

ANDHRA PRADESH HIGH COURT

Public Prosecutor

Vs.

A.V. Ramiah

Criminal Appeal No. 149 of 1956, Gudivada in C. C. No. 8 of 1956

(Subba Rao, C.J. and Basi Reddy, J.)

20.11.1957

JUDGMENT

Basi Reddy, J.

1. This case has been referred to a Division Bench by our learned brother Manohar Pershad J., as it involves an important question of law relating to the interpretation of Section 13 of the Madras Gaming Act, 1930.
2. This is an appeal by the State Government against an order of acquittal passed by the First Class Bench Magistrate, Gudivada, in Calendar Case No. 8 of 1956 on his file.
3. This case reveals a regrettable state of affairs and depicts the non-co-operative attitude adopted by some police officers in the conduct of criminal cases before Magistrates.
4. The facts are as follows: On 27-1-1956 the Sub-Inspector of Police, Gudivada Town, filed a charge-sheet against the respondent in the Court of the First Class Bench Magistrate, Gudivada, under Section 12 of the Madras Gaming Act alleging that on 26-1-1956 at about 4 p. m., the respondent was found gaming with cards and money along with some others in Pedayerukapadu fields at Gudivada. Three witnesses were cited for the prosecution : (1) Shri A. Ramasodana Rao, C. I. of Police, Gudivada Town, (2) Shri M. Sriman-narayana, S. I. of Police, C-1 Station (he was the Station House Officer who laid the charge-sheet) and (3) D. Venkateswararao.
5. The history of the case may be set out in chronological order as appears from the calendar.

Date of first hearing : 27-1-1956.

27-1-1956:- Accused present. Being questioned he pleaded not guilty. Issue summons to P. Ws. Case adjourned to 3-2-1956.

3-2-1956:- Accused present. P. Ws. not present. Summons not returned. Issue fresh summons and obtain acknowledgment of their receipt. Case adjourned to 10-2-1956. Bind over accused.

10-2-1956:- Accused present. P. Ws. not present. Summons not returned. Issue fresh summons and address the C. I. also separately. Case adjourned to 17-2-1956. Bind over the accused.

17-2-1956:- Accused present. P. Ws. not present. C. I. and S. L were reported as having gone to Masulipatnam. Case adjourned to 24-2-1956. Bind over accused. Issue summons to P. Ws. through P. C. 2093.

24-2-1956:- Accused present. P. Ws. not present. Summons not returned. Issue fresh summons with a D. O. letter to the C. I. of Police. Case adjourned to 2-3-1956 in consideration of the memo filed for the S. H. O. Bind over the accused.

2-3-1956:- Accused present. P. Ws. not present. Summons not returned. Issue fresh summons with a D. O. letter to the C. I. Case adjourned to 9-3-1956. Bind over accused.

6. A letter dated 2-3-1956 and signed by the Magistrate was addressed to Shri A. Ramasodana Rao, the C. I. of Police.

Subject:- Courts - Cri. - 1st Class Bench Court, Gudivada - non-attendance of the P. Ws. in P. C. 29 of 56 and B. C. No. 8 of 56 - report transmitted.

Ref:- Your petty case 29 of 56 under Section 12 of the Madras Gaming Act.

"A charge-sheet was filed by the S. H. O. Gudivada Town under Section 12 of Madras Gaming Act against one A. V. Ramayya of Parikipadu. This was taken on file as B. C. No. 8 of 56 and accused was examined. He denied the offence. Thereon summons were issued to P. Ws. But the S. H. O. Gudivada town has not attended the Court so far along with P. Ws. to conduct the prosecution.

You are also cited as a witness in this case. This case is being adjourned long and inordinately for want of the presence of the P. Ws. I request you to attend the Court on 9-3-1956 at 7-30 a. m. along with the S. H. O. Gudivada Town and other P. Ws. as the case was posted to that date for trial. Please treat this as specially urgent."

Yours sincerely,

Sd/-

2-3-1956.

9-3-1956:--- Accused present. P. Ws. not Present, including the S. H. O. (Gudivada Town). Judgment delivered. Accused acquitted under Section 247, Criminal Procedure Code

7. The order passed by the learned Magistrate is in the following terms:

"The case was called on for hearing today to which it had been adjourned. The complainant not being present either in person or by pleader, the accused is acquitted

under Section 247, Criminal Procedure Code."

Sd/- C. Nagabhushanam,

9-3-1956

Presiding Magistrate, 1st Class Bench, Gudivada.

8. Thus a petty case in which only three witnesses had been cited for the prosecution, two of whom were police officers, and which should not have normally taken more than an hour, underwent six adjournments at each of which the accused alone was present, and dragged for about six weeks, at the end of which the Magistrate resolved the dead-lock by acquitting the accused under Section 247, Criminal Procedure Code.

9. The State seeks to have this acquittal set aside as being opposed to law. The learned Public Prosecutor contends that as the case was instituted on police report and not on a complaint, the Magistrate has erred in law in acquitting the accused under Section 247, Criminal P. C, for non-appearance of the complainant.

10. The learned Advocate for the respondent meets this argument by saying that what was filed by the Sub-Inspector of Police was a charge-sheet only in name but it was in fact a complaint.

11. To appreciate the rival contentions, it is necessary to examine the relevant provisions of the Criminal Procedure Code and the Madras Gaming Act.

12. Section 247, Criminal P. C, which occurs in Chapter XX deals with the trial of summons-cases by Magistrates, and runs as follows:

"If the summons has been issued on complaint, and upon the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall, notwithstanding anything hereinbefore contained, acquit the accused, unless for some reasons he thinks proper to adjourn the hearing of the case to some other day". (The proviso is not material for purposes of this case).

13. If the charge-sheet filed in this case under Section 12 of the Madras Gaming Act was a complaint and not a police report, then the order of acquittal would be unassailable.

14. Section 4 (h) defines "complaint" as the allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person whether known or unknown, has committed an offence, but it does not include the report of a police officer.

15. Under Chapter XIV of the Criminal P. C, a police officer is empowered to investigate into any cognizable offence within his jurisdiction and submit a report under Section 173, Criminal Procedure Code, to the concerned Magistrate. A police officer cannot, however, investigate into a

non-cognizable offence without the order of a Magistrate.

16. Section 4 (f) defines "cognizable offence" as an offence for, and "cognizable case" as a case in which a police officer within or without the presidency towns, may, in accordance with the second schedule or under any law for the time being in force, arrest without warrant.

17. Now, the question for consideration is whether or not an offence under Section 12 of the Madras Gaming Act is a cognizable offence. If it is a cognizable offence, a police officer would have the power to investigate and submit a police report; in other words, can a police officer arrest a person without warrant for an offence under Section 12 of the Gaming Act? Section 13 of the said Act furnishes the answer and it is in the negative, for it says that any police officer may arrest without a warrant any person committing 'in his view' any offence made punishable by this Act. Thus Section 13 does not give an unrestricted power of arrest to a : police officer but gives him only a limited power in that he can arrest without a warrant only if the offence is committed in his view but not otherwise. It is not for all offences under Section 12 but only for some, that a police officer may arrest without warrant. It follows that an offence under Section 12 of the Gaming Act is not a cognizable offence within the meaning of Section 4 (f), Criminal P. C, and a police officer cannot investigate into it without the order of a Magistrate as required by Section 155 (2), Criminal Procedure Code.

18. But if, as in this case, a police officer does investigate into an offence under Section 12 of the Gaming Act without the order of a Magistrate and files a charge-sheet, it is nonetheless to be treated as a complaint and not as a police report. The label put on it by the Sub-Inspector of Police is of no significance.

19. We are accordingly of the view that the order of the learned Magistrate acquitting the respondent under Section 247, Criminal Procedure Code, for the non-appearance of the Sub-Inspector of Police, Gudivada, who was the complainant in the case, was legal and proper.

20. We may now refer to some of "the rulings cited by the learned Advocate for the respondent which lend support to the view we have taken.

21. In *King Emperor v. Sada*¹, a Full Bench of the Bombay High Court had to consider the scope of Section 250, Criminal P. C, which empowers a Magistrate to award compensation to a discharged or acquitted accused in false, frivolous or vexatious cases instituted on complaints. In that case a police constable filed a complaint against one Sada for committing a nuisance on the public road, an offence punishable under Section 61 of the Bombay District Police Act (Bombay Act IV of 1890). The Magistrate, after hearing the evidence adduced in the case, discharged the accused, and, finding that the complaint against accused was vexatious, ordered the complainant to pay to the accused Sada Rs. 10/- as compensation under Section 250, Criminal Procedure Code. It was contended before the Full Bench that the information lodged by the police constable

was not a complaint but was a police report and, therefore, the Magistrate had no jurisdiction to award compensation to the accused person. The learned Judges repelled that argument and held that as the offence under Section 61 of the Bombay District Police Act was not a cognizable offence, the information laid before the Magistrate by the police constable was a complaint and not a police report. They pointed out that there is no section in the Criminal Procedure Code which empowers a police officer to make, of his own motion, any report to a Magistrate in a non-cognizable case; hence, where he files a

¹ ILR 26 Bom 150

formal complaint in such a case, he cannot be said to make a report and his complaint falls within the definition of 'complaint' in Section 4 (h) of the Criminal Procedure Code.' At page 158 Chandavarkar J., observed as follows:

"It appears to me that the Code has carefully specified the purposes for which and the occasions when the police are empowered to make reports as to offences committed or threatened, and when they travel beyond them, their reports cease to have the privilege conferred upon them by the Code and can only come within the definition of "complaint" which is wide enough to include them."

This decision was quoted with approval by a Division Bench of the Madras High Court in *Chidambaram Pillai v. Emperor*²,

22. A similar view was taken in *Mallikhar-juna Prasada Rao v. Emperor*³, There it was held that the report of the police officer for an offence under Section 182, Indian Penal Code, was a complaint and not a police report. In the course of the judgment Burn J., observed:

"The report of the police officer in this case was a "complaint" as defined in the Criminal Procedure Code. It could not be considered to be such a police report as is excluded from the definition of a complaint in Section 4 (1) (h) of the Criminal Procedure Code, because that kind of report can only be made by the police in cognizable cases. This is quite obvious. If the case were otherwise, it would lead to the absurd conclusion that no police officer can ever make a complaint".

In the result, this appeal fails and is dismissed.

Appeal dismissed.

² ILR 32 Mad 3

³1933 Mad WN 576