

In Re: Manicka Reddy and ors.

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Court : Chennai

Decided On : Mar-30-1967

Reported in : 1968CriLJ760

Judge : Sadasivam, J.

Appellant : In Re: Manicka Reddy and ors.

Judgement :

ORDER

Sadasivam, J.

1. The question of law that arises for consideration in this criminal revision case is not covered by any authority. The question is, whether the Police can issue summons to any person in the course of an investigation relating to proceedings arising under part IV of the Criminal Procedure Code for prevention of offences.

2. The petitioners were summoned by the police under Section 160 CrI.P.C. to appear for an enquiry into a petition under Section 145 CrI.P.C. filed by one Sella Songayya Kilari before the Executive First Class Magistrate, Tiruvallur. The petitioners failed to appear and they were duly prosecuted for an offence under Section 174 I.P.C. A preliminary objection was raised by the petitioners and it was overruled by an order of the Sub Magistrate, Ponneri and the present petition has been filed to revise that order.

3. Section 160 CrI.P.C. empowers a police officer making an investigation under Ch. XIV of the Criminal Procedure Code, to issue summons requiring the attendance of witnesses within certain limits. The object of the Legislature in enacting the section is to give powers to a police officer to secure evidence with regard to a crime which he is investigating under Chapter XIV CrI.P.C. This power can hardly be invoked for any investigation or enquiry by the police in respect of a proceeding under Section 145 CrI.P.C. which is one of the sections in part IV of the Criminal Procedure Code, dealing with prevention of offences. But for the provision contained in Section 160 CrI.P.C., the police will ordinarily have to go to the persons who are acquainted with the circumstances of the case without sending for them.

It is clear from the proviso added to Section 160 CrI.P.C. by Act 26 of 1955, that the police cannot exercise the powers conferred under that section when the persons required to attend is under the age of 15 years or a woman. This proviso was introduced, as the power of summoning persons by the police for investigation of crimes was liable to be abused and that woman and children should not be put to indignity or inconvenience by being detained in police stations for long hours. It is significant to note that the police have not been given, powers to summon witnesses during investigation in respect of proceedings under any of the Chapters of Part IV CrI.P.C., dealing with prevention of offences, unlike in; the case of investigation of offences under; Chapter XIV CrI.P.C. In the absence of such powers, the petitioners can ignore the f summons and the prosecution of the petitioners can ignore the summons and the t prosecution of the petitioners for the offencefi1 under Section 174 I.P.C. cannot be sustained.

4. The learned Sub Magistrate, Ponneri has stated that though the police officer cannot summon a person for an enquiry in respect of proceedings under Section 145 CrI.P.C. he could do so in respect of an enquiry under Section 107 CrI.P.C. It is clear from what I have stated above, there is no meaning in-the distinction sought to be made by the1 learned Sub Magistrate. He has relied on the foot-note under Section 107 CrI.P.C. in the hand' book of Criminal law, by Sri S. Krishnamurthi in support of his order that an application under Section 107 CrI.P.C. is a complaint as denned in Section 4(1)(h) of CrI.P.C. I looked into the

decision in Anantapadmanabhaiah in re ILR 54 Mad 422 : AIR 1930 Mad 975 cited in the foot-note, but it does not lay down any such proposition. It does not state that an application under Section 107 Crl.P.C. is a complaint within the meaning of Section 4(1)(h) Crl.P.C. A complaint as defined in Section 4(1)(h) means the allegation made orally or in writing to a magistrate, with a view to his taking action under the Code that some person, whether known or unknown, has committed an offence, but it does not include the report of a police officer. Thus, a complaint, as denned in Section 4(1)(h) could only be, in respect of an offence which has been committed and it could not obviously refer to an application under any of the provisions of the Chapters in Part IV Cri.P.C. dealing with prevention of offences. In Anantapadmanabha in re ILR 54 Mad 422 : AIR 1930 Mad 975, it was held that a person against whom a magistrate has drawn up an order under Section 112 Cri.P.C. calling on him to show cause why he should not be bound¹ over to keep the peace under Section 107 Cri.P.C. is not entitled to the grant of a copy of the written information given by the police and on which the order is based, as such information is not part of the record within the meaning of Section 548 Cri.P.C.

The nature of the proceedings under Section 107 Cri.P.C. is dealt with in the last paragraph of the judgment. It is stated therein that the record in a proceeding under Section 107 Cr.P.C. begins usually with the order under Section 112 Cri.P.C. except where a magistrate not empowered under Section 107 Cri.P.C. wishes to have proceedings taken under it and issues a warrant under Clause (3) of that section. It is not authority as wrongly assumed by the learned Sub Magistrate, that an application under Section 107 Cri.P.C. is a complaint within the meaning of Section 4(1)(h) Cri.P.C.

5. In Konetiraju v. Subbaraju : AIR1954 Mad1019 it was held by this Court that an enquiry made by the police on a petition referred to them by a Magistrate under Section 145 Cri.P.C. is not an investigation under Ch. XIV, or in respect, of any offence and that an order disallowing a party to the proceedings under Section 145 from cross-examining a witness with reference to certain statements lie had made to the police during the course of their enquiry on the ground that the statements fell within the ban of Section 162, is clearly erroneous.

6. For the foregoing reasons, I uphold the preliminary objection raised by the petitioners. The order of the Sub Magistrate disallowing the preliminary objection is illegal and it is set aside. The petitioners are acquitted.

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