

(1953) 10 MAD CK 0018
In the Madras High Court

In Re: N. Sakkarai Kannu Pillai

Date of Decision : 30-10-1953

Acts Referred:

Madras City Police Act, 1888 — Section 65

Citation : (1954) CriLJ 1231

Hon'ble Judges : Somasundaram, J

Bench : Single Bench

Judgement

Somasundaram, J.—This is a revision against the order passed by the District Magistrate of Madura in C.A. No. 7 of 1953. The appeal was preferred by the State against the order passed by the Sub-Magistrate of Madurai Town.

Before the Sub Magistrate the petitioner herein was charged u/s 65, Madras City Police Act in that on 21-11-52 the petitioner was having in his godowns bearing door Nos. 1 to 6 at East Market Street, Madurai Town, 256 1/2 bags of Tadepalligudem rice which is imported exclusively by the Government from Tadepalligudem and supplied to consumers through retail agents appointed by the Government. The petitioner was asked to explain the possession of this as there was a reasonable doubt that they were either stolen property or property fraudulently obtained. The Sub Magistrate found that there was no satisfactory explanation by the petitioner for the possession of these bags of rice and therefore convicted him u/s 65 and sentenced him to pay a fine of Rs. 100, in default to simple imprisonment for three weeks.

As regards the bags of rice, when they were brought to court by the police they were sold to the Government wholesale agents through whom Tadepalligudem rice is supplied to retail agents at the rate fixed by the Government and the sale proceeds which amounted to about Rs. 10,580/- and odd were kept in criminal court deposit. The Magistrate, after the conviction, considered the question whether it should be confiscated or not. Holding that confiscation will be a very severe punishment out of all proportion to the nature of the offence committed, he ordered the sale proceeds to be returned to the petitioner herein. There, upon an appeal as stated above was preferred to the District Magistrate u/s 520,

Criminal P. C.

2. The learned District Magistrate, before disposing of the appeal finally, wanted certain further particulars to enable him to dispose of this appeal. In his view, it was necessary to know whether the petitioner was a rich man and whether he was a grain merchant. He also further wanted to know the antecedents of the petitioner. According to the District Magistrate, if he was a rich man he could well be made to forfeit the rice so that it may act as a deterrent punishment. Against this order calling for a finding, this revision has been filed.

3. The question that is raised by Mr. Kalyanasundaram appearing for the petitioner is that no appeal lies at all against the order of the Sub Magistrate to the District Magistrate and even if the District Magistrate has powers u/s 520 Criminal P. C. to deal with this order of confiscation, his powers are limited by the words of Section 520; So far as the right of appeal is concerned, it is clear that under Criminal P. C. unless a right of appeal is specially provided, for no appeal lies from an order of a criminal court (vide Section 404 Crl. P. C.), There is no provision in Criminal P. C. by and under which a right of appeal is provided against an order passed u/s 517. At any rate Chapter 31 of the Code which relates to appeals, does not contain any provision for an appeal from an order u/s 517. We have therefore to rely only on Section 520.

Section 520 is as follows:

Any court of appeal, confirmation, reference or revision may direct any order u/s 517, Section 518 or Section 519 passed by a court subordinate there-to, to be stayed pending consideration by the former court, and may modify, alter or annul such order and make any further orders that may be just.

Any court of appeal -may direct any order u/s 517" does not mean that a right of appeal u/s 517 is granted u/s 520. It only means, any court to which an appeal lies from the court which convicts & from which an appeal is provided, such a court u/s 520 has got the power to pass an order revising, altering or annulling the order passed u/s 517.

In this case the Sub Magistrate passed an order u/s 517, From a conviction by the Sub Magistrate an appeal lies to the District Magistrate. The District Magistrate can therefore direct any order passed u/s 517 to be stayed, modified, altered or annulled. The extent of the powers which the court of appeal has with reference to an order passed u/s 517 is both defined and limited by the words of Section 520 Criminal P. C. It could only pass an order either modifying the order u/s 517, altering an order u/s 517 or annulling an order u/s 517 and make any further orders that may be just, which include confirming the order also. Except the powers mentioned above, it has not all the powers given to a court of appeal u/s 423 of the Code.

Nor can Section 428 apply to a petition filed u/s 520. In fact, no appeal is preferred against an order u/s 517. The practice has been to move the District

Magistrate in the form of a criminal miscellaneous petition praying for one of the reliefs mentioned in Section 520, Criminal P. C. The order therefore, of the District Magistrate calling for a finding either as to the status of the petitioner or as to his profession or as to his antecedents is without jurisdiction.

This order is therefore set aside and the case is remanded to the District Magistrate for disposal in accordance with the provisions of Section 520, which defines and limits the power of the court of appeal. The District Magistrate will therefore dispose of this case in one of the ways mentioned in Section 520 Crl. P. C.

The petitioner herein will be at liberty to raise all objections against the maintainability of the appeal or petition by the State before the District Magistrate.