In Re: Pakkirisami and anr.

In Re: Pakkirisami and anr.

SooperKanoon Citation : sooperkanoon.com/813630

Court : Chennai

Decided On : Oct-31-1969

Reported in : (1970)1MLJ488

Appellant : In Re: Pakkirisami and anr.

Judgement :
ORDER

K.N. Mudaliyar, J.

1. Mr. Venkataraman appearing for the two petitioners (A-2 and A-3) who have been convicted for offences under Sections 323 and 352, Indian Penal Code, assailed the convictions mainly on the ground that the investigation is vitiated by an illegality in that the requirements of Section 155 (2), Criminal Procedure Code, have not been complied with.

2. P.W. 6 the Sub-Inspector who appears to have earlier filed charge-sheets for offences under Sections 323 and 341, Indian Penal Code, after investigating the matter, referred the case. Thereafter, he seems to have filed petty case charge-sheets under Section 75 of the Madras City Police Act. The trial Magistrate, finding the charge-sheets to be defective, returned them, and, by him memo. dated 26th January, 1967, the Sub-Inspector ultimately modified them as those under Section 323, Indian Penal Code, read with Section 190 (1) (b). It is on this chequered history of filing of the amended charge-sheets continuously that Mr. Venkataraman

has grounded his main attack.

3. Section 155 (2), Criminal Procedure Code, reads as follows:

No Police Officer shall investigate a non-cognizable case without the order of a Magistrate of the first or second class having power to try such case or commit the same for trial, or of a Presidency Magistrate.

The next relevant section would be Section 190 (1) (b) which enables cognizance of offences by Magistrates upon a report in writing of such facts made by any Police Officer. The other relevant section for the matter now debated, is Section 200 (aa), Criminal Procedure Code, which runs:

When the complaint is made in writing, nothing herein contained shall be deemed to require the examination of a complainant in any case in which the complaint has been made by a Court or a public servant acting or purporting to act in the discharge of his official duties.

Mr. Venkataraman argues that the report of the Police Officer under Section 173, Criminal Procedure Code, must be within the compass of Section 155 (2), Criminal Procedure Code, and only such report is contemplated within the meaning of Section 190 (1) (b), Criminal Procedure Code. In my view, the prohibition of Section 155 (2) in regard to the report made by a Police Officer under Section 173 does not place the report beyond the ambit of Section 190 (1) (b). It is true the Sub-Inspector (P.W. 6) has referred the case registered for offences under Section 323 and 341, Indian Penal Code. But in its place he appears to have filed invalid charge-sheets for an offence under Section 75 of the City Police Act and later notified them for an offence under Section 323, Indian Penal Code, read with Section 190 (1) (b). The apparent hiatus is not of any material importance, for the charge-sheets filed by the Sub-Inspector would fall squarely within Section 200 (aa), Criminal Procedure Code. Mr. Venkataraman cited the ruling of this Court in Crl.M.P. No. 1791 of 1969 contending that the entire trial is vitiated by the defective investigation. I find no material to support such an argument from the judgment in Crl.M.P. No. 1791 of 1969.

4. Mr. Venkataraman cited the decision in Podan v. State of Kerala (1962) 1 Cri. L. J. 339, to conted that Section 155 (2) expressly prohibits the investigation by the police suo motu of non-cognizable offences, that the order of a Magistrate is a condition precedent for such investigation, and that the irregularity cannot be cured under Section 537 as it results in failure of justice. I am in agreement with the observations of the learned Judge (Anna Chandy, J.) that a deliberate disregard of the prohibition under Section 155 (2) has to be deprecated, that the provisions of Criminal Procedure Code are mean to be obeyed, and that the Police Officers are not allowed deliberately to contravene those provisions in the hope that the irregularities they commit will be cured under Section 537, Criminal Procedure Code. In the peculiar circumstances of the case the learned Judge found that the irregularity has resulted in the failure of justice, since the signed statement taken from the accused was used in evidence against him; Such a feature is not present in the present case.

5. Mr. Venkatraman placed strong reliance on the statement of law found in para. 10 of the Supreme Court judgment in H.N. Rishbud v. State of Delhi : 1955 CriLJ526 , and it is as follows:

It does not follow, however, that the invalidity of the investigation is to be completely ignored by the Court during trial. When the breach of such a mandatory provision is brought to the knowledge of the Court at a sufficiently early stage, the Court, while not declining cognizance, will have to take the necessary steps to get the illegality cured and the defect rectified, by ordering such re-investigation as the circumstances of an individual case may call for.

It is true that in the present case the Court did not order re-investigation. But the case is such a simple one that it did not require any further investigation. The following statement of law from the Full Bench decision of this Court in Public Prosecutor v Ratnavelu Chetty I.L.R.(1926) Mad. 525 : 52 M.L.J. 210, cited by the learned Public Prosecutor is of material importance:.For Section 190 (1) (b) authorises certain Magistrates to take cognizance of any offence upon a report in writing of facts which constitute such [offence made by any Police Officer, and Section 200 (aa) provides that where a public servant acting or purporting to act in

the discharge of his official duties makes a complaint of an offence, nothing shall require the Magistrate to examine him before taking cognizance of the offence.

In Safdar Hussain v. S.K. Abdul Rahim : AIR1967 Mad4 , Anantanarayanan, J., (as he then was) followed the Full Bench decision containing the aforesaid statement of law. The learned Judge holds that, even in non-cognizable cases; nothing will prevent the police from competently filing a report which should then be treated as a complaint under Section 200(aa) Criminal Procedure Code, with the sole variation that no sworn statement need be recorded from the Police Officer lodging the complaint. The learned Public Prosecutor argued that, although the investigation in this case may be vitiated by some infirmities, the later cognizance and trial of the accused is not in any way vitiated. In Zutshi v. King (1950) M.W.N. 41 : L.R. 77 IndAp 62 : (1950) 1 M.L.J. 302 : AIR. 1950 P.C. 26, while dealing with a case under the Bombay City Police Act, their Lordships of the Privy Council observed:

The argument was that the trial and conviction of the appellants were void because the police investigation which led up to the trial was conducted illegally. This was a non-cognizable case and Section 58 (2) of the Bombay City Police Act 1902 provides that no Police Officer shall investigate a non-cognizable case without the order of a Presidency Magistrate. There was an order by the Chief Presidency Magistrate in this case but it was submitted that this order was invalid because the Magistrate was bound before making such an order to comply with the requirements of Section 202 (1) of the Criminal Procedure Code and he had not done so.

This question of jurisdiction was not considered fully by the Privy council, as the question was not raised before the High Court or in the appellant's petition for Special Leave to appeal.

6. In H.N. Rishbud v. State of Delhi : 1955 CriLJ526 , the scope of Sections 190, 193, 195 to 199 and 537, Criminal Procedure Code, has been considered by the Supreme Court. A defect or illegality in investigation, however serious, has no direct bearing on the competence or the procedure relating to cognizance or trial. No doubt a police report which results from an investigation is provided in Section

190, Criminal Procedure Code, as the material on which cognizance is taken. But it cannot be maintained that a valid and legal police report is the foundation of the jurisdiction of the Court to take cognizance. Section 190, Criminal Procedure Code, is one out of a group of sections under the heading 'conditions requisite for initiation of proceedings'. The language of this section is in marked contrast with that of the other sections of the group under the same heading, that is, Sections 193 and 195 to 199. These latter sections regulate the competence of the Court and bar its jurisdiction in certain cases excepting in compliance therewith. But Section 190 does not. While no doubt, in one sense, Clauses (a), (b) and (c) of Section 190 (1) are conditions requisite for taking of cognizance, it is not possible to say that cognizance on an invalid police report is prohibited and is therefore a nullity. Such an invalid report may still fall either under Clause (a) or (b) of Section 190 (1) and in any case cognizance so taken is only in the nature of error in a proceeding antecedent to the trial. To such a situation Section 537, Criminal Procedure Code, is attracted. If, therefore, cognizance is in fact taken, on a police report vitiated by the breach of a mandatory provision relating to investigation, there can be no doubt that the result of the trial which follows it cannot be set aside unless the illegality in the investigation can be shown to have brought about a miscarriage of justice. That an illegality committed in the course of investigation does not affect the competence and the jurisdiction of the Court for trial, is well settled. Hence, where the cognizance of the case has in fact been taken and the case has proceeded to termination, the invalidity of the precedent investigation does not vitiate the result, unless miscarriage of justice has been caused thereby. Mr. Venkataraman has not shown in the present case any serious prejudice in respect of the trial and convictions of the petitioners.

7. On the merits it is argued that the complaint has not disclosed the name of A-3 (2nd petitioner). On this ground A-3 is entitled to an acquittal, or his participation in the crime is highly doubtful.

8. As regards A-2 (1st petitioner), Mr. Venkataraman pleaded that the first petitioner is a young student of 19 years. I consider that the antecedents of this young person are such that the ends of justice will be met by admonishing him under Section 3 of the Probation of Offenders Act.

9. It is unnecessary surplusage to add Section 352, Indian Penal Code, for the offence under Section 323, Indian Penal Code. As the ingredients constituting an offence under Section 352, Indian Penal Code, are practically covered by an offence under Section 323, Indian Penal Code, I consider that the conviction under Section 352, Indian Penal Code, is untenable.

10. In the result, both A-2 and A-3 are acquitted of the offence under Section 352, Indian Penal Code. A-3 is acquitted of an offence under Section 323, Indian Penal Code. So far as A-2 is concerned, in respect of the offence under Section 323, Indian Penal Code, he is admonished under Section 3 of the Probation of Offenders Act. Fine amounts, if any, paid by A-2 and A-3 will be refunded to them. The Criminal Revision Case is partly allowed and partly dismissed.