

(1949) 11 MAD CK 0011
In the Madras High Court

In Re: A.K. Gopalan

Date of Decision : 04-11-1949

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 561A

Citation : (1949) 2 MLJ 730

Hon'ble Judges : Panchapakesa Ayyar, J;Panchapakesa Aiyar, J

Bench : Division Bench

Judgement

Panchapakesa Ayyar, J.—This matter arises from a petition u/s 561-A, Criminal Procedure Code, filed by one A.K. Gopalan, convicted in

S.C. No. 23 of 1948, on the file of the Sessions Judge, North Malabar, and sentenced to five years" rigorous imprisonment. He has filed Criminal

Appeal No. 243 of 1948 against that conviction and sentence, and that appeal is pending in this Court. His complaint is that when his advocate

went on 25th August, 1949, to interview him in Cuddalore Central Jail, to take instructions from him regarding this appeal, a police officer of the

C.I.D. insisted on being present at the interview and taking verbatim shorthand notes of what he was telling the vakil, and that all this is illegal and

that if the C.I.D. officer takes such notes he would communicate them to his superior officers and to the counsel on the opposite side, thus

breaking the rules regarding the confidential nature of such communications. He prays, therefore, that either this Court should order, u/s 561-A,

Criminal Procedure Code that no police officer should be present at the interview between him and his counsel, when he instructs his counsel

regarding Criminal Appeal No. 243 of 1948, or the other two appeals of his in the Sessions Court, Coimbatore, and take notes of his instructions

to his vakil, or, in the alternative, that he be directed to be produced before this Court to argue Criminal Appeal No. 243 of 1948, in person. The

learned Public Prosecutor objected that this Court has no powers u/s 561-A, Criminal Procedure Code, to grant either request as the Government had directed the C.I.D. officer to be present at such interviews. He relied on a decision of Govinda Menon and Rajagopalan, JJ., in Criminal Miscellaneous Petition No. 1490 of 1949. I have looked into that ruling. It has no bearing on the requests in this petition regarding the interviews concerning the three Criminal Appeals. There, one Anandan Nambiar, a member of the Madras Legislative Assembly and a detenu under the Madras Maintenance of Public Safety Order, Act I of 1947, having no case or appeal in this Court; prayed that the Superintendent of the Jail, where he was detained should be ordered to produce him before the Speaker of the Madras Legislative Assembly during the Assembly Session to take part in the Assembly proceedings, even though he had no notice to attend such proceedings, and to direct the Speaker of the Assembly to give him notice of the Assembly proceedings. Their Lordships held, and, if I may say so with respect, correctly, that Section 561-A, Criminal Procedure Code, had not given increased powers to a Court which the Court did not possess before that section was enacted, much less new powers, and that it only safeguarded and guaranteed the existence of those powers which the Court already possessed. Their ruling followed the ruling in King-Emperor v. Khwaja Nazir Ahmad (1945) 1 M.L.J. 86 : L.R. 71 IndAp 203 : ILR 1945 Lah. 1 . It is obvious that the requests made by Mr. Anandan Nambiar in the matter before their Lordships were quite outside the scope of this Court, having nothing to do with any matter or proceeding pending before it, and that no notice also had been given to him by the speaker of the Assembly to attend the Session, and it was not alleged that he was being wrongfully kept in ignorance of such notice, or that a notice actually issued by the speaker was being wrongfully withheld from him and that he was being wrongfully prevented from attending the Assembly in obedience to such notice. But, in this case, the petitioner has filed an appeal in this Court, which is pending, and has also two appeals in the Sessions Court, Coimbatore, and he has to be given by this Court all necessary facilities to instruct his counsel in those criminal appeals, like any other appellant. So, the petitioner is asking this Court only to exercise the powers of this Court regarding appellants in cases before it, and concerning their right to instruct vakils without a police officer being

present and taking verbatim shorthand notes of his instructions. Undoubtedly, this Court has had the power to safeguard the rights of parties before it in Civil and Criminal cases, as laid down by law, ever since its inception, and those rights have been safeguarded and continued u/s 561-A, Criminal Procedure Code and this Court ought to see that those rights are not infringed. Of course, those rights are subject to all the laws and rules governing the matter of interviews in jail. In fact, the learned Counsel for the petitioner has no objection whatever to being made subject to Rule 430 of the Madras Jail Manual and to have the interview in the presence of a Jail Officer who can be so placed as to be able to see and hear what passes between the petitioner and his counsel and to prevent any article being passed between the parties, as contemplated in Rule 430 of the Madras Jail Manual. He only objects to a police officer being present and taking shorthand notes of his instructions. I consider his objection. well founded. No Court shall fail in its duty of allowing a party to give instructions to his vakil freely and frankly without police officers (who naturally represent the other side) being present and taking down shorthand notes of the instructions and broadcasting them thereafter to their superior officers, etc. There is also no rule shown to me under which an appellant before this Court or before the Sessions Judge, Coimbatore, can be made, under mere executive orders of Government, to submit to the presence of a police officer at the interview between him and his counsel or to -such police officer's taking down shorthand notes of the instructions between the party and the vakil, obviously for intimating the instructions to the superior officers. I, therefore, direct the Superintendent, Central Jail, Cuddalore, to allow the petitioner to have interviews and give instructions to his counsel for the purpose of his Criminal Appeals without the presence of any police officer, and without his instructions being taken down in shorthand and subject only to the restrictions imposed by Rule 430 of the Madras Jail Manual and any other law or rule applicable to the case. A jail officer is quite different from a police officer. Many a jail officer drafts jail appeals for prisoners. Jail officers do not also represent the other side in criminal appeals. ""Jail custody"" and ""police custody"" are, it is well known, quite different. That is why the petitioner objects to the presence of a police officer while not objecting to that of a jail officer.

2. In view of my granting the prisoner's first request, there is no need to grant his second request which is only an alternative one.