

S.P. VAITHIANATHAN

v.

K. SHANMUGANATHAN

MARCH 1, 1994

[A.M. AHMADI AND N. VENKATACHALA, JJ.]

Criminal Law—Police Officer—Prosecution of—Allegations of beating and torturing complainant—Prosecution resisted as barred by s.53 of Tamil Nadu District Police Act, 1859—Held, in order to avail benefit of s.53 accused must show that he acted under the Act or any other law—Beating and torturing complainant cannot be said to be an action in discharge of any duty or function under Act or any other law.

Tamil Nadu District Police Act, 1859: Section 53—Police Officer—Prosecution of—Limitation—Held, before a prosecution is terminated as barred by s.53, accused must show that act complained of was done under provisions of the Act or any other law.

The appellant, being in-charge of an arrack shop, made a complaint to the superior officers of the Police Department that the respondent, who was the Additional Superintendent of Police, Prohibition and Enforcement, of the area, was conniving with the persons involved in illicit distillation activities. The respondent on coming to know of this, is alleged to have summoned the appellant to his office, beat him up and took him to the Prohibition and Excise Wing where he was further tortured. When appellant's efforts to bring the incident to the notice of the respondent's superiors went in vain, he filed a criminal complaint in the court against the respondent alleging commission of offences under ss.307, 323, 341, 342, 363, 364 and 506(2) I.P.C. The Court issued process which the respondent challenged in an application under s.482 Cr.P.C. before the High Court.

The High Court quashed the order by which the process had been issued holding that the proceedings were barred by s.53 of the Tamil Nadu District Police Act, 1859. The appellant filed the appeal by special leave.

Allowing the appeal, this Court

HELD: 1.1. The High Court committed an error in quashing the

A complaint on the ground that it was barred by s. 53 of the Tamil Nadu District Police Act, 1859. [264-B]

B 1.2. Before a prosecution is terminated as barred by s.53 of the Act, the accused must show that on the allegations made in the complaint it *ex-facie* appears that the act complained of was done under the provisions of the Act or under the provisions of any other law for the time being in force whereunder powers are conferred on the police. [262-B]

C 1.3. In order to avail of the benefit of s.53, the accused must show that he acted 'under' the Act or any other law. Unless a relationship is established between the provision of law 'under' which the accused purports to act and the misdemeanour complained of, the provision of s.53 will not be attracted. [262-D, F]

D 1.4. In the instant case, the allegation in the complaint is that while the appellant was called by service of a summons presumably to inquire into allegations of *illicit* distillation, the respondent had merely used it as an excuse to secure his presence but in fact his real intention was to beat him up to prevent him from complaining against those who were paying him 'mamool' (illegal gratification) money. Thus according to the appellant, the respondent bore a grudge against him and, therefore, he misused his power, issued a summons, secured his presence and then tortured him. E He has charged him for the commission of offences under ss.341, 342, 362, 364, 506 (II Part) and 307 IPC. These do not attract the provision of s.53 of the Act. [262-G-H, 263-A]

F 1.5. Merely because the appellant was called through a summons issued under law, the conduct of beating and torturing the appellant on the latter appearing in obedience to the summons cannot establish any nexus between the official act of issuance of summons and the action of the respondent on the appearance of the appellant. It was no part of the duty under the Act, Code or any other law for the time being in force conferring power on the police to beat and torture the appellant. By no stretch of G reasoning can it be said that the respondent's action torturing the appellant was in discharge of any duty or function under the Act or under any other law. Nor can it be said that respondent's action was incidental to or in furtherance of his duties and functions under any law. [262-C-F]

H *The State of Andhra Pradesh v. N. Venugopal & Ors.*, [1964] 3 SCR

742, relied on.

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Maulud Ahmad v. State of Uttar Pradesh, [1963] Suppl. 2 SCR 38 and *Ajaib Singh & Anr. v. Joginder Singh & Anr.*, AIR (1968) SC 1422, referred to.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 156 of 1994.

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From the Judgment and Order dated 13.12.90 of the Madras High Court in Crl. M.P. No. 6529 of 1987.

K. Swami for the Appellant.

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N. Natarajan, V. Balachandran and V. Krishnamurthy for the respondent.

The Judgment of the Court was delivered by

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AHMADI, J. Special leave granted.

The respondent was the Additional Superintendent of Police, Prohibition and Enforcement, Salem, at all material times. The appellant herein was in-charge of an arrack shop belonging to his uncle at Sevathapuram. On account of *illicit* distillation in that area, the sales at the said arrack shop fell sharply. Consequently he complained to the authorities to check *illicit* distillation. His complaints fell on deaf ears. The *illicit* distillation activities were ever on the increase because of the connivance of the respondent. The appellant, therefore, complained to the higher authorities about the respondent's involvement and deliberate connivance at the activities of *illicit* distillers. The respondent on learning about the complaints and allegation of corruption was annoyed and bore a grudge against the appellant. The respondent, therefore, summoned the appellant to his office on March 20, 1985 at about 8.30 P.M. and beat him up severely and then took him in a jeep to the Prohibition & Excise wing where he was further tortured. The appellant contends that it was by sheer accident that he escaped alive. He then wrote to the respondent's superiors about the ill treatment meted out to him but to no avail. He then filed criminal complaint in Court alleging commission of offences under Sections 341, 342, 323, 363, 364, 506, Part II, and 307 of the Indian Penal Code.

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The learned Chief Judicial Magistrate, Salem issued process. There-

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A upon the respondent approached the High Court under section 482 of the Code of Criminal Procedure (the Code) for quashing the issuance of process on three grounds, viz.,

B (1) there was an inordinate delay of nearly two years in the lodging of the complaint and hence the learned CJM should not have entertained the complaint;

(2) the prosecution was untenable for want of sanction under section 197 of the Code; and

C (3) the prosecution was barred by limitation in view of the provision in section 53 of the T.N. District Police Act, 1869, (hereinafter called 'the Act').

D The High Court rejected the first and the second contentions but upheld the third contention and consequently quashed the order by which process was issued. The proceedings initiated against the respondent were consequently rendered untenable as barred by section 53 of the Act. We are, therefore, required to examine the correctness of the finding recorded by the High Court on the third point.

Section 53 of the Act reads as under:

E *"Limitation of action -*

F All actions and prosecutions against any persons which may be lawfully brought for anything done or intended to be done, under the provisions of this Act, or under the provisions of any other law for the time being in force conferring powers on the police shall be commenced within three months after the act complained of shall have been committed and not otherwise....."

G On a plain reading of this provision it becomes clear all actions and prosecutions for anything done 'under the provisions of the Act or any other law in force conferring powers on the police' must be commenced within three months after the act complained of is committed and not otherwise. There is no doubt that the said provision applies to prosecutions also in respect of any action taken or anything done under the provisions of the Act or under the provisions of any other law conferring powers on the police. Two questions, therefore, arise: (i) is the action of the respon-

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dent complained of done under the provisions of the Act? or (ii) is the said action done under the provisions of any other law for the time being in force conferring powers on the police? The High Court placing reliance on the decision of a learned Single Judge of the High Court of Andhra Pradesh (1978) XXII MLJ Reports 412 came to the conclusion:

"...whereas section 53 of the Act does not provide for limitation in relation to particular categories of offences unlike section 468 of the CrI.P.C., which provides for limitation in respect of prosecution, irrespective of their nature instituted against police officers. As such Section 468 CrI.P.C. and section 53 of the Act operate in different fields. Section 53 of the Act is a special provision in regard to police officers while section 468 of the CrI.P.C. is a general provision in regard to offenders in general. Therefore, these two sections do not operate in the same field or area and do not overlap and that apart, the provision of section 53 of the Act, which is a special provision, must prevail over the general law enacted in section 468 of the CrI.P.C."

On the above line of reasoning it held the complaint to be barred by section 53 of the Act. It is clear that after coming to the conclusion that section 53 of the Act would prevail over the general provision found in section 468 of the Code, the High Court did not examine, if in the facts and circumstances of the case, the provision of section 53 of the Act was attracted. It did not address itself to the aforesaid two questions but relying on the aforesaid case law by which it was held that section 53 of the Act would prevail, it concluded that the prosecution was time-barred and quashed the same.

The Act was enacted for better regulation of the police-force throughout the Madras Presidency with a view to making it a more efficient instrument for the prevention and detection of crime. By section 6 all powers which hitherto belonged to the existing police-authorities came to be vested in the police-authorities appointed under the Act to the extent not inconsistent with the provisions of the Act. Section 21 states that every police-officer shall, for the purposes of the Act, be considered to be always on duty and it should be his endeavour to prevent all crimes, offences and public nuisances, etc. Section 50 lays down that any charge against a police officer above the rank of a constable under this Act shall be enquired into and determined only by an officer exercising the powers of a Magistrate.

- A Section 53 extracted above then provides for limitation of action. We will assume, without deciding, that section 53 of the Act will prevail over section 468 of the Code.

It seems clear to us that before a prosecution is terminated as barred by section 53 of the Act, the accused must show that on the allegations made in the complaint *ex-facie* appears that the act complained of was done under the provisions of the Act or under the provisions of any other law for the time being in force whereunder powers are conferred on the police. It is true that under section 21 of the Act a police officer can be said to be on duty all the 24 hours. The prosecution launched against the respondent is in regard to the ill-treatment meted out to the appellant when the latter visited the former in response to the summons. It was no part of the duty under the Act, Code or any other law for the time being in force conferring power on the police to beat and torture the allellant when he presented himself before the respondent in respon^d to the summons. By no stretch of reasoning can it be said that the respondent's action of torturing the appellant was in discharge of any duty or function under the Act or under any other law. It is also difficult to say, if the allegations made are taken at their face value, that the respondent's action was incidental to or in furtherance of his duties and functions under any law. It must be realised that in order to avail of the benefit of section 53 of the Act, the respondent must show that he acted 'under' the Act or any other law. Merely because the appellant was called through a summons issued under law, the conduct of beating and torturing the appellant on the latter appearing in obedience to the summons cannot establish any nexus between the official act of issuance of summons and the action of the respondent on the appearance of the appellant. Unless a relationship is established between the provision of law 'under' which the respondent purports to act and the misdemeanour complained of, the provision of section 53 will not be attracted. In the present case the allegation in the complaint is that while the appellant was called by service of a summons presumably to inquire into allegations of *illicit* distillation, the respondent had merely used it as an excuse to secure his presence but in fact his real intention was to beat him up to prevent him from complaining against those who were paying him 'mamool' (illegal gratification) money. Thus according to the appellant the respondent bore a grudge against him and, therefore, he misused his power, issued a summons, secured his presence and then tortured him. He has charged him for the commission of offences under sections 341, 342, 363, 364, 506, (II Part) and 307, I.P.C. These do

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not attract the provision of section 53 of the Act.

In this view which we are inclined to take in the facts and circumstances of this case, we are fortified by a Three-Judge Bench of decision of this Court in *The State of Andhra Pradesh v. N. Venugopal & Ors.*, [1964] 3 SCR 742. The background facts in which this decision was rendered were that during the course of investigation information was received that one Ramanna had received stolen articles. Ramanna was, therefore, taken into custody and within less than 3 days thereafter his dead body was found with a number of injuries. The police officers were prosecuted for having caused the injuries to Ramanna for the purpose of extorting from him information which might lead to the detection of an offence and restoration of stolen property. The police officers pleaded that the prosecution was barred by limitation by reason of the provisions of Section 53 of the Act. Dealing with this contention in the backdrop of the aforesaid facts this Court held on the language of that provision that the protection of Section 53 is not confined only to acts done or intended to be done under the provisions of the Act but extends to acts done or intended to be done under the provisions of any other law conferring powers on the police such as the Code of Criminal Procedure which confers numerous powers of arrest, search and investigation. Any prosecution in respect of any act done or intended to be done under the provisions of any of these law has also to be commenced within the period prescribed by Section 53; but the Court held:

".....it becomes the task of the Court, whenever any question whether this section applies or not arises to bestow particular care on its decision. In doing this it has to as certain first what act is complained of and then to examine if there is any provision of the Police Act or other law, conferring powers on the police under which it may be said to have been done or intended to be done. The Court has to remember in this connection that an act is not "under" a provision of law merely because the point of time at which it is done coincides with the point of time when some act in the exercise of the powers granted by the provision or in performance of the duty imposed by it. To be able to say that an act is done "under" a provision of law, one must discover the existence of a reasonable relationship between the provisions and the act. In the absence of such a relation the act cannot be said to be done "under" the particular provision of law.

- A Proceeding further this Court pointed out that the act of beating or the act of confining was, it is true, alleged to be done at a time when the police officer was engaged in investigation. But it is not possible to see what reasonable relationship these acts had with the process of investigation. Nor can one see how the act of sending away the injured person had any relation to the process of investigation. This Court pointed out that the High Court fell into an error in thinking that whatever a police officer does to a person suspected of a crime at the time when the said officer is engaged in investigating that crime should be held to be done in the discharge of his official duties to investigate and would, therefore, be covered by Section 53 of the Act. Taking this view, this Court reversed the finding recorded by the High Court in this behalf. Applying the said principles to the facts alleged against the officer in this case, it is difficult to agree with the High Court that the case falls within the mischief of Section 53 of the Act.

- D Out attention was also invited to two decisions of this Court in *Maulud Ahmad v. State of Uttar Pradesh*, [1963] Suppl. 2 SCR 38 and *Ajaib Singh & Anr. v. Joginder Singh & Anr.*, AIR (1968) SC 1422 which turned on the language of Section 42 of the Police Act, 1861. The language of that provision is not the same as that of Section 53 of the Act, in that, it does not carry the expression "or under the provisions of any other law for the time being in force conferring powers on the police power on the police" although it uses the words "under the general police powers hereby given" and, therefore, confined it self to any thing done or intended to be done under that enactment. Therefore, that section cannot be said to apply to prosecution or anything done under the provisions of any other Act or under police powers conferred by any other Act.

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- G In view of the above we have no hesitation in concluding that the High Court committed an error in quashing the complaint on the ground that it was barred by Section 53 of the Act. We, therefore, allow the appeal, set aside the order of the High Court and remit the matter to the Trial court for disposal in accordance with law. We may clarify that we have merely gone by the averments or allegations made in the complaint and we should, therefore, not be understood to express any opinion on facts which would have to be proved at the trial.