

In Re: S.A.A. Beyabani

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Court : Chennai

Decided On : Mar-27-1952

Reported in : AIR1953Mad1002; (1952)2MLJ398

Judge : Somasundaram, J.

Acts : Madras District Police Act, 1859 - Sections 44, 50, 51 and 53

Appeal No. : Criminal Misc. Petn. Nos. 447 and 448 of 1952

Appellant : In Re: S.A.A. Beyabani

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : Neti Subramaniam, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

Somasundaram, J.

1. Cri. M. P. No. 447 of 1952: This is an application for leave to appeal to the Supreme Court against the judgment in Cri. Ap. No. 682 of 1950. That was an appeal preferred by the state against the acquittal of the accused by the Stationary Sub-Magistrate of Nellore in respect of a charge for an offence under Section 44,

Madras District Police Act. One of the grounds on which leave is sought is that this prosecution is barred under Section 63, Madras District Police Act. I must state at once that this point was neither raised before the trial Court nor was that raised before me when the appeal was heard. I think at the time when the appeal was heard, the advocate must have bestowed some attention on this point and very probably he rightly felt that there was no force in this contention, and that is why he did not raise it before me. However, as the point has been raised in this application for leave to appeal to the Supreme Court, I must deal with it.

2. Section 53 says that all actions and prosecutions against any person, which may be lawfully brought for 'anything done or intended to be done under the provisions of this Act' or under the provisions of any other law for the time being in force conferring powers on the police shall be commenced within three months after the act complained of. 'Anything done or intended to be done under the provisions of this Act or under the provisions of any other law for the time being in force conferring powers on the police' have been introduced by an amendment by Act 8 of 1947. Before that this section was as follows: 'Anything done or intended to be done either under the provisions of this Act or under the provisions of any other law for the time being in force conferring powers on the Police'. Even before that, according to the decision in -- 'Murugesu Naidu, In re', AIR 1916 Mad 142 (A), the words were 'for anything done under the provisions of this Act under the General Police powers'. This section has been the subject of interpretation in 'Chendrial, in re', The Law of Offences and Criminal Procedure -- 1 Weir 846 (B)'. There a Bench of the Court consisting of Muttuswamy Aiyar and Best JJ. have held that this section has reference only to acts done or intended to be done under colour of the Act whereas the act complained of was not professedly done in the exercise of any power conferred by the Act in that case, the act that was complained of was one of having bought and sold goats, an offence falling under Section 44 as it then stood.

This again came up for consideration in --AIR 1916 Mad 142 (A)'. In this case, the offence complained of was one under Section 45, Madras District Police Act for receiving unauthorised fee or recompense. In construing the words 'anything done or intended to be done', Aylmer J. has held that the intention of the Legislature is

obvious, viz., to impose a bar of limitation against actions and prosecutions against officers for acts done or purporting to be done in pursuance of their official powers. It is, therefore, clear from these two decisions that what is contemplated under Section 53 as a bar of limitation for the prosecution is the act done or intended to be done under the provisions of this Act or under the provisions of any other law. But the complaint in this case is not for anything done under the provisions of this Act or by virtue of any power conferred on him as a Police Officer. The act that is complained of is one of desertion, an offence specially created under the provisions of this Act. It cannot be said to be an act done in pursuance of any power conferred on him by this Act or by the provisions of any other Act. Section 53, therefore, cannot apply to the facts of this case. The question of limitation must, therefore, be considered to be not applicable to this case. In my opinion, the learned Advocate, who appeared for the accused at the time of the hearing of the appeal, was therefore, perfectly justified in not raising that point at the time of the hearing.

3. The second point that is raised is that he having been already dismissed, he should not be tried again for an offence and be convicted. For this, the learned Advocate Mr. N. Subramaniam relies on Section 51, District Police Act. Section 51 is as follows :

'Nothing contained in this Act shall be construed to prevent any person from being prosecuted for any offence made punishable on conviction by this Act or to prevent any person from being liable under any other law, regulation or Act to any other or higher penalty or punishment than is provided for such offence by this Act : provided always that no person shall be punished twice for the same offence.'

It deals only with punishment under the Act or for offences falling under the Act. When a person is convicted for an offence either under the provisions of this Act or under any of the several Acts, he should not again, be convicted for the same offence in respect of the same facts. The punishment here is not the punishment of dismissal which is made after departmental enquiry but a punishment imposed by the Court. This sentence has been passed by the Court after he has been found guilty. Section 51, therefore, will not apply to cases of dismissals made

depart-mentally by the Police.

4. The third contention is that there was no sanction given by the District Superintendent of Police to prosecute this person. So far as the Act is concerned, there is no provision of law under which sanction is necessary. He relies upon a G. O. according to which it is stated that it is the District Superintendent of Police that must sanction the prosecution against the Police officer. It is not a provision in the Act. In the absence of any provision providing for sanction in the Act itself, I do not think that any sanction is necessary under the Act for prosecuting the accused. So long as the provisions of this Act do not require that sanction by the District Superintendent of Police is necessary, the prosecution does not become invalid without such sanction. That contention also fails.

5. Another contention that is raised is that any charge against a Police officer above the rank of a constable under this Act shall be enquired into and determined only by an officer exercising the powers of a Magistrate. It is contended that there is no evidence to show that this Court is a Police officer within the meaning of the term 'exercising the powers of a Magistrate'. Section 50 on which the learned Advocate relies applies only to a case of departmental enquiry and not to an offence before a Court. There is no substance in this contention either.

6. In the result, in my opinion, there is no substantial point in this case, so as to compel me to give leave to appeal to the Supreme Court. The petition is, therefore, dismissed.

7. Crl. M. P. No. 448 of 1952 : As regards the petition for stay of the sentence of imprisonment, in consequence of the dismissal of Crl. M. P. No. 447 of 1952, I think this petition also must be dismissed. I do not think there is any need to stay the operation of the order of the High Court. This petition is accordingly, dismissed.