

(1995) 12 AP CK 0054

In the Andhra Pradesh High Court

Case No : Criminal Revision Case No. 113 of 1993 and Cri. Revision Petition
No. 107 of 1993

Bhootati Konda Murugadu

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 20-12-1995

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 104, 41, 41(1), 54, 55
Penal Code, 1860 (IPC) — Section 332, 352, 353, 99

Citation : (1996) 2 ALD 905 : (1996) 1 ALD(Cri) 660 : (1996) 2 ALT(Cri) 85 :
(1996) CriLJ 3310

Hon'ble Judges : V. Rajagopala Reddy, J

Bench : Single Bench

Advocate : C. Ramachandra Raju and B.S. Sivaji, for the Appellant; Public
Prosecutor, for the Respondent

Judgement

1. The petitioner was convicted for the offence under S. 332, IPC and sentenced to undergo rigorous imprisonment for a period of six months in C.C. No. 292 of 1989 on the file of the II Addl. Judl. Magistrate of First Class, Tirupati. The appeal filed by him in C.A. No. 25 of 1992 on the file of the Addl. Sessions Judge, Tirupati, proved to be unsuccessful. This revision is filed seeking to revise the judgment of the appellate Court.

2. The case of prosecution was that PW 1 is a Head Constable and PW 2 is a Police Constable of Tirupati Control Room. When they were in the Control Room, PW 4, who is S.H.O. and Head Constable attached to East Police Station, Tirupati, asked them to trace the petitioner and another (hereinafter called the accused), who were concerned in a cognizable offence and bring them. PW 3 was the defacto complainant, at whose instance the crime was registered. Accordingly PWs 1 and 2, along with PW 3 went in search of the accused. On seeing the accused, PWs 1 to 3 told them that their presence was required by PW 4 in a case booked against them. Since accused refused to come along with them, PW. 1 told the accused that if they did not accompany, they would have to take them

by force to the police station. So saying PW 1 caught hold of the petitioner's left hand. Thereupon the petitioner stabbed him on his buttock with a broken soda bottle causing bleeding injury and thus both the accused escaped.

3. The trial Court relying upon the evidence of PWs 1 to 6, convicted the petitioner and sentenced as stated above. A-2 was acquitted. The appellate Court, on a re-appraisal of the entire evidence of PWs 1 to 6 found that the petitioner was responsible for causing injury on PW 1, accordingly confirmed the conviction and sentence imposed upon the petitioner.

4. There is overwhelming evidence on record in support of the findings of the courts below. PW 1 is an injured witness and his evidence was accepted by both the courts. I cannot therefore interfere with the findings.

5. However, the counsel for the petitioner, vehemently contended that the arrest of the petitioner by PWs 1 and 2 without obtaining a written order from PW 4 as required under S. 55 of the Code of Criminal Procedure (for short, "the Code") was illegal and therefore the petitioner was entitled to use criminal force to deter PWs 1 and 2 from apprehending him; therefore the acts of the petitioner should be held as exercising his right of private defence, which would not amount to any offence. The courts below have considered this contention, but negated the same.

6. In support of his contention the learned counsel relied upon the decision of the Madras High Court in *In Re: Pedda Muni Reddi and Another*, . In that case the S.I. of Police deputed PW 1, who is a constable attached to his police station to arrest the accused, without giving him an order in writing, in accordance with the provisions of sub-section (1) of S. 55 of the Code (S. 56(1) of old Code). It was held that the oral direction to arrest the accused was not in compliance of the provisions of S. 55(1) of the Code. Consequently the action of PW 1 in trying to effect the arrest was held to be illegal. The learned Judge followed the decisions in *Doraswami Pillai Vs. The King Emperor*, , where a constable, who entered the house of the accused at mid-night, was found guilty of house trespass and the accused therein was held justified under S. 104, IPC in voluntarily causing slight harm which he inflicted upon the constable; and the decision of Patna High Court in *Gulabi Mahto and Others Vs. Emperor*,), which held that an offence under S. 353, IPC was not committed when a S.I. of Police directed a constable to bring a certain person, without giving a direction in writing and when the constable tried to take the person by force to the police station he was inflicted with injuries. It was further held in that case that the constable did not act on his own account to arrest the person and therefore a direction in writing was essential as contemplated under S. 55(1) of the Code. Relying upon the above two decisions it was held by the learned Judge of the Madras High Court in the above case (1948 Cri LJ 705) (supra) that PW 1 had no authority to effect the arrest without an order in writing under S. 55(1) of the Code and that PW 1 did not purport to act on his own accord because there was nothing to show that the elements necessary to justify the action under S. 41 of the Code (S. 54 of the old Code)

were present. Therefore the use of criminal force to prevent illegal arrest could not come within the ambit of S. 352, IPC.

7. A reading of the clauses (a) to (i) of sub-section (1) of S. 41 of the Code makes it clear that every police officer is empowered to arrest a person, without warrant in nine categories of cases mentioned in S. 41(1) of the Code. Section 55(1) gives a special power of arrest to a police officer, in certain circumstances. Under this provision, when a police officer in charge of a police station or an investigating officer deposes his subordinate officer to arrest a person without warrant, he should give in writing, specifying the name of the person to be arrested and the nature of the offence. Thus this provision enables a subordinate police officer to arrest a person without warrant, at the instance of his superior officer or the investigating officer. Therefore the conditions laid down in this section shall be strictly complied with before a person is lawfully arrested under this provision and any arrest without the order in writing will be unlawful and the person would be within his right to use criminal force to prevent his illegal arrest. However, such criminal force shall be in accordance with the provisions of S. 99, IPC.

8. It is necessary to notice clause (i) of sub-section (1) of S. 41 of the Code. Under this clause the police officer can arrest without a warrant, for whose arrest a requisition either written or oral has been received from any other police officer, provided the description of the person to be arrested and the cause of arrest is made clear. Under this clause the requisition need not be in writing. The direction here is from one police officer to another police officer. In this provision before causing arrest, the police officer arresting, shall be satisfied that the person can be lawfully arrested without warrant by the officer who issued the requisition. The difference between this provision and that of sub-section (1) of S. 55 of the Code is, in the latter case the subordinate officer who was deputed to arrest, need not be satisfied about the legality of the arrest, without warrant. He is arresting only at the direction of his superior officer and not on his own initiative. In the former case the officer concerned has to satisfy himself that the officer, who asked him to arrest, was legally entitled to arrest without warrant under S. 41(1) of the Code and he would be then effecting to arrest on his own discretion or initiative, depending on the circumstances of the situation.

9. The facts of the present case disclose that PW 4 a Head Constable who is also the S.H.O. of East Police Station, Tirupati, having registered a crime against the accused, requested PW 1 who is also a Head Constable in A.R. Police and attached to Police Control Room, Tirupati, to bring the accused for interrogation, in the crime registered against him. PW 3 who is the defacto complainant was also sent with him. When PW 3 saw the petitioner, he told PW 1 that he was the accused. Thereupon PW 1 asked to follow him to PW 1. When he refused, PW 1 caught hold of his wrist and tried to arrest him. Thereupon the petitioner inflicted injuries upon PW 1. The direction given by PW 4 to PW 1 therefore comes within the meaning of clause (i) of sub-section (1) of S. 41 of the Code. The description

of the offender as well as the offence complained against the petitioner are made known to PW 1; PW 3 the defacto complainant having been accompanied him must have apprised him of the offence. When the petitioner refused to come to PW 4, PW 1 exercised his own discretion to arrest him. PW 1 is not a subordinate officer to PW 4. Both are Head Constables of equal rank and are from different police stations. There is therefore no deputation of a subordinate officer in this case. The action of PW 1 must be held to be in exercise of his powers under clause (i) of sub-section (1) of S. 41 of the Code and not under sub-section (1) of S. 55 of the Code, since he was apprised of the person to be arrested and the offence for which the arrest was to be made. Hence, no written direction is required for arresting the petitioner. The arrest of the petitioner is therefore lawful.

10. The learned Public Prosecutor cited a Division Bench decision of Madras High Court in *Maharani Gurucharan Kaur of Nabha and Another Vs. The Province of Madras and Others*, . In that case on a telephonic message by superior officer, a subordinate police officer arrested the plaintiff, the wife of Ex-Maharaja of Nabha. There was no written direction to the officer for arresting the Ex-Maharani. It was observed (at pp. 546-47 of AIR) :

"There is no warrant for the proposition that a police officer cannot order the arrest of a person by means of a telephonic message. The word "requisition" in S. 54(1)(ix) is quite general and clearly covers a message communicated by telephone, although it will be necessary for him when he is asking another police officer to do what he could have done himself to disclose not only the identity of the person whom he wishes to be arrested but also the offence or the reason for which the arrest is to be made. This has to be done for the reason stated in the last clause of S. 54(1). This information will enable a person who is called upon to arrest to know that the person required to be arrested by him could have been lawfully arrested without a warrant by the officer who had issued the requisition. The proposed action being thus within the competence of one who may be described, although not quite accurately, as a principal, the person requisitioned would be doing nothing wrong if he complied with his so-called principal's orders and carried them out of his agent.

... .. In other words, S. 56 of the Code only applies to cases of police officers who are either in charge of a police station or who are making investigation under Ch. 14. If in their capacities as such officers, they depute their subordinates to arrest without warrant (otherwise than in their presence) they have to give that order in writing. But if they are not acting in that capacity, a compliance of the general provisions contained in S. 54(i)(ix) would be enough."

Sections 41 and 55 of the Code corresponds to Ss. 54 and 56 of the old Code. Section 41(1)(i) of the new Code corresponds to S. 54(1)(ix) of the old Code. It was held in this case that the arrest by the police officer on the telephonic message was proper, both the persons to be arrested and the cause for which

the arrest to be made must be taken to be specified and that the police officer must be presumed to have been satisfied the arrest without warrant was valid. It was also held that the police officer was not only doing what he was fully entitled to do, but was executing a duty that he was bound to discharge in view of the orders of superior officer. In re : Mohammed Meera Sahib, AIR 1943 Madras 207 : (1943 Cri LJ 272), another decision cited by the learned Public Prosecutor, it was clearly held that clause (ix) of sub-section (1) of S. 54 of the old Code (S. 41(1)(i) of the new Code) does not seek to limit in any way the application of the other clauses. It merely introduces another class of persons to be arrested without a warrant. Section 56(1) of old Code (S. 55(1) of new Code) does not purport to confine or restrict the application of S. 54 of old Code (S. 41 of the new Code). It only lays down the procedure to be adopted by an officer in charge of a police station desirous of requiring an officer subordinate to him to arrest a person without a warrant. In this case it was held that arrest was made by the Head Constable in exercise of his own powers of arrest conferred under S. 41(1) of the Code and not made because of any power delegated to him by the S.H.O.

11. The learned Public Prosecutor also cited the decision in Kizhakkethil Sulaiman Vs. The State of Kerala, , where the Head Constable directed the constable to go and apprehend the accused, without any order in writing and when he tried to arrest the accused he was stabbed by him resulting in his death. In that case it was held that even though he was directed by the Head Constable to arrest the accused, from the nature of the evidence there was no reference to the orders received by him from the Head Constable, but he was acting on his own initiative under S. 54(1) of the Code. It was held that (at p. 188, para 6 of AIR) :

"The special powers under S. 56, Cr.P.C. cannot override the general powers of arrest without warrant in the cases provided for in S. 54 of the Code. The fact that the deceased constable had been deputed under S. 56 to arrest the accused does not take away from him his powers of arrest in his discretion under S. 54 of the Code, if the exigencies of the situation so require. To take a contrary view is likely to make the object of S. 54 nugatory, because there may be cases where besides being armed with an order contemplated under S. 56 a police officer may also be possessed of the requisite information under S. 54, in which case his act will be supportable under either of the sections."

This decision will advance the case of the prosecution and supports the view I have taken, it was further held in the above case that inflicting of injuries by the accused would also not come within the right of private defence, since the arrest was done by a public servant acting in good faith under cover of his office. Even if the arrest was irregular, if what has been done is done in good faith under the cover of office, no right of private defence would arise.

12. The decision in Pedda Muni Reddi's case (1948 Cri LJ 705) (supra) cited by the learned counsel for the petitioner has to be viewed in the light of facts of that case, which are slightly different. It was found therein that the arrest was made by two constables at the instance of their superior police officer. But the

possibility of their acting independently, at their own discretion under S. 41(1)(i) of the Code was not examined. In such circumstances the Court held that the arrest was made in violation of S. 55 (1) of the Code, since there was no written direction. Whereas in the present case, PW 1 though initially was asked by PW 4 to arrest the petitioner, since the accused refused to come and tried to escape, he tried to arrest him, having been satisfied that the petitioner was concerned in a cognizable offence, necessary information having been provided by PW 3. The arrest of PW 1, therefore, falls under clause (i) of sub-section (1) of S. 41 of the Code. On facts, Pedda Muni Reddy's case (1948 Cri LJ 705) (supra) is therefore, not applicable to the instant case, the facts in which appear to be nearer to the facts in the Bench Decision in Maharani Gurucharan's case (1943 Cri LJ 45) (supra) and identical to the facts in Nyaya Panchayat Palog Vs. Ghanu Ram, .

13. I, therefore, hold that the arrest of the petitioner by PW 1 is not illegal and the petitioner is liable for the offence under S. 353, IPC and was therefore rightly convicted and sentenced by the Courts below. The criminal revision case is accordingly dismissed.

14. Petition dismissed.