

ANDHRA PRADESH HIGH COURT

Boddepalli Lakshminarayana

Vs.

Suvvari Sanyasi Appa Rao

Criminal Appeal No. 456 of 1957, Srikakulam in A. No. 119 of 1957

(Sanjeeva Rao Naidu, J.)

07.10.1958

JUDGMENT

Sanjeeva Rao Naidu, J.

1. This is an appeal preferred by the complainant against the judgment of the learned Additional Sessions Judge, Srikakulam, acquitting the accused persons in this case.

2. In the original complaint, there were four accused of which the second and the fourth accused were acquitted by the Judl. Second Class Magistrate, Srikakulam, under Section 251-A of the Criminal Procedure Code. Accused 1 and 3 were convicted under Section 380 Indian Penal Code and sentenced to simple imprisonment till the rising of the Court and to pay a fine of Rs. 250 each or in default to undergo simple imprisonment for a month. Accused 1 and 3 preferred an appeal against their convictions, to the Sessions Judge, Srikakulam, who, as aforesaid, acquitted them of the charge. Hence this appeal.

3. The facts of the prosecution case are as follows : The complainant, examined as P.W. 1, is the owner of a printing press which was located in the premises of an ashramam known as Srinivasa Asharamam near Dusi village. P.W. 1 had purchased the press from one Pappala China Ramadasu examined as P.W. 4 under Ex. P-1 dated 21-11-1955, which is a registered agreement for the sale of the press, for Rs. 4,000/-. Out of this sale consideration, Rs. 3,500/- was paid at the time of execution of Ex. P-1 and, subsequently, the balance of Rs. 500/- was paid on 10-1-1956, as evidenced by Ex. P-2. Prior to the sale of the press to P.W. 1, the press was registered in the name of P.W. 4 who was declared the keeper and proprietor of the press under Section 4 of the Press and Registration of Books Act (Act XXV of 1867).

4. Some time prior to 25-3-1956, the date of the offence, the complainant, P.W. 1, had left for Kurnool after locking the room in which the press was located. On the night of 25-3-1956, the

case for the prosecution is, that accused 1 and 3, taking advantage of the absence of P.W. 1 from the village, broke open the lock of the room and with the assistance of some cart-men removed the press, in portions, by bullock-carts to the house of the first accused in the village of Korlakota. This is said to have happened at mid-night on the 25th-26th March 1956. When the complainant returned to Dusi on 27-3-1956, he found the press missing and, having come to know from P.Ws. 2 and 3 that the press had been stolen, made a report to the police, Ex. P. 13. Strangely enough, the police took no action in the matter and hence P.W. 1 was necessitated to prefer a private complaint.

5. Although the simple point for consecration in this case was whether the accused removed the press from the possession of P.W. 1 with a dishonest intention so as to bring the case within the scope of Section 380 Indian Penal Code, both the Courts below embarked on an elaborate examination of the title to the press, the origin of that title, the parallel title set up by the accused and various other extraneous and irrelevant matters which did not arise for consideration at all in this case. A criminal court is not competent to adjudicate upon the civil rights of parties in respect of their title to or ownership of property whether movable or immovable. That would be trespassing into the exclusive jurisdiction of a civil court, loc, in a theft charge, all that the court has to decide is whether at the time of the alleged occurrence the property that was the subject matter of theft was in the possession of the complainant and whether it was moved out of the complainant's possession with a dishonest intention, It was this error on the part of the Courts below that has resulted in their receiving as evidence unnecessary and irrelevant matter in this case, thus burdening the record for no justifiable reason.

6. Before dealing with the merits of the complaint and the evidence in support thereof, it would be necessary to notice the relevant provisions of the Press and Registration of Books Act, 1867 (Act XXV of 1867). Section 3 of the Act runs as follows :

"Every book or paper printed within the States shall have printed legibly on it the name of the printer and the place of printing, and (if the book or paper be published) the name of the publisher and the place of publication."

Section 4 of the Act requires the keeper of the printing press to make a declaration before the Magistrate within whose local jurisdiction such press is located and is in the following terms :

"No person shall, within the states, keep in his possession any press for the printing of books or papers, who shall not have made and subscribed the following declaration before the Magistrate within whose local jurisdiction such press may be :

"I, A. B., declare that I have a press for printing at..."

And this last blank shall be filled up with a true and precise description of the place where such press may be situate".

Section 5 of the Act also requires to be noticed and is as follows :

"No newspaper shall be published in the States except in conformity with the rules hereinafter laid down :

(1) Every copy of every such newspaper shall contain the name of the person who is the editor thereof printed clearly on such copy as the name of the editor of that newspaper :

(2) The printer and the publisher of every such newspaper shall appear in person or by agent authorised in this behalf in accordance with rules made under Section 20, before a District, Presidency or Sub Divisional Magistrate within whose local jurisdiction such newspaper shall be printed or published, or such printer or publisher resides, and shall make and subscribe, in duplicate, the following declaration :

"I, A. B., declare that I am the printer or publisher, or printer and publisher of the newspaper entitled and printed or published, or printed and published, as the case may be, at"

And the last blank in this form of declaration shall be filled up with a true and precise account of the premises where the printing or publication is conducted.

(3) As often as the place of printing or publication is changed, a new declaration shall be necessary.

(4) As often as the printer or the publisher who shall have made such declaration as is aforesaid shall leave the States, new declaration from a printer or publisher resident within the said territories shall be necessary.

Provided that no person who has not attained majority in accordance with the provisions of the Indian Majority Act, 1875, or of the law to which he is subject in respect of the attainment of majority shall be permitted to make the declaration prescribed by this Section, nor shall any such person edit a newspaper".

7. Section 6 requires that the declaration so made and subscribed as in Sections 4 and 5, shall be authenticated by the signature and official seal of the Magistrate before whom the said declaration shall have been made and one of the said originals should be deposited among the record of the office of the Magistrate and the other among the records of the High Court of Judicature or other principal Civil Court of Original jurisdiction for the place where the said declaration shall have been made. Section 7 declares that in any legal proceeding whatever, civil as well as criminal, the production of a copy of the declaration as is aforesaid, attested by the seal of some court empowered by this Act to have the custody of such declarations, shall be held to be sufficient evidence that the said person was printer or publisher, or printer and publisher as the case may be. Section 13 of the Act prescribes the penalty for keeping a press without making the declaration required by Section 4 and is as follows :

"Whoever shall keep in his possession any such press as aforesaid, without making such a

declaration as is required by Section 4 of this Act, shall, on conviction before a Magistrate, be punished by fine not exceeding two thousand rupees, or by simple imprisonment for a term not exceeding six months or by both."

Sections 14 and 15 also prescribe incidental penalties in respect of the keeper of a press and are in the following terms :

"14. Any person who shall in making any declaration under the authority of this Act, make a statement, which is false, and which he either knows or believes to be false or does not believe to be true, shall on conviction before a Magistrate, be punished by fine not exceeding two thousand rupees, and imprisonment for a term not exceeding six months.

15. Whoever, shall edit, print or publish any newspaper without conforming to the rules hereinbefore laid down, or whoever shall edit, print or publish, or shall cause to be edited, printed or published, any newspaper, knowing that the said rules have not been observed with respect to that newspaper, shall, on conviction before a Magistrate, be punished, with fine not exceeding two thousand rupees or imprisonment for a term not exceeding six months or both."

It may be seen from the above provisions that the law requires that a keeper of a press should make a declaration before the competent Magistrate which should be authenticated by the Magistrate and deposit one copy of the declaration with the latter and the other with the High Court or other principal Civil Court of original jurisdiction; and prohibits a person from keeping the press without having lodged such a declaration as aforesaid.

8. In this case, such a declaration was lodged by P.W. 4 as evidenced by Exs. P-4 and P-5 which are certified copies of the declarations lodged with the District Magistrate and issued by the Addl. Dist. Magistrate, Srikakulam. Ex. P. 3 is a similar declaration in respect P.W. 1 declaring that he is the keeper of the press. It may be seen from these documents that originally P.W. 4 was the keeper of the press and he sold it to P.W. 1; and subsequent to the sale, P.W. 1 had been declared as the keeper of the press in question under the Act. This being the case, it way quite unnecessary for the Courts below to enter into an examination of the possible title Or ownership of the press, for no such title or ownership can be recognised as entitling a person to keep the press in his possession in the absence of such a declaration filed and authenticated under Act XXV of 1867. It is found as a fact by the learned Judl. Second Class Magistrate that no such declaration was made and lodged, either by the 1st accused or by the 3rd accused.

9. It is submitted by the accused that the press was taken away by them, although they say that it was taken away not in the night but only in the day time. It is immaterial when the removal of the press had taken place, if it had in fact taken place and if the dishonest intention could be inferred from the entire facts and circumstances of the case.

10. The learned Judl. Second Class Magistrate, who went carefully into the evidence, came to the conclusion that there was ample evidence to show that the press had been removed on the active directions of accused 1 and 3 and that this is further supported by the accused's own admission that the press had been removed by them. It is however unfortunate that the learned Sessions Judge did not care to consider the various ingredients necessary to be established before an offence under Section 380 Indian Penal Code could be held to have been proved. Section 37B Indian Penal Code defines theft and is in these terms :

"Whoever, intending to take dishonestly any moveable property out of the possession of any person without that person's consent, moves that property in order to such taking is said to commit theft.' Section 379 is the punishment Section, which provides for a punishment of three years imprisonment or fine or both. Section 380 Indian Penal Code relates to an aggravated form of theft, that is, theft in a dwelling house and a higher punishment namely, of seven years imprisonment and fine is prescribed. It runs thus :

"Whoever commits theft in any building, tent or vessel, which building, tent or vessel is used as a human dwelling or used for the custody of property, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

It may be seen from the above Sections that the following ingredients of the offence have got to be established before the offence could be said to have been brought home to the accused persons charged in this case :

1. The movable property must have been taken out of the possession of a person.
2. Such taking should have been without that person's consent.
3. In order to the taking of the property, the property in question should have been moved and such moving should have been done intending to take it dishonestly.

4. The moving should take place in a building. - The expression 'dishonestly' has been defined in Section 24 thus :

"Whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person is said to do that thing 'dishonestly.'"

11. "Wrongful gain" is regarded as gain by unlawful means of property to which the person raiding is not legally entitled. Similarly, 'wrongful loss' is defined as the loss by unlawful means of property to which the person losing it is legally entitled. There is nothing peculiar about the expression 'dishonestly' employed in the Indian Penal Code. All that is required to be proved in order to establish that the person doing the act was doing it dishonestly is, that by that act he is gaining by unlawful means of property to which he is not legally entitled to gain, or that any

person is losing property by reason of that act which the person losing is legally entitled. The expression 'dishonestly' used in the Indian Penal Code should not be confused with the commonly used word 'dishonestly' which is understood to involve an element of fraud or deceit. In this case, under law, the only person who could keep the press in his possession is P.W. 1. By removing the press out of the possession of P.W. 1, the accused responsible for such removal were gaining by unlawful means, that is, by unlawfully breaking open the lock and taking away the press and acquiring possession thereof, which they are not entitled to keep in their possession, having regard to the general law as well as the provisions of Act XXV of 1867. Similarly, the direct result of their removal of the press from out of the complainant's possession is the causing of loss to the complainant who is the lawful keeper of the press, in that he is no longer having possession of the press, and cannot, therefore, use it which he is legally entitled to do by reason of the declarations and authentication referred to already.

There is therefore no doubt that the act of the accused in removing the press from the possession of P.W. 1 - whether such removal had taken place during the day or during the night and whether such removal was effected under a claim of right or not - was, in law, done dishonestly within the meaning of the Indian Penal Code and hence all the ingredients that are necessary to be proved for establishing the offence under Section 380 Indian Penal Code are shown to be present in this case. It is contended by the learned counsel for the accused 1 and 3 that the act of the accused in removing the press from out of the custody of the complainant was done under a *bona fide* claim to the press as the rightful owners and as such the accused could not be held to have committed any offence in this case. There is, in my opinion, no merit in this contention. At the outset, it must be noticed that the removal could not have been *bona fide* as under law the accused could not lawfully keep the press in their possession at the time of its removal having regard to the provisions of the Press and Registration of Books Act extracted above. Further, to a charge of theft, the plea that the property was removed under a *bona fide* claim of right would not avail. For example, a person who *bona fide* believes that the fountain pen on his neighbour's desk is his has no right in law to trespass into the neighbour's house and snatch away the pen without the latter's consent. The offence of theft is essentially against the possession of another of the movable property involved. The accused are thus clearly guilty of the offence charged against them and the learned Sessions Judge was completely wrong in allowing himself to be digressed by considerations which are totally inadmissible and irrelevant in the disposal of the case.

12. I therefore find the accused persons (accused 1 and 3) guilty of the offence under. Section 380, Indian Penal Code.

13. The only question that requires to be examined is as regards the sentence. The learned Judl. Second Class Magistrate sentenced the accused persons to simple imprisonment till the rising of the court and to a fine of Rs. 250/- each or in default to simple imprisonment for a month, which had been set aside by the learned Addl. Sessions Judge, Srikakulam.

14. Section 417(3) Criminal Procedure Code provides for the granting of special leave to the

complainant in any case of appeal to the High Court from the order of acquittal passed in any case instituted upon a complainant. Section 423(1)(a) is as follows :

"The Appellate Court if it considers that there is no sufficient ground for interfering, dismiss the appeal, or may -

(a) in an appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the accused be retried or committed for trial, as the case may be, or find him guilty and pass sentence on him according to law".

It may be seen from these provisions that in an appeal against an acquittal, where the High Court finds an accused person guilty, it is open to the High Court to pass sentence on the accused in accordance with law. The exercise of this power can at the most be regarded as subject to the limitation that the sentence to be passed by the High Court should not be in excess of the powers of punishment exercisable by the trial Court. In other words, in this case, as the trial court is the Court of the Judl. Second Class Magistrate and as his powers under Section 32 of the Code of Criminal Procedure are limited to awarding imprisonment for a term of six months and a fine of Rs. 500/- the maximum sentence that this Court can award to the accused persons in this case would be this limit, namely, six months imprisonment of either description and a fine of Rs. 500/-. This conclusion is the result of the assumption that whatever sentence the appellate court awards, must be deemed to be the sentence which the Judl. Second Class Magistrate himself should have awarded in the first instance and this punishment is delimited by the provision of Section 32 Criminal Procedure Code.

It would not therefore be open to the High Court to award a sentence higher than the sentence which the Judicial Second Class Magistrate himself could have awarded under law; for, to hold otherwise, would imply that the Judl. Second Class Magistrate had awarded a sentence beyond the limits imposed on him by law. Such a sentence would not be a sentence according to law within the meaning of Section 423 Criminal Procedure Code. This conclusion is further strengthened by a reference to Section 439(3) Criminal Procedure Code which is as follows :

"Where the sentence dealt with under this Section has been passed by a Magistrate acting otherwise than under Section 34, the Court shall not inflict a greater punishment for the offence which, in the opinion of such Court, the accused has committed, than might have been inflicted for such offence by a Presidency Magistrate or a Magistrate of the first class."

This section limits the powers of the High Court even in revision as regards the sentence to be passed in cases wherein the original sentence was passed by a Magistrate acting otherwise than under Section 34 of the Code.

15. In this case, the conduct of the accused persons in removing the press out of the possession of the complainant from the room where the press was installed, taking advantage of the temporary

absence of the complainant from the village, amounted to a serious offence, an act which is penalised both under the Indian Penal Code and under the special laws contained in the Press and Registration of Books Act (Act XXV of 1867). I am, however, not taking into consideration the fact that the act of removal of the press and the consequent keeping of the press in the possession of the accused persons amounted to an offence under Section 13 of the aforesaid Act, in determining the sentence in this case. An offence under Section 380 Indian Penal Code is punishable with imprisonment of either description for seven years and also with fine. Taking all facts and circumstances into consideration, I feel that the interests of justice would be served by imposing a sentence of six months rigorous imprisonment on each of the accused 1 and 3 and a fine of Rs. 500/- on each and in default to further rigorous imprisonment for one month in each case. If the fine is realised, it is ordered that a sum of Rs. 300/- be paid to the complainant as compensation under Section 545 Criminal Procedure Code. I further direct that the printing press be handed over forthwith to the complainant in this case.

16. In this connection, it is necessary to point out some of the irregularities that have been committed by the learned Judl. Second Class Magistrate in handling this case. In the first place, he purported to acquit the second and fourth accused before him under Section 251-A clause (11) Criminal Procedure Code. This is clearly irregular, as Section 251-A has no application to a case arising out of a private complaint. It is sufficiently made clear on the Code itself (S. 251) which is as follows :

"In the trial of warrant cases by Magistrates, the Magistrate shall, -

(a) in any case instituted on a police-report, follow the procedure specified in Section 251-A; and

(b) in any other case, follow the procedure specified in the other provisions of this Chapter".

As this case was not instituted on a police report, the procedure envisaged under Section 251-A has no application and the procedure followed by the Magistrate in acquitting accused 2 and 4 under Section 251-A(11) is not in conformity with law. The correct procedure that should have been followed by the Magistrate in this case is what is contained in Sections 252 to 259 Criminal Procedure Code. If the Magistrate felt that the prosecution had not proved the case against accused 2 and 4, he should have acquitted them under Section 258(1) Criminal Procedure Code but as no mis-carriage of justice has resulted by reason of this irregularity, I consider that the same is curable under Section 537 Criminal Procedure Code and therefore calls for no interference in the matter.

17. It is also noticed that the learned Judl. Second Class Magistrate awarded a sentence of imprisonment till the rising of the Court, obviously because Section 380 Indian Penal Code made it obligatory to award both imprisonment and fine. Apart from the fact that the sentence is unjustifiably lenient, the sentence of imprisonment till the rising of the Court is unknown to law,

for the sentence of imprisonment involves the suffering of it outside the custody of the Court. On the date on which the case comes on for hearing, if the accused is taken into custody by the Court, he would only be regarded as being in the custody of the Court and that would not amount to the suffering of imprisonment. In order that the sentence of imprisonment should be suffered, Section 383 Criminal Procedure Code requires that the Court passing the sentence should forthwith forward a warrant to the jail in which the accused is, or is to be, confined and, unless the accused is already confined in such jail, shall forward him to such jail with the warrant. Section 385 Criminal Procedure Code requires that when the prisoner is to be confined in a jail, the warrant shall be lodged with the jailor. Since all these requirements are laid down for the execution of the sentence of imprisonment, a sentence of imprisonment till the rising of the Court is incapable of execution as provided by the Sections of the Code of Criminal Procedure and does not therefore amount to the suffering of imprisonment within the meaning of the Code. The Subordinate Courts fought to take note of this fact. If they intend to give one day's imprisonment as being sufficient in the interests of justice having regard to the merits of the case, it is their plain duty to issue a warrant to the jail to confine the accused for one day and it is only when the accused suffers that one day's imprisonment in jail that he would have served the sentence. If the Court does not wish to send the person to jail, it must all the same commit the person to be kept in confinement in some other place provided for the purpose but where no such place other than the jail is provided by the Government, it is the plain duty of the Court to commit the accused to the nearest jail to undergo his sentence even if it be for one day.

Appeal allowed.