ANDHRA PRADESH HIGH COURT

Public Prosecutor

Vs.

Mohammed Ali

Criminal Appeal No. 213 of 1965. in C. C. No. 766 of 1963

(Ananthanarayana Ayyar, J.)

30.06.1967

JUDGMENT

Ananthanarayana Ayyar, J.

1. The learned Public Prosecutor has filed this appeal against the judgment of the Second Additional District Munsif Magistrate, Vijayawada, acquitting the sole accused altogether.

2. The relevant facts are as follows.

3. The Superintendent-in-charge, Central Telegraph Office, Vijayawada, filed a complaint on 13-11-1963, in the Court of the Judicial First Class Magistrate, Vijayawada, in which he stated as follows:-

> "Complaint filed under Section 195 (1) (a), Criminal Procedure Code for offences under Sections 182, 417 and 471, Indian Penal Code
> The Superintendent-in-charge, Central Telegraph Office, Vijayawada, sent a requisition to the Sub-Regional Employment Officer, Vijayawada. on 9-7-1962 requesting him to send candidates for appointment as telegraph peons.....
> SD/- Complainant,
> Superintendent-in-charge,
> C. T. O., Vijayawada."

4. The learned Magistrate, Sri G. Pulliah, took it on file, making an endorsement as follows:-

> "Taken on file on 13-11-63 under Sections 417 and 471, Indian Penal Code. Issue summons to the accused....."

5. The prosecution examined seven witnesses. Of these, H. A. D.'Monte (P. W. 1) was the Superintendent, C. T. O., Vijayawada, who called for applications in July 1963 and before whom

the accused is said to have produced transfer certificate (Ex. P. 2) with endorsement (Ex. P. 3) which is said to be the subject-matter of the charges. He deposed that he filed them in the office. Subsequently, one V. Sambandham became the Superintendent in the same office, in place of P. W. 1. He gave a complaint to the police, complaining of the offence. The Inspector of Police (P. W. 7) registered the crime under Section 465 read with Section 471, Indian Penal Code in R. C. 27/63. He deposed as follows:-

> "I obtained the orders from IV City Magistrate, Hyderabad on 7-8-63 to investigate into the case under Section 155 (2) Criminal Procedure Code..... I submitted my report to S. I., S. P. F. Hyderabad....."

Subsequently, on 13-11-1963 the Superintendent-in-charge of C. T. O., viz., V. Sambandham who had succeeded P. W. 1 (H. A. D'monte) signed in complaint and filed it in Court. The learned Magistrate, who took the case on file examined the witnesses, P. Ws. 1 to 7. He questioned the accused on 22-1-1964 putting one single long question mentioning various items of evidence against him and the accused gave a single answer 'I did not commit the offence.' He examined P. Ws. 2 to 7 from 19-2-64 to 26-3-64. The leaned Magistrate questioned the accused in detail and on 2-5-1964 he framed charges against him under Sections 182 and 471, Indian Penal Code. The accused pleaded "not guilty" and stated that he had no defense witnesses. Finally, the learned Magistrate delivered the Judgment on 30-6-1964.

6. In the judgment, he framed four points for consideration as follows:-

> (1) Whether this Court can take cognizance of this case?
>
> (2) Whether the Police can investigate into a non-cognizable case without the orders of Magistrate?
>
> (3) Whether the prosecution made out their case under Sections 182 and 471, Indian Penal Code?
>
> (4) To what relief?

7. On point No. 1 the learned Magistrate held as follows:-

> ".....The charge sheet in this case was filed under Sections 182, 417 and 471, Indian Penal Code ..... P. Ws. 1 and 2 are the concerned officers who should have filed the complaint in this case. Neither of them nor their superior filed the complaint in this case. One V. Sambandham is said to have filed the complaint in this case. He is not examined as witness for the prosecution. There is no explanation as to why P. Ws. 1 and 2 who were the concerned officers or their superiors have not filed this complaint. There is no evidence connecting the alleged complaint with the proceedings of this case. Section 195, Criminal Procedure Code is mandatory provision which directs that Courts shall take cognizance of the offences under Sections 172 to 188, Indian Penal Code only on the complaint of the public servant concerned or some other public servant to whom they are subordinates. There is no such complaint in this case as directed in Section 195 (1), Criminal Procedure Code"

On point No. 2, the learned Magistrate held as follows:-

> "The offence under Section 182 is a summons case which means a non-cognizable case as quoted above. Section 155(2), Criminal Procedure Code bars the Police to investigate into a non-cognizable offence without the orders of the competent Magistrate. No such orders of the Magistrate have been filed and marked in this case. P. W. 7 is the Inspector of Police. He deposed that he obtained orders from the IV City Magistrate. Hyderabad on 7-8-1963 to investigate this case under Section 155 (2). Criminal Procedure Code. No such orders have been filed in this case. Hence Section 155 (2). Criminal Procedure Code is a bar for the police to investigate into this case. I, therefore, find that the police shall not investigate into this case.

He held on Points Nos. 3 and 4 as follows:-

> "Point No. 3:- In the light of the findings on points 1 and 2, there is no need to discuss and give a finding on this point.
> Point No. 4:- In the result, the accused is acquitted under Section 258 (1), Criminal Procedure Code"
> Point No. 1 :-

8. The case of the prosecution was that the accused committed the offence with which P. W. 1 was concerned in his official capacity as Superintendent of C. T. O., Vijayawada, and not in his personal capacity as an individual.

9. If P. W. 1 had continued to be in office at the time of filing the complaint, and if he had filed the complaint, that complaint would have been in his official capacity as Superintendent and not in his individual capacity as Sri H. A. D.'Monte The public servant concerned under Section 195 (1) (a), Criminal Procedure Code so far as this case is concerned was the Superintendent. C. T. O., Vajayawada, in his official capacity and not Sri H. A. D.'Monte (P.W. 1) in his individual capacity.

10. The learned Magistrate has relied on the decision of the Supreme Court in *Daulat Ram v. State of Punjab*[1], The learned Counsel for the accused in this Court also has sought to rely on that decision. In that case, one Daulat Ram, a patwari, was charged for the offence under Section 182, Indian Penal Code for having given false complaint to the Tahsildar, his superior officer at Pathankot. Their Lordships observed in the Judgment as follows:- (at p. 1207)

> "..... The public servant who was moved by the appellant was undoubtedly the Tahsildar ..... The question is therefore whether under the provisions of Section 195, it was not incumbent on the Tahsildar to present a complaint in writing against the appellant and not leave the Court to be moved by the police by putting in a charge-sheet ..... It was therefore incumbent, if the prosecution was to be launched, that the complaint in writing should be made by Tahsildar as the public servant concerned in this case. On the other

hand what we find is that a complaint by the Tahsildar was not filed at all, but a charge-sheet was put in by the station house officer."

[1] AIR 1962 SC 1206

Therefore, their Lordships referred to the public servant concerned as the Tahsildar and never referred to his name or to him in his personal capacity as a private individual. That decision is a direct authority to show that, in this case, the public servant concerned for the purpose of Section 195 (1) (a), Criminal Procedure Code was the Superintendent-in-charge of the C. T. O., Vijayawada. Whoever happened to occupy that post at the time of filing the complaint was the public servant concerned and could file the complaint. The post of C. T. O. was held at various times by persons as follows:- P. W. 2, M. J. Venkatesan - from 1-5-62 to 31-8-62. P. W. 1, H. A. D'monte - July 1963. Complainant V. Sambandham - Date of complaint (13-11-1963) and of filing of complaint. The passage relied upon by the learned Magistrate in the Judgment of the Supreme Court in Daulat Ram's case (Supra) is as follows:-

> "The words of the Section (195 of the Code of Criminal Procedure) namely, that the complaint has to be in writing by the public servant concerned and that no Court shall take cognizance except on such a complaint clearly shows that in every instance the Court must be moved by the appropriate public servant. ..... The words 'no Court shall take cognizance' have been interpreted on more than one occasion and they show that there is an absolute bar against the Court taking seizin of the case except in the manner provided by the section ....."

This passage does not give any support to the view of the learned Magistrate. It has to be observed that the learned Magistrate himself had taken the case on file. The finding of the learned Magistrate on Point No. 1 is wrong.

11. Point No. 2:- P. W. 7 deposed that he had obtained orders from the IVth City Magistrate, Hyderabad, for prosecution (vide portion extracted by me already from the judgment of the lower Court). This statement was not challenged up to cross-examination by the accused; nor any question was put by the learned Magistrate to P. W. 7 in the matter. If the learned Magistrate doubted the truth of the statement of P. W. 7, he could have put a question to him and if the learned Magistrate felt that a copy of that order should be filed in the Court, he could have called for such an order being filed or insisted on its being filed. If a valid order really had been passed under Section 155 (2), Criminal Procedure Code, the investigation would have been competent and valid, whether a copy of that order was filed in the Court or not. So, the action of the learned Magistrate in his finding on Point No. 2 is not justified and is untenable.

12. When the learned Magistrate came to the conclusion on Points Nos. 1 and 2, the course adopted by him viz., acquittal of the accused was not correct of proper.

13. In the present case, the proceedings were not initiated by the charge-sheet filed by the Police but the Superintendent, C. T. O. who filed the complaint. As the complainant is a public servant, under the proviso (aa) to Section 200 Criminal Procedure Code there was no need for the complainant being examined on oath before taking the case on file. The learned Magistrate himself acted rightly on that basis by taking the case on file without examining the complainant.

Sri V. Sambandham signed the complaint and filed it in Court as he was then holding the office of C. T. O. Each of Sri M. J. Venkatesan (P. W. 2) and H. A. D.'monte (P.W. 1) deposed as witness because he knew certain relevant facts as one who had occupied the office at certain relevant times. Therefore, the observation of the learned Magistrate 'there is no evidence connecting the alleged complaint with proceedings of this case' has no significance. His observation that there was no explanation as to why P. Ws. 1 and 2 have not filed the complaint is based on a presumption which is wrong. There was no need for P. W. 1 or P. W. 2 to file the complaint. The proceedings were initiated by a complaint by some one other than police officer and not by a charge-sheet filed by a police officer. The learned Magistrate himself accordingly followed the procedure which was not under Section 251-A but under Section 251 (b), Criminal Procedure Code. In the circumstances, the fact that Police (P. W. 7) had made investigation was not of any importance and could not affect the validity of proceedings even if the Police (P. W. 7) had investigated without proper authority by way of order under Section 155 (2), Criminal Procedure Code.

14. The findings on Point Nos. 1 and 2 by the learned Magistrate only related to defects by way of improper initiation, the complaint being filed by one who was not public servant under Section 195 (1) (a), Criminal Procedure Code and improper investigation, and as such the learned Magistrate ought not to have acquitted the accused on those findings alone without going into merits of the case

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15. Section 156, Criminal Procedure Code, runs as follows:-

> "(1) Any officer in-charge of a Police Station may without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XV relating to the place of inquiry or trial.
> (2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate."

16. In *Rishbud v. State of Delhi*[2], their Lordships of the Supreme Court have stated that sub-section 156, Criminal Procedure Code was a provision empowering an officer in charge of a Police Station to investigate a cognizable case without the order of a Magistrate and delimiting his power to the investigation of such cases within a certain local jurisdiction and that it was the violation of this provision that was cured under sub-section (2). Under the explanation to Section 537, Criminal Procedure Code in determining whether any error, omission or irregularity in any proceedings under this Code has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings. From the record, it does not appear that an objection was taken by anybody up to the time of the judgment on the ground, which is concerned in Point No. 1 or Point No. 2. The judgment also does not state that such an objection was taken any time before the judgment was delivered.

17. In AIR 1955 Supreme Court 196 (Supra.) it was observed by the Supreme Court as follows: (at pp. 203-204)

> "A defect or illegality in investigation, however serious had no direct bearing on the competence or the procedure relating to cognizance of trial. No doubt a police

[2] AIR 1955 SC 196

> report which results from an investigation is provided in Section 190, Criminal Procedure Code as the material on which cognizance is taken. But it cannot be maintained that a valid and legal police report is the foundation of the jurisdiction of the Court to take cognizance....."

The present case was taken on file on the basis of a complaint by the Superintendent-in-charge, C. T. O., and not on a police charge-sheet.

18. In *Munnalal v. State of Uttar Pradesh*[3], the above passage in Rishbud's case was extracted with approval and the following observation was made (at pp. 31-32).

> "In view of this decision, even if there was irregularity in the investigation and Section 5-A was not complied with in substance, the trials cannot be held to be illegal unless it is shown that mis-carriage of justice has been caused on account of the illegal investigation. Learned Counsel for the appellant has been unable to show us how there was any miscarriage of justice in these cases at all due to the irregular investigation.....

In the present cases no objection was taken at the trial when it began and it was allowed to come to end..... The appellant therefore cannot say that the trial was vitiated unless he can show that any prejudice was caused to him on account of the illegal or irregular investigation. We have already remarked that no such thing has been shown in this case; nor was it possible to show any such thing in view of the alternative defence taken by the appellant....." In the present case, there is no basis for holding that the trial which was held on a complaint by the Superintendent-in-charge C. T. O., (not a Police Officer) was in any way vitiated by the investigation of the Circle Inspector (P. W. 7) even if his investigation has not been authorized by an order of the competent Magistrate under Section 155 (2), Criminal Procedure Code.

19. The findings of the learned Magistrate on Point Nos. 1 and 2 are, therefore, not tenable. Consequently, the judgment of acquittal which is based purely on the findings of the learned Magistrate on Point Nos. 1 and 2 is not tenable. In the light of the findings which I have given in this appeal on Point Nos. 1 and 2, Point Nos. 3 and 4 will have to be decided after going through the evidence. The learned Magistrate has not done that. Therefore, the proper course to be adopted by me now is to direct the learned Magistrate to give findings on Point Nos. 3 and 4 in the light of the findings which I have given on Point Nos. 1 and 2.

20. In the result, I allow this appeal, set aside the judgment of acquittal and direct the learned Magistrate to dispose of the case on merits after giving findings on Point Nos. 3 and 4.

Appeal allowed.

[3] AIR 1964 SC 28