

In Re: Chinnayya Goundan and ors.

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Court : Chennai

Decided On : Jan-07-1948

Reported in : (1948)1MLJ448

Appellant : In Re: Chinnayya Goundan and ors.

Judgement :

ORDER

Govinda Menon, J.

1. This is an application to revise the appellate order of the Sub-Divisional Magistrate, Namakkal, confirming the conviction and sentence passed on the 25 petitioners herein, of an offence under Section 143 read with Section 188, Indian Penal Code and the sentence of a fine of Rs. 100 on each of the petitioners.

2. On the 13th and 14th January, 1946, the Sub-Magistrate of Attur passed orders under Section 144, Criminal Procedure Code, restraining all the petitioners who belong to one of the factions in the Keeripatti village in Attur taluk from conducting the ' bull play' in connection with the Pongal festival in a village temple. In defiance of this prohibitory order, the petitioners formed themselves into an unlawful assembly and in spite of the warning given by the police officers on the spot, conducted the ' bull play ' on the occasion of the festival. For this offence, they were charge-sheeted for being members of an unlawful assembly with the common object of committing an offence, viz., the defiance of the order under

Section 144, Criminal Procedure Code, which itself is an offence under Section 188, Indian Penal Code, tried and convicted and sentenced to the fines above stated. Having failed in their attempt to get the conviction and sentence set aside in appeal, the petitioners now seek to revise the order of the lower appellate Court.

3. The only substantial point urged in revision is that in the absence of a complaint by the public servant who promulgated the order under Section 144, Criminal Procedure Code, no Court could take cognizance of the offence under Section 143; because the real offence is one under Section 188, Indian Penal Code, for which the necessary pre-requisite is a complaint under Section 195(1)(a), Criminal Procedure Code. Both the lower Courts have rejected this contention on the ground that the petitioners have committed two distinct offences, viz., one under Section 143, Indian Penal Code, and the other under Section 188, Indian Penal Code and it is within the absolute discretion of the prosecution to choose either or both of the offences for the purpose of prosecution. Having chosen to prosecute under Section 143, Indian Penal Code giving up as it were the offence under Section 188, Indian Penal Code, there is no prohibition on the prosecution from proceeding with the inquiry and trial under Section 143, Indian Penal Code, without a complaint as stated above. It is therefore according to the lower Courts, a matter for election for the prosecuting agency and the learned Sub-Divisional Magistrate finds nothing illegal in this.

4. The authorities on this question are not quite uniform nor easy to reconcile. But the more authoritative and recent decisions of this Court proceed upon a line of reasoning culminating in a conclusion to the effect that in such cases a complaint from the public servant concerned is essential. It is more in consonance with natural justice and equity that where on the same facts a general offence which does not require a complaint by a Court or a public servant is committed along with a more aggravated particularised form of offence, it is not open to the prosecution to circumvent the provisions of Section 195, Criminal Procedure Code, by resorting to proceed with the general minor offence without attempting to move the Court or officer concerned for taking action under Section 195, Criminal Procedure Code. In *Perianna Muthirian v. Vengu Aiyar* (1928) 56 M.L.J. 208, Curgenvin, J., in dealing with a case where the facts stated in the complaint disclosed an offence

under Section 193, Indian Penal Code, committed in relation to a proceeding in Court, has laid down that no Court can take cognizance of such an offence otherwise than in the manner prescribed by Section 195, Criminal Procedure Code, and it would make no difference that the complaint in order to evade that provision elects to name the offence as one for which no complaint by the Court or public officer was necessary. The specific offence should be given preference over the more general offence. In that case a complaint was filed against two individuals for the alleged offence of abetment of forgery in relation to a document filed before a Court where proceedings under Section 145, Criminal Procedure Code, were pending; and even before the culmination of such proceedings, a complaint was filed alleging the abetment of forgery against two persons. This complaint was rejected on the ground that it was not instituted by the Court in which the document was produced in relation to the proceeding pending therein. On revision Curgenvén, J., held that though it was sought to be made out by the complainant therein, that the persons who were alleged to have abetted the offence of forgery should be proceeded against under Section 465 read with Section 109, Indian Penal Code, still it was not open to the party to evade the specific offence of fabricating false evidence in relation to a judicial proceeding by giving preference to the more general offence of forgery. The reasoning of the learned Judge, with which I respectfully agree, is that the gravamen of the charge was the fabrication of false evidence in relation to a judicial proceeding and therefore the complainant ought not to be permitted to circumvent the provisions of Section 195, Criminal Procedure Code, by putting forward a general offence of forgery. A similar case is the one in *Ravanappa Reddi v. Emperor* (1931) 62 M.L.J. 735 : I.L.R. 55 Mad. 165.343, where Jackson and Curgenvén, JJ., held that where a complaint was filed against the accused by a private complainant alleging that the accused had fabricated a promissory note on which a suit was filed against the complainant, and a fraudulent decree obtained, the Court when confronted with a complaint like this by a private person, must refuse to take cognizance of it and could not even examine the complainant on oath. The principle underlying this decision is again the same as on which Curgenvén, J., proceeded in *Perianna Muthirian v. Vengu Aiyar* (1928) 56 M.L.J. 208. A Division Bench consisting of Madhavan Nair and Burn, JJ., in *Appadurai Nainar v. Sampath Rao Nainar* :

(1935)69MLJ812 have remarked that parties should not be allowed to evade the provisions of Section 195, Criminal Procedure Code, by filing a complaint under another provision of the Penal Code if clearly an offence for which a prior complaint by the Court or the public officer is necessary, has been committed relying upon the decision in Ravanappa Reddi v. Emperor (1907) 17 M.L.J. 559 : I.L.R. 31 Mad. Mad. 43. The circumstances under which the decision of the learned Judges was passed were that a suit was brought in a village panchayat Court on a promissory note where it was found that the document was a forged one and that the promisee had forged-it along with other persons who were the scribe and attesting witnesses to the document. As a result of this, the defendant filed a complaint against the plaintiff in the suit as well as the scribe and the attestors, and it was then, that the learned Judges held that as the prosecution was clearly under Section 467, Indian Penal: Code, the complaint could not be proceeded with unless the Court before which the offence was revealed files a complaint as required under Section 195, Criminal Procedure Code. There was the additional circumstance that in this case an. anomalous situation had come into being because the Criminal Procedure Code was not applicable to the Village Courts under Section 77 of the Village Courts Act, and even so, the learned Judges held that a private complainant cannot initiate proceedings. This decision is very strong authority establishing that in all cases where the offence complained against requires a previous complaint under Section 195, Criminal Procedure Code, no prosecution can be instituted even. where the provisions of Section 195, Criminal Procedure Code, are not applicable to the public officer before whom the offence is committed. The principle deducible from these cases is that when a complaint is made to a Court the facts should be considered as a whole and there should be no splitting up of the facts. There-fore, the Court is not entitled to disregard some of the facts and try an accused person for an offence which the remaining facts disclose. Considering the facts as a whole if they disclose an offence for which a special complaint is necessary under the provisions of Section 195, Criminal Procedure Code a Court cannot take cognizance of the case at all unless that special complaint has been filed. The most recent case on the subject is that of my learned brother Happell, J., in Antarvedi Sarma v. Emperor I.L.R. (1938) pat. 680, where the previous cases have been exhaustively analysed and

discussed and my learned brother following the decision in Ravanappa Reddi v. Emperor (1907) 17 M.L.J. 559 : I.L.R. 31 Mad. 43, and Appadurai Nainor v. Sampath Rao Nainar : (1935)69MLJ812 held that where the facts disclosed an offence under Sections 193 and 471, Indian Penal Code, the complainant could not be allowed to evade the provisions of Section 195, Criminal Procedure Code, by filing a complaint under Section 467, Indian Penal Code alone. The decision of Lakshmana Rao, J., in Gurusami Chetti v. Emperor : AIR1941 Mad323 , was considered and distinguished. What is applicable to private parties is equally applicable in the case of a prosecution initiated by the police also. If a private party cannot be allowed to evade the provisions of Section 195, Criminal Procedure Code, by filing a complaint under a provision of the Indian Penal Code for which no previous complaint under Section 195, Criminal Procedure Code, is necessary a fortiori the Crown also cannot be allowed of one transaction separate and specific offences were committed and that by itself is sufficient to justify the observations of the learned Judge. In the present revision the ingredient for the offence of unlawful assembly is the common object of committing an offence, and that is the disobedience of the order under Section 144, Criminal Procedure Code. Again the formation of the unlawful assembly is only one of the items or ingredients constituting the offence brought into existence by the disobedience of the order. It seems to me therefore that it is impossible to hold that specific or separate offences have been committed by the petitioners. The substantive offence committed by the petitioners is that they knowing that a legal order has been promulgated have disobeyed that order, and thereby they are guilty under Section 188, Indian Penal Code. I do not for a moment suggest that if after forming themselves into an unlawful assembly with the common object of disobeying that order and having disobeyed that order, the petitioners again commit some other offence, e.g., if they cause grievous hurt or any other offence, they cannot be tried for that offence without a previous complaint. The reason is that the elements which constitute the offence of grievous hurt or other offences against person or property are quite different from those constituting the offence under Section 188, Indian Penal Code.

5. As I have already mentioned that the real offence committed in this case is one under Section 188, Indian Penal Code, the petitioners cannot be tried for a minor

general offence like the one under Section 143, Indian Penal Code, without a proper complaint under Section 195, Criminal Procedure Code. Such being the case the conviction and sentence of the petitioners are without jurisdiction and they are therefore acquitted.

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