged misappropriations of the funds of the T. A. S. Rathnam Brothers. In these proceedings I cannot pause to examine the validity of this complaint or otherwise; but it behoves every investigating officer to be scrupulously careful in conducting the investigation without impinging upon the other rights of the people bearing in mind the inevitability of the proof of nexus between the property seized and the amounts said to be misappropriated by the petitioner and as revealed by the investigation. I find no merits in this revision petition. Therefore, the revision petition is dismissed.

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