

Pritam Singh

Vs

State of Haryana

Criminal Appeal No. 240 of 1968

(C. A. Vaidialingam, A. N. Ray JJ)

15.03.1971

JUDGMENT

VAIDIALINGAM, J. -

1. In this appeal, by special leave, the appellant accused challenges the judgment and order, dated February 8, 1968, of the Punjab and Haryana High Court in Criminal Revision No. 237 of 1967, confirming the conviction and sentence passed against him for an offence under Section 29 of the Police Act, 1861 (hereinafter to be referred as the Act).

2. The appellant was at the relevant period a constable having roll number 857. He was originally recruited in 1950 to the police service in the composite Punjab State; and on the formation of the state of Haryana, he was allotted to Haryana. The appellant was posted to do duty at the police lines, Karnal, before November 25, 1963. It was reported by the Lines Officer on November 25, 1963 that when roll-call was taken on the evening of that day at about 6.30 p.m., the appellant was found absent. The report also refers to the absence of certain other police officers, with whom we are not concerned. The Judicial Magistrate, Karnal, issued what is stated to be a notice, dated January 14, 1966 to the appellant, alleging that he was found absent from duty from the police lines at the time of the roll-call on November 25, 1963. He was asked to explain why he should not be held guilty under Section 29 of the Act. The appellant stated that he would neither plead guilty nor would he admit that he remained absent from duty. He was further stated that he was mentally upset in view of the sudden deaths of his mother and brother-in-law, and also due to his children being cut off from him. He wound up his answer by saying that he was under medical treatment in the civil hospital, Karnal, and the doctor therein sent him to Patiala.

3. He was tried for an offence under Section 29 of the Act on the ground that he was absent from duty on November 25, 1963. The Judicial Magistrate, by his order, dated March 4, 1966, found the appellant guilty of the offence and sentenced him to pay a fine of Rs. 5/- and in default to undergo simple imprisonment for seven days. The learned Magistrate considered the plea of the accused regarding his having undergone treatment in the civil hospital, as also the evidence of the doctor who has spoken to this fact, and held that the case of the accused requires a very sympathetic consideration. But nevertheless the Magistrate found that as the appellant was technically guilty of the offence under Section 29 of the Act, with which he was charged, he has to be punished. Accordingly, he convicted him and imposed the fine, as stated above. The appellant challenged his conviction and sentence before the learned Sessions Judge as well as the High Court, but was unsuccessful.

4. Though several contentions regarding the legality of the conviction have been taken by Mr.

Lakshminarasu, learned counsel nominated to represent the appellant by the Legal Aid Society of the Supreme Court Bar Association, in the view that we take regarding the prosecution being barred by limitation under Section 42 of the Act, it becomes unnecessary to refer to those contentions and deal with them.

5. We have already referred to the fact that the allegations against the appellant related to his absence from duty on November 25, 1963, stated to be an offence under Section 29 of the Act. The notice issued by the Judicial Magistrate was on January 10, 1966. The contention that is taken by Mr. Lakshminarasu based on Section 42 of the Act is that the prosecution against the appellant has been commenced beyond the period of three months, as provided in Section 42 of the Act, and therefore, the trial and other proceeding landings up to the conviction of the appellant are illegal and void. The counsel pointed out that the act complained of was the appellant's absence from duty at the time of the roll-call on November 25, 1963. The earliest stage taken in this case for prosecuting the appellant was on January 10, 1966 when the Judicial Magistrate issued the notice to the appellant calling upon him to explain why he should not be held guilty under Section 29 of the Act. That notice was issued long after the expiry of three months from the date of the commission of the offence complained of. In fact, Mr. Lakshminarasu argued that the date of filing the complaint will be date when prosecution is commenced. But he was willing to assume that the issue of the notice on January 10, 1966, is a stage in the prosecution. Even then he argued that the prosecution is barred under Section 42 of the Act.

6. It is no doubt true that this point has not been taken as such before any of the courts; But in the statement given on February 9, 1971 regarding the propositions of law to be advanced before this Court, this contention has been specifically raised. A copy of the said statement has been given to the counsel for State the same day. However, the point that is raised is a pure question of law, not involving any further investigation of facts. We therefore permitted counsel for the appellant to raise his legal contention.

7. The question therefore is whether the prosecution initiated against the appellant in this case is barred by limitation under Section 42 of the Act. The material part of Section 42, relevant for the present purpose reads as follows :

"All..... prosecutions against any person, which may be lawfully brought of anything done or intended to be done under the provisions of this Act, or under the general police powers hereby given shall be commenced within three months after the act complained of she have been committed, and not, otherwise,"

From the section quoted above, it will be clear that the period of three months prescribed for commencing a prosecution under the said section is only with respect to prosecution of a person for something done or intended to be done by him under the provisions of the Police Act or under the general police powers given by the Act. It is clear that the appellant's prosecution was initiated against him for something done under the provisions of the Act, namely, non-compliance with the requirement to be on duty as required under the Police Act. Therefore, under Section 42 of the Act, the prosecution should have been commenced against the appellant within three months after the act complained of has been committed. The act complained of was alleged to have been committed on November 25, 1963. Even treating the notice issued by the Judicial Magistrate as amounting to commencement of prosecution, it took place only on January 10, 1966, long after the expiry of three months from the date of the commission of the offence. Therefore, the prosecution commenced against the appellant is barred by limitation under Section 42 of the Act.

8. In this case there is no controversy that the offence with which the appellant was charged was one under Section 29 of the Act and for the said offence he was tried and convicted. Mr. B. D. Sharma, learned counsel for the respondent-State, faced with this situation urged that in the notice issued by the Judicial Magistrate, Karnal, to the appellant on January 10, 1966, it was specifically stated that the appellant was absent not only on November 25, 1963, but that he also continued to be absent as before. According to he learned counsel, this clearly means that even on the date when the motive was issued to the appellant, that is, on January 10, 1966, the appellant was absent and was guilty of an offence under Section 29 of the Act and hence the prosecution has commenced within the period mentioned in Section 42 of the Act. We are not inclined to accept this contention. A perusal of the orders of the Trial Magistrate, the learned Sessions Judge and the High Court, clearly show that the appellant was tried on the specific charge of having absented himself from duty on November 25, 1963. The notice issue by the Magistrate on January 10, 1966 also refers to the report of November 25, 1963 about the appellant's being absent on that evening at roll-call. For his absence on November 25, 1963 he was called upon the show cause why he should not held guilty under Section 29 of the Act. Further it is also seen from the examination of the accused under Section 342, Code of Criminal Procedure, that a specific question was put to him. "If is in evidence against you that you were absent from the Police Lines Karnal on 25-11-1963 and as such were marked absent at the time of Roll-call. What do you say to it ?" We are only referring to this question to show that the specific allegation against the appellant related to his absence on November 25, 1963 and it was the evidence in the regard that was put to the appellant for offering his explanation.

9. All the above facts clearly show that the appellant was tried and convicted for an offence under Section 29 of the Act in which case the prosecution for such an offence should have been done within the time laid down thereunder.

10. We may also refer to the decision of this Court in Maulud Ahmad v. State of Uttar Pradesh ((1963) Supp 2 SCR 38.) wherein it has been held that if there is a prosecution of a police officer for an offence under Section 29 of the Act, such a prosecution should be done within the period of limitation mentioned in Section 42 of the Act. In that case the appellant therein, a Head constabler was charged and tried, along with another person, for various offences under the Indian penal Code, such a Sections 304-A and 218/109. The other, accused was acquitted but the head constable was convicted under Section 218, I.P.C. One of the contentions raised by the appellant before this Court was that as the prosecution was launched against him more than three months after the commission of the offence, it was barred by limitation under Section 42 of the Act. This Court after a perusal of the scope of Sections 36 and 42 of the Act rejected the contention of the appellant. This Court held that the head constable was prosecuted and convicted for offence not under the Act but under the Indian Penal Code. To such prosecution, it was held that Section 42 did not apply. On the other hand, it was held that Section 42 of the Act applies to a prosecution against a person for an offence under Section 29 of the Act. The conclusion arrived at by us that the prosecution in the case on hand is barred by Section 42 of the Act is also supported by the decision quoted above.

11. To conclude, it is clear that the prosecution against the appellant has been commenced beyond the period of three months and as such it is barred by limitation under Section 42 of the Act. Hence the orders of the High Court and the two subordinate courts are set aside. In consequence, the conviction of the appellant as well as the levy of fine are also set aside.

12. The appeal is allowed and fine, if collected, shall be refunded, to the appellant.

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