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In Re: Charu Chandra

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Court : Kolkata

Decided On : Jul-20-1916

Reported in : 37Ind.Cas.57

Judge : Chaudhuri, J.

Appellant : In Re: Charu Chandra

Judgement :

Chaudhuri, J.

1. This is an application under Section 491 of the Criminal Procedure Code for the production of one Charu Chandra Majumdar, who was arrested under Section 54 by the Calcutta Police. A Rule was issued by the Chief Justice and Mr. Justice Walmsley constituting the Criminal Bench; but a question having been raised as to what the proper procedure is in a case of this character, as to whether such applications ought not to be made to the Judge exercising the Ordinary Criminal Jurisdiction of this Court, the matter has been sent to me for disposal. For a great number of years all these applications have been made as a Rule to the Original Side of this Court. With the exception of one case, namely, that of Rudolph Stallmann, I do not remember any single case in which that practice was departed from. An application was made in that case to a single Judge of this Court, but the Rule was evidently heard by three Judges forming a Special Bench constitute ed by the Chief Justice. Having regard to the practically uniform procedure of this

Court and the rules framed by the Court under Section 491 (2), Criminal Procedure Code, I hold that the Original Side in its Criminal Jurisdiction is the proper Court to deal with these applications. I find that the same is the procedure in Bombay--applications being made on its Crown Side. I apprehend the application was made in Stallmann's case following the practice obtaining in England, where such an application may be made to any Judge of the Supreme Court, but such a procedure, so far as I know, has no sanction so far as we are concerned. I have made the above observations as I have been asked by both sides to deal with the question of procedure in my judgment in this matter. It is to be noticed that an order made by me in the exercise of my Original Criminal Jurisdiction is appealable under our rules, whereas an order made by the Criminal Bench is not appealable.

2. Now coming to the matter of the application, Section 54, Criminal Procedure Code, authorises arrest without an order from a Magistrate and without a warrant only in certain circumstances, limited by the provisions therein contained. I need not deal with any other proviso except the first. In this case there was no complaint before the Police officer who arrested the applicant, and the question is as to whether he had received 'credible information,' or whether it can be said that reasonable suspicion' existed that the applicant was concerned in a cognizable offence. There was no information before the officer except the following letter:

To

The Commissioner of Police,

Calcutta.

Sir,

Re: enquiry into the affairs of the Bharat Luxmi Provident Company of Calcutta.

4. I respectfully beg to state that on enquiry made into the complaints against the above-named Bharat Luxmi Provident, Ld., 81, Clive Street, Calcutta, and their Agent, D. R. Soman of Khanapur, Bombay Presidency, it is found out that the Managing Agent, Charu Chandra Majumdar, of Calcutta, and Agent D. R. Soman,

of Bombay, have committed offences under Sections 409, 420, Indian Penal Code, as there is prima facie evidence to that effect. I, therefore, request that you will kindly arrange to have the said Charu Chandra Majumdar, the Managing Agent of the Company, SI, Clive Street, Calcutta, arrested and sent to the District Magistrate, Kanara, Karwar, for trial.

I beg to remain,

Sir,

Your most obedient servant,

(Sd.) R. V. Kowshik,

Police Inspector, C. I. D.,

Poona, on special duty in

Kanara District, Bombay

Presidency.

Respectfully forwarded through the

District Superintendent of Police, and the

District Magistrate, Kanara.

No. 1391 of 1916.

1. 3242

No. 7-5-16

Karwar 29th April 1916.

23-4-16.

Forwarded with compliments.

(Sd.) Daniel Donald,

D. S., Police, Kanara.

I. R. 1367

No. 4-5-16,

Karwar 3rd May 1916.

Forwarded with compliments.

5. The person in question may be caused to be arrested under Section 54 of the Criminal Procedure Code and forwarded to the Magistrate, 1st class, Karwar, by whom the case will be heard.

6. The letter, it will be noticed, contains no particulars. The note made by the Magistrate is merely a recommendation, which may be neglected. It is not suggested by the Crown that it may be read as warrant or that it should be considered of any value. If the Magistrate had materials before him, he was the proper officer to issue a warrant, but if he did not feel competent to exercise his power, his recommendation is worth nothing.

6. A statement of an indefinite character is all that was before the Police Officer who acted upon the letter, and apparently he did so being frequently applied to by the Police Officer at Kanara. It seems clear to me that the information upon which a Police Officer may act under this Section, must be such as enables him to conclude that it is credible, there must be facts before him to base his judgment upon. I do not think it can be said that a Police Officer has credible information, merely because a brother Police Officer in some remote part of the country writes a letter that he has information upon which he thinks that there is prima facie evidence' and that action ought to be taken under this Section. The discretion which is given to the officer who has to arrest, must mean discretion exercised by him upon consideration of the materials placed before him, not merely on intimation that some other Police Officer thinks that some offence or other has been committed. What the precise nature of the offence is, the letter does riot

state. A Police Officer acting under this Section has to act on his personal responsibility. If he could act on a representation made to him as in this case by a brother Police Officer that he had some information, the responsibility could be shifted from person to person, and the provisions of Section 220, Indian Penal Code, entirely nullified. Section 54 gives him personal authority and must involve personal responsibility. He has to be satisfied that he has credible information, and he has to show it.

7. I have next to consider the proviso about reasonable suspicion.' It may be argued that a Police Officer is justified in thinking that reasonable suspicion'exists when he is informed by a brother Police Officer holding a responsible position that the latter has information upon which he thinks a cognisable offence has been committed. I do not think the Section can mean such suspicion. If it be so construed, it may be carried to this extent, that any officer may write to any other officer that he suspects a man of having committed a cognizable offence and cause his arrest. The Section gives wide powers and ought to be rigorously construed. It is not mere suspicion, but the suspicion must be reasonable' -- reasonable according to the opinion and in the judgment of the officer called upon to arrest. I do not think the argument can be accepted that suspicion entertained by another officer, however responsible the office he may hold, is sufficient for the arresting officer to act upon, or that it is reasonable for him to entertain a suspicion because some one else suspects, as thereby he practically consigns his reason to another person, and gets rid of his personal responsibility. I think that reasonable suspicion' means reasonable suspicion based upon facts which have been brought to the knowledge or cognizance of the officer called upon to arrest--not suspicion which may be aroused in his mind by a communication from a brother officer without particulars. I am strengthened in my opinion by the case of Queen v. Behary Singh (1), where Markby, J., says: 'The widest power is that conferred by paragraph 2 of Section 100 (the then corresponding Section), which provides that a Police Officer may arrest without orders from a Magistrate and without warrant any person against whom a reasonable complaint has been made or a reasonable suspicion exists of his having been concerned in any offence specified1 in the schedule to the Act as offences for which Police officers may arrest without a warrant,' in other words, 'cognizable offences', in the words of the

present Code, What is a reasonable complaint or suspicion must depend on the circumstances of each particular case; but it must be at least founded on some definite facts tending to throw suspicion on the person arrested and not on mere vague surmise or information.' This case has been cited in later cases both here and in Bombay, and been tacitly followed. The Deputy Commissioner of Police, in his affidavit in answer to, the, application, says that he had no information about the case except what was contained in the letter above quoted. He had no personal knowledge of the facts, but he thought that upon the letter it was a fit and proper case in which he could exercise the powers conferred upon him bySection 54. He does not tell us whether he acted because he thought there was reasonable suspicion entertained by him or whether he thought he had credible information. A Magistrate's power to take cognizance of an offence under Section 190(1)(c) Criminal Procedure Code, is guarded by the words upon his own knowledge or suspicion,' and I do hot think that larger powers were intended to be given to a Police Officer. It is necessary in 'exercising such large powers to be cautious and circumspect, and I hold that reasonable suspicion' and credible information' in Section 54 must be based upon definite facts which the Police Officer must consider for himself before he acts under the Section. He cannot delegate his discretion, or take shelter under another person's belief or judgment. Any other interpretation would tend to diminish the sense of responsibility of the officers concerned, and make the exercise of the power dangerous, possibilities which ought to be guarded against. The Crown has placed this matter before me in the fairest manner possible, and has not desired that my decision should be based upon further materials which have come to the possession of the Police Officer since the arrest was effected. The applicant has also placed certain facts he has since ascertained, but under the circum-' stances I am not called upon to consider them, or discuss their relevancy. I make the Rule absolute and direct that the accused be set at liberty.

Rule made absolute.

8. Babu S. C. MuKerjee, Attorney, for the Petitioner.

9. Mr. J. T. Hume, Public Prosecutor, for the Crown.

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