

(1982) 06 MAD CK 0002

In the Madras High Court

Case No : Criminal Rev. Case No. 158 of 1980/Crl. Rev. 137 of 1980

In re: V.V. Perumal

Date of Decision : 22-06-1982

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 155
Penal Code, 1860 (IPC) — Section 175

Citation : (1982) LW(Cri) 167

Hon'ble Judges : Singaravela, J

Bench : Single Bench

Advocate : I. Subramaniam, for the Appellant; M. Karpagavinayakam, Government Advocate No. III (Crl. Side) on behalf of the State, for the Respondent

Judgement

Singaravela, J.—The facts are briefly these : An enquiry into the working constitution and financial position of the Paramankurichi Jaggery

Manufacturing Co-operative Society Limited, was ordered under S. 65 of the Tamil Nadu Cooperative Societies Act, 1961. The Co-operative

Sub Registrar in the office of the Assistant Director (Palmgur), Tuticorin was deputed and the enquiry was in progress. The revision petitioner, as

the President of this Society was called upon by the enquiry officer to produce among others, the cash book of the Society. As this was not done,

the Assistant Director (Palmgur), Tuticorin, addressed the Superintendent of Police, Tirunelveli, for taking necessary action against the revision

petitioner as the disobedience on his part constituted an offence under S. 175, I.P.C. The letter of the Assistant Director was forwarded to the Sub

Inspector of Police, Srivaikuntam for doing the needful.

2. On receipt of this, the Sub Inspector of Police, Srivaikuntam, incorporated this as a F.I.R. under S. 175, I.P.C. assigning Crime No. 8 of 1980

to this. An offence under S. 175, I.P.C. being a non-cognizable one, this officer moved the Judicial II Class Magistrate, Tiruchendur, for

permission to investigate the case, as under S. 155 of the Crl. P.C. such a permission is obligatory. Apparently to on coming know of this move,

the revision petitioner appeared by counsel before the learned Magistrate and filed an application objecting to the grant of such a permission and

praying for sending certain records of the proceedings initiated under S. 65 of the T.N.C.S. Act 53 of 1961.

3. The learned Magistrate entertained this application as Crl. M.P. 304 of 1980 and dismissed it holding that the records sought for were not

necessary for granting the permission and that it was not fair to reject the request to for permission to investigate the case.

4. The contentions raised in this revision are firstly, that the learned Magistrate ought not to have taken cognizance of the offence in the absence of

a complaint in writing by the public servant concerned or of some other public servant to whom he is subordinate as provided under S. 195(1)(b),

Crl. P.C. and secondly, that the alleged offence having been committed in or before October, 1976 the cognizance by the learned Magistrate on

4th January, 1980 is barred by limitation.

5. There is no force in either of these contentions. In this case, the stage of taking cognizance has not been reached at all. The complaint of the

Assistant Director (Palmgur), Tuticorin having prima facie disclosed an offence under S. 175, I.P.C., which is non-cognizable, the Sub Inspector of

Police, Srivaikuntam, had recorded this complaint in the form of a F.I.R. and, approached the Magistrate having jurisdiction for permission to

investigate the case, a course which is obligatory under S. 155(2), Crl. P.C. The Sub Inspector of Police should not have registered the F.I.R, in

this case, under the Police Standing Orders, P.S.O. 583, as information in respect of a non-cognizable offence should be recorded only in the

General Diary and not in the form of First Information Report which can be done only in cases of cognizable offences or cases referred for enquiry

or report under Ss. 144, 145 or 174 of the Crl. P.C. (P.S.O. 573). But then, this being at the most a procedural irregularity is of no consequences

in this case. The stage, therefore, in this case is one relating to the information to the Police and their powers to investigate, provided under Chapter

XII of the Code. It is needless to point out that the participation of the Magistrate during the investigation of a case relates to a stage long prior to

his taking cognizance of a case under Chapter XV of the Code. The orders" of a Magistrate for investigating non-cognizable offence are of the

areas of the exercise of the police powers intended as a limitation and a safeguard against undue interference with the liberty of a citizen. The fact

that the permission to investigate a non-cognizable offence does not extend to the powers of arrest, shows that the statute has intended to restrict

the powers of police officers only to cognizable offences.

6. It is only after an investigation by an officer in charge of a police station under Chapter XXII of the Code that he can send up a final report to

the Magistrate as provided for under S. 173 of the Crl. P.C. It is only then than the question of taking cognizance can arise and at no stage earlier.

Even in cases tribal on complaints other than police reports, a Magistrate under S. 200, Crl. P. C. taking cognizance has first to apply his mind for

the purpose of proceeding under that section and subsequent sections under Chapters XV of the code. It is only after he chooses to act under S.

202 or 204, Crl. P. C. that he can be considered to have taken cognizance of the case. In this case such a stage is yet to be reached. It may well

be said that even after investigation by the Police, which affords ample opportunities to an accused to put forward his case and produce or cause

to be produced documents relied upon by him the investigation officer may hold that there is no case for sending up the accused before court and

inform the Magistrate accordingly. In such a case there is and can be no question of the Magistrate taking cognizance of the case. As such this

contention must fail.

7. While at this, it is necessary to the procedure that has been followed by the learned Magistrate in this case, which is wholly irregular and against

law. The learned Magistrate was in error in having allowed the revision petitioner to intervene in a proceeding, which as is clear from Chapter XII

of the Code, is one entirely between the investigating agency and the Magistrate. It is well-settled that an accused cannot be permitted to

participate in a proceeding at a stage when the very question, whether a person complained against is to be called upon to answer an accusation, is

yet to be considered by the Magistrate. The entire scheme of the Code is that an

accused person does not come into the picture at all till process is issued to secure his presence. As such the revision petitioner in this case had no right to take part in the proceedings nor has the Magistrate any jurisdiction to permit him to do so. In Chandra Das Singh v. Prakash-Chandra Base the Supreme Court in considering the question, whether an accused person had a right to intervene at the stage of an enquiry under S. 202, CrI. P. C. and suggest to the Magistrate to put questions to the witness, at a stage when no process had been issued against him, has held that an accused has no right to participate in the proceedings and permitting an accused person to intervene during the enquiry would frustrate the very object and that was why the Legislature had made no specific provision permitting him to take part in an enquiry and the Magistrate had no jurisdiction to permit an accused to do so. The position of the petitioner in this case is still worse. It is not a case where, as in the Supreme Court case, there was a complaint under S. 190 of the CrI. P.C, followed by an enquiry under S. 202 of the CrI. P.C. In this case, the matter is only at the stage of the Police Officer seeking the permission of the Magistrate under S. 15(2), CrI. P.C, with a view to take up investigation. As such, neither S. 190 nor S. 200, CrI. P.C, is attracted or applicable, in which case alone the question of cognizance by the Magistrate within the scope of S. 195(1)(b), CrI. P.C. will arise. Consequently, the learned Magistrate has clearly acted in excess of jurisdiction in entertaining the application of the revision petitioner. It follows that the order which is now sought to be revised is itself nonest in the eye of law.

8. Coming to the question of limitation, while it is true that the Code has prescribed a period of limitation for taking cognizance of certain offences and an offence under S. 175, I.P.C., is one of those offences to which these provisions will apply it is unnecessary in view of my finding on the first point to consider this question in this case as the court has not yet taken cognizance of the offence. It is open to the revision petitioner, in the event of a charge-sheet being laid against him to urge this bar before the court. Event otherwise, the Code has not placed any blanket bar on actions commenced beyond the period of limitation prescribed therein. Provision has been made under S. 473 enabling a court to take cognizance of an offence even after the expiry of the period of limitation, if it is satisfied on the

facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interests of justice. This contention also must fail.

9. In the result, the Criminal Revision Petition is dismissed.