

(1916) 08 MAD CK 0013
In the Madras High Court

In Re: Kakumara Anjaneyalu and Another

Date of Decision : 17-08-1916

Acts Referred:

Citation : 35 Ind. Cas. 813

Hon'ble Judges : Seshagiri Aiyar, J

Bench : Single Bench

Judgement

Seshagiri Aiyar, J.—The charge against the 1st accused is this (I use the language employed in the charge sheet):-- That you (referring to the

accused) on or about the 18th June 1915 at Tenali defamed Bollee Ramanajayya (complainant) by giving information to prosecution 3rd witness,

Railway Head Constable, and the Railway Station Master, prosecution 2nd witness, that the complainant Ramanajayya was bringing illicit ganja by

the train, which led to the search of the person of the complainant and another. The charge against the 2nd accused is that you (referring to the

accused) on the said date gave a written information to the prosecution 3rd witness that"", etc.

2. As regards the 1st accused, the charge is simply that he gave information to the Station Master and the Head Constable that the complainant was bringing illicit .ganja by train.

3. The cases of the two accused have been separately argued before me. As regards the 1st accused, I am constrained to differ from the Courts

below and must hold that there is no legal evidence upon which the conviction against him can stand. The Sessions Judge as well as the Magistrate

refer to the evidence of the prosecution witnesses Nos. 2 and 3 as substantiating the case against the 1st accused. This is what the Station Master

states: He told me he had given information to the Police that he expected some

parties by the train to bring smuggled ganja"". No mention of the person who was coming by the train and who was suspected of bringing the ganja was made. The Head Constable P. W. No. 3 says: ""When Exhibit B was written, the 1st accused was present. The 2nd accused came to me first and then 1st accused came, it was only the 1st accused who gave me the information."" He does not say what the information was which was given by the 1st accused.- It is a gratifying feature of that case that" the cross-examining Pleader has put a restraint upon himself in not supplementing the evidence for the prosecution, as very often happens in such cases. The evidence, as it stands, is altogether insufficient to bring home any offence to the 1st accused. I must, therefore, reverse the conviction against him and direct that the fine, if paid, be refunded to him.

4. As regards the 2nd accused the matter stands altogether on a different footing. He undoubtedly gave a written complaint to P.W. No. 3.

5. I may first of all refer to the objection raised by Mr. Richmond that the written complain is not in accordance with the actual charge that; has

been laid against the 2nd accused. After looking into the complaint, I do not think that there is any substance in this contention. Exhibit B says

(referring to the complainant and another) that they are both suspected of bringing ganja without license."" Mr. Richmond wants me to infer from

this that there was a bare suspicion and that was all that was mentioned to the Head Constable; but having regard to what happened, namely, the

search of the person of the complainant, I feel no doubt that the 2nd accused actually intended to convey the information to P. W. No. 3 that the

complainant was coming with smuggled ganja in his possession. The more serious contention of the learned Counsel is this, that the complaint

preferred by the 2nd accused is privileged. He relies in support of his contention upon a decision in Muthusami Naidu v. Emperor 14 Ind. Cas.

757 : 37 M.L.J. 110 where it was held that a complaint to a Magistrate was absolutely privileged. I do not think that the principle of this decision can

be extended to a complaint to a Police Constable. It is true, as pointed by Mr. Richmond, that just as Section 211 would cover the case of a false

complaint to a Magistrate, Section 182 may be availed of, if there is a false complaint to a Police Head Constable. But nonetheless, the principle

enunciated in Muthusawmi Naidu v. Emperor 14 Ind. Cas. 757 : 11 M.L.T. 431

proceeds upon the basis that parties before the Court, Counsel

and witnesses are all absolutely privileged, following earlier decisions of this Court. That principle cannot be extended to the case of the complaint

to a Constable.

6. Another objection of the learned Counsel is that the burden of proof has been wrongfully thrown on his client to show that he came within

exceptions 8 and 9 of Section 499, Indian Penal Code. Apart from authorities, I feel no doubt that the procedure adopted by the Courts below is

perfectly correct, having regard to the language of the Indian Penal Code. Section 499 says: whoever by words, either spoken etc...makes or

publishes any imputation., is said, except in the cases hereinafter excepted, to defame that person,"" If we turn to exception 8 of the section, it is

therein stated: It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that

person.... ""The two ingredients to be established are the preferring of a complaint in good faith and preferring it to a person who has authority over

the person complained against. Both these ingredients should be affirmatively established by the person who wants to bring himself, within

exception 8, and that is what Section 105 of the Evidence Act lays down.

7. Apart from the authorities, there can, therefore, be no doubt upon that matter: The learned Counsel for the petitioner relies very strongly upon a

decision of Muttusami Aiyer and Shephard, JJ. in Venkatanarasimha v. Kotayya 12 M.k 374. In the first place, the observations of the learned

Judges in that case refer to a suit in a Civil Court for damages. In the second place, the learned Judges found that the occasion for writing the

petition was a privileged one. The occasion was this: the Magistrate had gone to the place where the accused were residing to enquire into certain

charges against the Village Munsif, and the accused who were the ryots of the village preferred a petition to him on the spot. The learned Judges

held that the occasion was privileged. It is for the party who says that the petition is defamatory to show that the privilege has been exceeded. That

I take to be the ratio decidendi of the decision in Venkata Narasimha v. Kotayya 12 M.k 374. The learned Judges had not to deal with the

construction of Section 499. This decision is no authority for a case under the Indian Penal Code. I am, therefore, of opinion that the Courts below

are right in holding that the charge against the 2nd accused has been made out. 1 sustain the conviction so far as the 2nd accused is concerned and dismiss his petition.