
(1958) 11 AP CK 0015

In the Andhra Pradesh High Court

Case No : Writ Petition No. 530 of 1955

Appa Rao Patnaik K.

APPELLANT

Vs

State of Andhra and Others

RESPONDENT

Date of Decision : 04-11-1958

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1959) 2 LLJ 558

Hon'ble Judges : P. Satyanarayana Raju, J;P. Chandra Reddi, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The Order of the Court was as follows :

This petition under Art. 226 of the Constitution is directed against the dismissal of the petitioner by an order of the District Superintendent of Police, Visakhapatnam, dated 25 March, 1953, as confirmed by the order of the Deputy Inspector-General of Police, Northern Range, Waltair, on 12 June, 1953. The petitioner was working in the Police Department. At the material time, he was a head constable attached to Saravakota police station Pathapatnam taluk of Srikakulam district. On 20 December, 1951, a requisition was sent to the petitioner who was then in charge of the police station in the absence of the sub-inspector of police by the medical officer in charge of the local fund dispensary at about 8 p.m. to be present at the dispensary for recording the dying declaration of a girl who was involved in a lorry accident. Though he received the intimation, he neither attended the hospital nor made any arrangement to record the dying declaration. This was brought to the notice of the authorities concerned by the station writer some time in March 1952. We are not here concerned with the developments regarding the investigation into the crime resulting in the death of the girl mentioned above.

2. On 12 May 1952, a memo was served on the petitioner containing a charge in

that he failed to take steps for recording the dying declaration referred to supra and asking him to offer an explanation. An explanation was submitted by him to the effect that he was not on duty at the relevant time and the station writer was acting for him. An enquiry was made by the Deputy Superintendent of Police and a report was made to the District Superintendent of Police. The District Superintendent of Police, on the material before him including the explanation furnished by the petitioner and the evidence adduced, came to the conclusion that the charge against him was unconvincing and that he should be punished with dismissal from service. Consequently, he was called upon to show cause against the proposed punishment. The petitioner absent his answer. Not satisfied with it, the District Superintendent of Police dismissed him by his order referred to above and this was confirmed on appeal by the Deputy Inspector-General of Police, Northern Range, Waltair, in C. No. 177/Apl/53 dated 12 June, 1953. It is to quash these orders that the jurisdiction of this Court under Art. 226 is invoked. In support of this petition, the only point urged is that the Deputy Superintendent of Police, not being vested with the powers of a Magistrate, had no authority to make the enquiry, inasmuch as S. 50 of the Madras District Police Act, 1859 (XXIV of 1859), contemplates an enquiry only by an officer "exercising the powers of a Magistrate."

3. We do not think we can accede to this contention. Section 50 of the Madras District Police Act is in the these terms :

"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."

4. To know who are the officers that can exercise the powers of a Magistrate, we have to turn to S. 7 of the Act. Section 7 of the aforesaid Act reads :

"The Inspector-General of Police shall be appointed a Justice of the Peace; he shall also have the full powers of a Magistrate throughout the general police district, but shall exercise these powers issued by the State Government. The State Government may vest any District Superintendent of Police with all or any of the powers of a Magistrate within such limits as they may deem proper; but such Superintendent shall exercise the powers with which he shall be so invested only so far as may be necessary for the preservation of the peace, the prevention of crime, and the detection, apprehension, and detention of offenders in order to their being brought before a Magistrate, and as far as may be necessary for the performance of the duties assigned to him by this Act."

5. It is seen from S. 7 that it is only the Inspector-General of Police that has to be appointed a Justice of the Peace with all the powers of a Magistrate. It is left to the discretion of the Government to invest any of the district Superintendents of Police with all or any of the powers of a Magistrate. Therefore, every District Superintendent of Police does not exercise magisterial powers. Such powers should be specifically conferred on him by the Government. Further Deputy

Inspectors-General are to included in that section. This makes it clear that it is not these sections govern departmental inquiries. We will show presently that they bear on charges of different kind. It is S. 10 that is applicable to such inquiries. That section contemplates an enquiry by the three types of officers enumerated therein. It is a self-contained provision in regard to the departmental action to be taken against the delinquent officer. If we accept the argument of the petitioner, it will lead to an anomaly. Section 10 authorizes the Inspector-General, Deputy Inspectors-General and the District Superintendents of Police to exercise the powers of dismissal, suspension, or reduction to a lower post, or time-scale, or to a lower stage in time-scale, for reasons stated therein, such as remissness, negligence in the discharge of duties or being otherwise unfit for the same. That does not lay down the condition that the officers imposing any of the punishments indicated therein should exercise magisterial powers. The only requirement is that the inquiries should be subject to the rules framed under the Act and the provisions of the Constitution, that section itself not prescribing any procedure applicable to the inquiry. There does not seem to be any further restriction on the authority. While that section empowers Deputy Inspector-General and all District Superintendents of Police to dismiss, suspend or reduce to a lower post, or time scale, or to a lower stage in time-scale, any officer of the subordinate police, S. 7 does not take in Deputy Inspector-General of Police, which means the power vested in the Deputy Inspector-General of Police is taken away by S. 50 read with S. 7. It is also to be noted that it is not every District Superintendent of Police that could exercise magisterial powers under the latter section. It is only officers selected by the Government for the purpose that could be invested with powers of a Magistrate. In other words, the power conferred on certain categories of officers is curtailed by force of S. 7 of the Act. This interpretation will be importing a restriction into S. 10 which is not warranted by the language and cardinal rule of construction of statutes that the provisions of a statute should be so read as to harmonize them and not to create a conflict. We do not think that there is any such conflict between these sections. In our opinion, the scope of S. 10 is different from that of S. 50. The two sets of sections deal with different subjects. Section 10 deals with departmental enquiries for punishing subordinate police officials for remissness and negligence in the discharge of their duties, while S. 50 and the group of sections that precede it beginning from S. 44 concern themselves with offences created under the Act. The expression "charge under the Act" is significant. It denotes that it is only an offence created under the Act that is required to be enquired into by an officer exercising the powers of a Magistrate. A perusal of these sections establishes that some offences are created under this Act and machinery is provided for dealing with them. The punishment for each of these offences is provided there. This section read in conjunction with Ss. 44 to 47 clearly establishes that it is only proceedings of a judicial nature that should be enquired into and determined by officers coming within the purview of S. 7 of the Act, and a departmental enquiry envisaged by S. 10 of the Act does not attract the provisions of S. 50 read with S. 7 of the Act.

6. It is argued by Sri Ramanarasu that the offences created by the Act are tribunal only by Magistrates as is apparent from Ss. 44 to 48. Each of these sections speaks only of persons being convicted by a Magistrate. If so, how can S. 50 require an officer exercising the powers of a Magistrate to enquire into a charge against a police officer ? In such a situation, this provisions is redundant. In fact, there will be repugnancy or conflict between this provisions and the section preceding it. We do not think we can give effect to this argument. A careful reading of these sections will remove any misapprehension in this behalf. Sections 44 - 47 are applicable to trial of offence committed by all police officers, while S. 50 relates to a police officer above the rank of a constable. The intendment of this section is to confer a privilege on a police officer above the rank of a constable of being tried by a superior officer exercising the powers of a Magistrate. Sub-ordinate police officers could be tried by any Magistrate which includes a second-class Magistrate. The legislature evidently thought it desirable that officers of a particular status should be tried by superiors who are invested with the powers of a Magistrate under S. 7. Thus, the ambit of S. 50 is different from that of Ss. 44 to 47 and consequently there is no question of there being any conflict between the two sets of sections. Nor could S. 50 be described as being redundant. This view of ours is in consonance with the principles enunciated by the Full Bench of the Allahabad High Court in Mahendra Singh Vs. State of U.P. and Others, The provisions that fell to be considered by the Full Bench are analogous to those of the Madras District Police Act. Sections 7 and 35 of the Act before the learned Judges in the Allahabad case correspond to Ss. 10 and 50 of the Madras District Police Act. After an elaborate discussion, the learned Judge reached the conclusion that a departmental enquiry does not come within the range of S. 35 of that Act and that it attracts only S. 7 of that Act. To the same effect is the judgment of the Calcutta High Court in Shiva Nandan Sinha and Others Vs. State of West Bengal, : . The opinion expressed by Kapur, J., in Punjab State v. Bhagat Singh AIR 1955 P&H 118 is in conformity with the doctrine of the above two cases.

7. It follows that the enquiry conducted in this case is not vitiated by any defect in the procedure followed by the enquiring officer.

8. No other point has been raised before us.

9. In the result, the writ petition is dismissed with costs. Advocate's fee is fixed at Rs. 75.