SUPREME COURT OF INDIA

S.A.A.Biyabani

Vs.

State of Madras

Crl.A.No. 56 of 1953

(B. K. Mukherjea, Ghulam Hasan and B. Jagannadhadas, JJ.)

28.05.1954

JUDGEMENT

JAGANNADHADAS, J. :

This is an appeal by special leave against the judgment of the High Court of Madras reversing the acquittal of the appellant and convicting him under section 44 of the Madras District Police Act. The facts which have given rise to this prosecution and which are not in dispute are as follows. The appellant who belonged to Kurnool was in the year 1948, Sub-Inspector of Police in the Nellore District of the then State of Madras, having been recruited into the Police service in the year 1932. From the 11th May to the 25th June, 1948, he was on sanctioned leave and went to Cuddapah. On the expiry of the leave, he applied for extension of leave for two months enclosing a medical certificate and requested that his pay may be sent to the Station House Officer, Kurnool.

He was on that date eligible for leave to average pay for seven months. On receiving the application, the District Superintendent of Police, Nellore, sent a requisition to the District Medical Officer, Kurnool, to examine him. He was also directed to appear before the District Medical Officer, Kurnool, on the 10th July, 1948. He received the intimation but did not appear before the District Medical Officer. On the other hand, he left suddenly for Hyderabad on that very day. Admittedly he was at Hyderabad till about December, when he returned to Kurnool. Meanwhile his name was struck off from the service by the Madras Government as a "Deserter" with effect from the 25th August, 1948. On the 22nd December,1948, he sent from Kurnool, a petition to the Inspector-General of Police, Madras, through the District Superintendent of Police, Nellore, praying for reinstatement.

His prayer for reinstatement was refused and the present prosecution was initiated. On these facts a charge was framed against the appellant under section 44 of the Madras District Police Act. The explanation offered by the appellant in answer to the charge was as follows. During the period of his sanctioned leave, his eldest boy about 19 years of age left home without his knowledge and his whereabouts could not be known. He went to Cuddapah where his brother was serving as a Municipal Doctor hoping to find the boy there. He also searched at other places. In the course of the search, he came to know on the 10th July, 1948, at Kurnool, that the boy was seen by some common friend at Secunderabad. He immediately ran up to Hyderabad in search of the boy on the very day without presenting himself for medical examination since he felt that to be more urgent.

He says that he expected to come back from Hyderabad in a few days and present himself for

medical examination. He further says that when he went to Secunderabad, he was suspected by the Razakaras as being a spy of the Madras Police and that he was kept under close surveillance and custody by them and that, therefore, he could neither come away nor keep himself in communication with the authorities. According to his explanation he could move out of Hyderabad only in December, 1948 and on then knowing about the fact of his name having been struck off from service, he presented the application for reinstatement.

2. The charge against the appellant is under section 44 of the Madras District Police Act. The prosecution examined three witnesses in support of its case, while the appellant examined 14 witnesses to substantiate his defence. Section 44 of the Madras District Police Act is as follows:

"Every Police-Officer who shall be guilty of any violation of duty or wilful breach or neglect of any rule or regulation or lawful order made by competent authority 'or who shall cease to perform the duties of his office without leave, or without having given two months' notice as provided by this enactment' ..... shall be liable on conviction before a Magistrate to a penalty not exceeding three months' pay, or to imprisonment with or without hard labour not exceeding three months, or both".

What is alleged against the appellant is that he ceased to perform the duties of his office without leave or without having given two months' notice as provided. That he in fact failed to turn up for the duties of his office without leave and that he did so without having given two months' notice, are admitted but it is pleaded that no offence was committed since this was forced on him by circumstances. The learned Sub-Magistrate who acquitted the appellant was of the opinion that what is required to constitute an offence under the section is the intentional cessation to perform the duties of the office without leave or without giving two months' notice. On the evidence he came to the conclusion that the prosecution failed to make out that the cessation from duty by the appellant was intentional.

His finding is as follows:

"From the evidence on behalf of the prosecution, the prosecution has not proved that the intention of the accused was to abscond. It has to be considered whether the accused ceased to perform the duties of his office by his own free will or compelled by circumstances beyond his control to stay away from duty. The communal disturbances in Hyderabad were notorious facts of which judicial notice can be taken. Even according to the prosecution, the accused was in Hyderabad at that time. The prosecution has not shown satisfactorily why the evidence on behalf of the defence should be discredited".

The learned Magistrate accordingly gave the benefit of doubt to the appellant and acquitted him. On appeal by the State against the acquittal, the learned Judge of the High Court stated the point rightly when he said that the whole question depends on whether the explanation of the accused is to be accepted, viz. that on the 10th July, 1948, he heard that his son was seen at Secunderabad and that, therefore, he had to leave in search of him and that when he went to Hyderabad, he became a captive to the Razakars and was not able to get out until December, 1948. The learned Judge noticed that the appellant gave positive evidence in support of his explanation, but in his opinion, the witnesses were not speaking the truth.

Now it is to be remembered that the appeal before the high Court was one against acquittal. While no doubt on such an appeal the High Court was entitled to go into the facts and arrive at its own estimate of the evidence, it is also settled law that, where the case turns on oral evidence of

witnesses, the estimate of such evidence by the trial court is not to be lightly set aside. This has been laid down by this Court in -'Surajpal Singh v. The State', AIR 1952 SC 52 at p. 54 (A) and reiterated more than once. See also the latest decision in - 'Madan Mohan Singh v. State of Uttar Pradesh', AIR 1954 SC 637 (B).

As pointed out above, the trial court was inclined to accept the evidence of the defence witnesses through whom the explanation put forward by the accused was sought to be proved. We have not been able to find any sufficient reason given by the learned Judge, why, differing from the trial court, these witnesses are to be considered unreliable. The learned Judge appears to have discredited their evidence on certain comments not touching their reliability but on general considerations said to indicate that the explanation was not probable. It was said that if the explanation was true, the appellant might have done a number of things which he did not do. The appellant was not asked about any of these supposed omissions by him.

The reasons for which the learned Judge discredited the evidence of the defence witnesses, whom the learned trial Magistrate was inclined to accept are no more than a general suspicion against the truth of the story put forward by the appellant. It is no doubt remarkable that the appellant, according to him, came to know from D. W. 13 about his having seen his missing son at Secunderabad on the very date on which he had to present himself for medical examination, i. e. 10th July , 1948. But such general suspicions are not by themselves enough in an appeal against acquittal to dispute the credibility of witnesses, whom a trial Magistrate was inclined to accept.

3. Apart, however, from any question whether the appellant has been able to make out positively the truth of his explanation the material question in the case which the learned Judge appears not to have noticed is that the prosecution has to make out that the cessation of the appellant from duty was intentional. It is not disputed that under section 44 of the Madras District Police Act it is the prosecution that has to make out the cessation intentional. No doubt in an ordinary case where no other special circumstances appear on the record, the Court might well assume, that cessation as a fact, was intentional cessation. But where as in this case other circumstances appear, the requisite intention has to be clearly made out.

The prosecution apparently realising this have in the charge put forward a positive case that the appellant left for Hyderabad to seek a job, but gave no evidence to substantiate it. The learned Government advocate for the State also laid particular stress on the following portion of the answer of the appellant to the charge framed against him.

"Owing to the very disturbed conditions and explosive situation immediately after the Police action I could not make bold to show out. After the situation considerably eased up by December 1948 I returned to Kurnool, and came to know that I was treated by the Madras Government as a 'deserter'. I immediately sent up a petition on 22nd December, 1948, to the Inspector-General of Police".

In view of the admitted fact that the Police Action in Hyderabad took police in September, 1948, the learned Government Advocate urged that this portion of the appellant's explanation shows that he could not have been under such restraint after September, 1948 and right up to December, 1948, so as not to be able to return to duty or to send up a petition to his superiors informing them about his situation shortly after the Police Action. There is nothing in the evidence to show when exactly normal conditions in Hyderabad were restored.

It is not to be assumed that the Police Action brought about normal conditions from that very date.

Nor is it fair to read the portion of the appellant's explanation above extracted as constituting an admission that the normal conditions became more or less restored though not to the full extent, immediately after the Police Action.

4. In our opinion the judgment of the High Court discloses no adequate reason for the reversal of the acquittal with reference to the standards laid down by this Court. The appellant was entitled to the benefit of doubt and the acquittal should not have been set aside. The appeal is accordingly allowed and the appellant is acquitted.

Appeal allowed.

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