

Paramasivam Chettiar Vs. State

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Court : Chennai

Decided On : Jul-06-1967

Reported in : 1968CriLJ1667; (1968)1MLJ255

Judge : Krishnaswami Reddy, J.

Appellant : Paramasivam Chettiar

Respondent : State

Judgement :

ORDER

Krishnaswami Reddy, J.

1. Though several points were raised by the learned Counsel appearing for the petitioner, only one point was pressed before me, viz., that First Class Magistrate (Executive), Pattukottai, had no jurisdiction to tender pardon to the two approvers, as the sanction obtained by him from the Additional District Magistrate, Tanjore, was invalid.

2. What happened in this case was the First Class Magistrate of Pattukottai during the investigation of the case/tendered pardon under Section 337(1), Criminal P.C. to two approvers on the sanction given by the Additional District Magistrate. It is contended by the learned Counsel that the Additional District Magistrate had no powers to accord sanction to the First Class Magistrate for tendering pardon under

Section 337(1), Criminal P.C. To appreciate the contention of the learned Counsel, it is necessary to set out the relevant provision of the Criminal Procedure Code. Section 337, Clause (1), Criminal Procedure Code is as follows:

In the case of any offences triable exclusively by the High Court, or Court of Session, or any offence punishable with imprisonment which may extend to seven years or any offence under any of the following sections of the Indian Penal Code, viz., Section 161 etc. etc. the District Magistrate a Presidency Magistrate, a Sub-Divisional Magistrate, or any magistrate of the First Class, may, at any stage of the investigation or enquiry in to or the trial of the offence, with a view to obtaining the evidence of any person supposed to have been directly or indirectly concerned in or privy to the offence, tender pardon to such person on condition of his making a full and true disclosure of the whole of the circumstances with in his knowledge relating to the offence and to every other person concerned, whether as principal or abetter, in the commission thereof:

Provided that, where the offence is under enquiry or trial, no Magistrate of the First Class other than the District Magistrate, shall exercise the power hereby conferred, unless he is the magistrate making the enquiry or holding the trial, and where the offence is under investigation, no such magistrate shall exercise the said power unless he is the Magistrate having jurisdiction in a place where the offence might be enquired into or tried and the sanction of the District Magistrate has been obtained to the exercise thereof.

This section with its proviso requires the following two conditions to be complied with in respect of tendering a pardon by a First Class Magistrate during the investigation of an offence:

(1) He must be a magistrate having jurisdiction in a place where the offence might be 'enquired into or tried; and

(2) he must have obtained the sanction of the District Magistrate for tendering pardon. It is not disputed in this case by the learned Counsel that the First Class Magistrate, Pattukottai, had jurisdiction over the place where the offence might be enquired into or tried and that sanction was given to him by the Additional District

Magistrate to tender pardon.

(2-A.) The next question to be considered is whether the Additional District Magistrate, Tanjore, had powers to accord sanction to the First Class Magistrate, Pattukottai.

(3) Under the proviso to Section 337(1), the sanction can be obtained only from the District Magistrate. Under Section 10(1) of the Criminal P.C., the State Government can appoint a Magistrate of the First Class, who will be called the District Magistrate. Section 10 Clause (2) of the Code provides as follows:

The State Government may appoint any magistrate of the First Class to be an Additional District Magistrate and such Additional District Magistrate shall have all or any of the powers of a District Magistrate under this Code, or under any other law for the time being in force, as the State Government may direct.

In this case, it is not disputed that the State Government appointed the Collector of Tanjore as the Additional District Magistrate under Section 10(2), Criminal P.C. and conferred all the powers exercisable by the District Magistrate under the Code. The ordinary powers of the District Magistrate are enumerated in Schedule III, Part V of the Criminal P.C. in which the power to give sanction to the First Class Magistrate for tendering pardon is not included. From this, the learned Counsel for the petitioner points out that though the Additional District Magistrate was clothed with all the powers of the District Magistrate, by the State Government, as the power to grant sanction is not included in the schedule and that such power to sanction being a special power it cannot be said that such special power was conferred on him.

I am unable to agree with the contention of the learned Counsel. It is clear under Section 10(2) that the State Government may confer all or any of the powers under the Code namely Criminal Procedure Code, exercisable by the District Magistrate of the District by virtue of his appointment under Section 10(1) of the Criminal P.C. All the powers under the Code will undoubtedly mean the powers conferred on the District Magistrate under any provision in the Criminal Procedure Code. The powers are not limited only to those enumerated in the schedule. The

Code gives power to the District Magistrate to give sanction. This power is not conferred by the State Government on him as is done in the case of Additional District Magistrates. If the District Magistrate is specially empowered by the State Government to do a thing by virtue of a power conferred on the State Government, such power may not be said to be a power under the Code but that will be a special power. It is not the case here. As already noted, the power to give sanction to a First Class Magistrate is provided under the Code itself. No limitation can be placed on the language of Section 10(2) 'all or any of the powers under this Code' to the powers enumerated under the schedule.

Sadasivam, J. in *Manicka Pandurar v. State* 1968 Mad W N Cr 158 while considering this point held that the powers under the Criminal Procedure Code cannot be confined to the powers mentioned in Schedule 3 to the Code. I respectfully agree with Sadasivam J.

5. The learned Counsel for the petitioner drew my attention to a decision of the Supreme Court in *Ajaib Singh v. Gurbachan Singh* AIR 1965 SC 1619. The Supreme Court was concerned in that decision with the point whether an Additional District Magistrate appointed under Section 10(2) though clothed with all the powers of a District Magistrate was of the same rank of a District Magistrate or below the rank. It was held that an Additional District Magistrate appointed under Section 10(2) is undoubtedly below the rank of a District Magistrate appointed under Section 10(1) even though all the powers of a District Magistrate are conferred under Section 10(2) on the Additional District Magistrate. We are not concerned with that point in this case. I do not think the decision reported in the above case has got any bearing on the point to be decided in this case.

6. I therefore find that the First Class Magistrate, Pattukottai who tendered pardon to two approvers had valid sanction as required under Section 337, Criminal P.C. and that he had jurisdiction to do so.

7. This petition is dismissed.