(1956) 08 MAD CK 0021

In the Madras High Court

Case No : Writ Petition No. 394 of 1956

M. Vaidyanathan APPELLANT

Vs

The Sub-Divisional Magistrate, Erode and Others RESPONDENT

Date of Decision : 03-08-1956

Acts Referred:

Companies Act, 1956 — Section 234, 242(1)
Constitution of India, 1950 — Article 226, 32
Criminal Procedure Code, 1898 (CrPC) — Section 154, 156, 156(1), 157, 157(1)
Penal Code, 1860 (IPC) — Section 406, 409

Citation : AIR 1957 Mad 65 : (1957) CriLJ 205

Hon'ble Judges : Rajagopalan, J

Bench : Single Bench

Advocate : K. Rajah Aiyar, S. Swaminathan and K. Ramgopal, for the Appellant; A.G. and Special Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Rajagopalan, J.—The Agricultural and Industrial Corporation Ltd., was incorporated in 1947 under the provisions of the Indian Companies

Act, 1913. At the meeting of the General Body of the shareholders held on 5-3-1949 the petitioner was elected the Managing Director of the

company in the place of one Narayana Rao who had been the Managing Director up to then. The petitioner claimed, that on 17-7-1949 at another

meeting of the General Body of the Shareholders one A. S. Venkata Rao was elected the Managing Director, and the petitioner handed over

charge of the affairs of the company to Venkata Rao.

The claim in the counter-affidavit of respondent 2 was that the petitioner functioned along with A. S. Venkata Rao till 4-5-1950, though Venkata

Rao had been elected as director in charge on 17-7-1949. The petitioner further claimed that after 4-5-1950 he ceased to have anything to do

with the management of the company. He was employed thereafter at Kozhikode and later at Bom-bay.

2. From the averments in the counter-affidavit of respondent 2, it appears that in the balance-sheet of the company, filed with the Assistant

Registrar of Companies at Erode on 7-3-1949 tangible assets of the company to the extent of nearly Rs. 49,000 were disclosed. It was alleged

that no balance-sheet was filed with the Registrar of Companies subsequent to that. There were charge and counter-charges as between the

directors and ex-directors of the company,

On 8-6-1955 the Registrar of Companies addressed a letter to the Inspector-General of Police, Madras. A copy of that letter was tiled as Ex. A,

annexed to the counter-affidavit filed by respondent 2. In that letter the Registrar referred to the enquiries conducted by the Officers of his

department and to the advice of the Public Prosecutor, Cuddalore, in whose opinion ""there was a prima facie good case for police investigation

and charging the officers of the company for offences under Sections 406. 409 and 477-A, Penal Code. The Registrar requested the Inspector-

General of Police to cause a thorough investigation to be made in the matter.

3. The letter of the Registrar dated 8-6-1955 was treated as a complaint to the police, and it was eventually registered at Kanjanur police station in

South Arcot District as Cr. No. 48 of 1955, under Sections 406, 409 and 477-A, Penal Code. In November 1955 the further investigation was

transferred Jo the police officers in charge of the Erode police station. It was registered as Cr. No. 892 of 1955, and a copy of the complaint was

lodged as the First Information Report with the Sub-Divisional Magistrate, Erode.

Further investigation into the complaint was eventually taken over by the Criminal Investigation Department, Madras, and from the affidavit of

respondent 3 it appeared that respondent 3, an Inspector of Police of the Criminal Investigation Department was placed in charge of the

investigation. The Investigation has not yet been completed.

4. The petitioner averred in the affidavit he filed in support of the petition that he was arrested at Bombay on 29-10-1955, without a warrant and

he was subsequently released on bail by the Additional Presidency Magistrate. Esplanade, Bombay. The petitioner appeared before the Sub-

Divisional Magistrate, Erode, on 24-11-1955, but what happened further in that court he, did not say.

5. In March 1956, the petitioner applied under Article 226 of the Constitution impleading the Sub-Divisional Magistrate, Erode, and the Registrar

of Joint Stock Companies, Madras, as respondents 1 and 2 respectively. The relief asked for was ""the issue of a writ of prohibition prohibiting all

further proceedings in Cr. No. 892 of 1955 before the Sub-Divisional Magistrate, Erode........

6. Though he had not been impleaded as a party to these proceedings at that stage, the Inspector of Police, Criminal Investigation Department,

who was in charge of the investigation, swore to an affidavit on 9-7-1956 to explain what further proceedings were taken after the investigation

was taken over by the C.I.D. Subsequent to that the petitioner was permitted in C. M. P. No. 5646 of 1956 to implead the Inspector of Police as

respondent 3 in these proceedings, and also to amend the prayer in W. P. No. 394 of 1956. The relief that the petitioner asked for after that

amendment was the issue of a writ of prohibition

prohibiting all further investigation by respondent 3 in so far as the petitioner Ss concerned in respect of the affairs of the Agricultural and Industrial

Credit Corporation Ltd.

7. The petitioner''s claim was that he was arrested at Bombay on 29-10-1955 and that he was subsequently released on bail. The truth of that was

not challenged. The petitioner himself apparently did not know on what charges he was arrested. The arrest was without a warrant. Even in the

counter-affidavit filed by respondents 1 and 3 there was nothing to show what led to the arrest of the petitioner on 29-10-1955. Nor even was

there anything to indicate that the arrest was effected on the basis of the letter dated 8-6-1955 which was treated as a complaint for the purposes

of Investigation by the police.

When the petitioner appeared before the Sub-Divisional Magistrate, Erode, the petitioner was apparently under the impression that he had been

arrested in the course of investigation into the complaint dated 8-6-1955, which was at that stage treated as the First Information Report in Cr.

No. 892 of 1955 of the Erode police station. It may not be necessary to refer further to the arrest or the circumstances under which that arrest was effected for the disposal of this petition.

8. I shall proceed on the basis, that the letter of the Registrar dated 8-6-1955 was a complaint to the police within the scope of the provisions of

the Criminal Procedure Code. The offences of the petitioner, among others, was alleged to have committed were specified as those punishable

under Sections 406, 409 and 477-A. I. P. C.

Of these, offences punishable under Sections 406 and 109, I. P. C. are cognizable offences. These are cases in which the person accused of

having committed those offences could be arrested by the police without a warrant issued by a Magistrate. Section 154, Criminal P. C. runs:

Every information relating to the commission of a cognizable offence if given orally to an officer in charge of a police station shall be reduced to

writing by him or under his direction and be read over to the informant; and every such information, whether given in writing or reduced to writing

as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as

the State Government may prescribe in this behalf

The letter dated 8-6-1955 though addressed to the Inspector General of Police, satisfied the requirements of Section 154, Criminal P. C. It was

eventually registered apparently under the provisions of Section 154 by the officer in charge of the police station at Kanjamir. Section 156(1)

authorises any officer in charge of a police station to investigate any cognizable case without the order of a Magistrate.

Under Section 157(1), even without a complaint in Writing if ""from the information received or otherwise"" an officer in charge of a police station

has reason to suspect the commission of a cognizable offence he could send a report of the same to a Magistrate empowered to take cognizance

of such an offence upon a police report and thereafter arrange for the investigation of the case.

9. I have referred to the provisions of the Criminal Procedure Code to explain what the statutory duties of a police officer are, when he is informed

by a complaint in writing or even otherwise that a cognizable offence has been committed. At that stage even the disclosure of the name of the

person suspected to have committed the offence may not be necessary to authorise an investigation by the police officer.

10. The relief that the petitioner eventually asked for in these proceedings before me under Article 226 of the Constitution was, that a writ of

prohibition should issue to restrain respondent 3 from investigating into the charges against the petitioner, the charges that he was suspected of

having committed offences punishable under Sections 406, 409 and 477-A. Penal Code. If respondent 3, who is now in charge of the conduct of

the investigation, has jurisdiction to investigate the charges against the accused, then obviously no writ of prohibition can issue.

The complaint of the learned counsel for the petitioner was that the Registrar of Companies acted in excess of his jurisdiction when he addressed

the letter dated 8-6-1955 to the inspector General of Police asking for an investigation. I shall deal with that contention a little later. Even if the

Registrar acted in contravention of any statutory provisions in preferring a complaint to the police that in my opinion, may not affect the jurisdiction

of the police officer to investigate into a complaint of the commission of cognizable offences like those punishable under Sections 406 and 409, I.

P. C.

Even if any irregularity tainted the complaint dated 8-6-1955, Section 157(1), Criminal P. C. is Sufficient to clothe the police officer with

jurisdiction to investigate. Even on information received from whatever source that information was received or even otherwise, if the police officer

in charge of the police station has reason to suspect that a cognizable offence has been committed, he has jurisdiction to Investigate u/s 157(1),

Criminal P. C. In fact it would be his statutory duty to investigate.

11. The Criminal Procedure Code itself does not provide for any statutory bar to, such an investigation. Whether there is any other statutory bar to

the investigation entrusted to respondent 3 is the next question.

12. The learned counsel for the petitioner relied on Section 630, Companies Act (Act 1 of 1956) and urged that that barred an investigation by the

police even into charges of the commission of cognizable offences if the acts on which these charges were founded were in relation to the affairs of

a company incorporated under the Companies Act.

The Companies Act (Act 1 of 1956) replaced the earlier enactment, the Indian Companies Act, 1913. It should be more convenient to refer to the

statutory provisions as they stand numbered in Act 1 of 1956 without any need to quote the corresponding provisions of the earlier Act, the Indian

Companies Act, 1913. In the rest of this judgment I shall refer to the Companies Act (Act 1 of 1956) as the Act.

13. Section 630 of the Act runs:

Penalty for wrongful withholding of property-

(1) If any officer or employee of a company--(a) wrongfully obtains possession of any property of a company; or

(b) having any such property in his possession, wrongfully withholds it or knowingly applies it to purposes other than those expressed or directed in

the articles and authorised by this Act; he shall, on the complaint of the company or any creditor or contributory thereof, be punishable with fine

which may extend to one thousand rupees.

(2) The Court trying the offence may also order such officer or employee to deliver up or refund, within a time to be fixed by the Court, any such

property wrongfully obtained or wrongfully withheld or knowingly misapplied, or in default to suffer imprisonment for a term which may extend to

two years.

14. The learned Advocate-General pointed out that there was no statutory provision in the English Companies Act to correspond to Section 630

of the Act. Section 630 of the Act is really based on and is analogous to Section 16, Friendly Societies Act, 1875 of England. The scope of the

summary procedure provided for by Section 16. Friendly Societies Act and that of the reliefs that could be claimed or granted under that section

were explained by the Court of Appeal in Vernon v. Watson, (1891) 2 QB 288 Lord Halsbury L. C. observed:

If the operation of the statute had been confined to criminal proceedings I should have entertained no doubt that imprisonment for the criminal

offence afforded no answer to a civil claim for the debt.

After pointing out that in Section 16 two different proceedings were mixed up together, the Lord Chancellor observed:

We must apply the ordinary principles of law to each part of the procedure. In fact the legislation itself points in that direction, because one part of

the section provides that the criminal proceedings taken under it shall not interfere with the right to indict........That was based on the statutory provision that nothing herein contained prevents any such person from being proceeded against by way of indictment, if not previously convicted of

the same offence under the provisions of this Act.

It is true that there is no such saving clause in Section 630 of the Act. But that, in my opinion, makes no real difference to the application of the

principles laid down with reference to Section 16, Friendly Societies Act. 1875.

15. Section 630 of the Act by Itself Imposes no bar to the initiation of proceedings in a criminal Court even with reference to acts committed in

relation to the affairs of a company, if those acts amount to offences like those punishable under Sections 406 and 409, I. P. C. Section 630 of the

Act provides for a summary procedure. It authorises ah officer or an employee of the company, and only these two, to apply u/s 630.

The acts specified in cls. (a) and (b) of Section 630(1) of the Act may not by themselves and with nothing more amount to criminal

misappropriation as defined by the Indian Penal Code and made punishable u/s 406 or Section 409, I. P. C. For example, knowingly applying any

property of the company to purposes other than those expressed or directed in the articles and authorised by the Act falls within Section 630(1)(b)

There might be nothing criminal punishable u/s 406, Penal Code in such an application. Yet it would fall u/s 630 of the Act.

I have referred to these at some length only to explain the scope of Section 630 of the Act. It proTides a summary remedy and the persons who

are entitled to ask for that remedy are specified. It is confined to an officer or an employee of the company. Whether, when in proceedings initiated

u/s 630(1) of the Act a punishment follows that would bar a conviction u/s 406 or Section 409, I. P. C., I am not called upon to decide in these

proceedings and I express no opinion.

We are still at the stage of initiation of proceedings. The Registrar of Companies could not himself invoke Section 630 of the Act. He complained

to the police that offences punishable under Sections 406 and 409, I. P. C. appeared to have been committed. Those are offences against the

State. In the prosecution of a person suspected of having committed such offences, it is the state representing society as a whole that is interested.

The benefits conferred by Section 630 of the Act are confined to the company, to its representatives specified by Section 630 itself.

It is a little difficult to see any real basis for the contention of the learned counsel for the petitioner, that Section 630 of the Act bars an investigation

or prosecution for offences punishable under Sections 406 and 409. I. P. C. Section 630 of the Act provides no statutory bar to the exercise of

the jurisdiction vested in a police officer by Sections 154, 156(1) and 157(1), Criminal P. C.

16. The learned counsel for the petitioner next referred to the provisions of the Act dealing with the powers of the Registrar and the Central

Government, and in particular to Sections 234 and 242 of the Act. Section 242(1) is only an enabling provision as the use of the word ''may'' in the

passage ""the Central Government ''may'' after taking such legal advice as it thinks fit prosecute such a person for the offence"" indicates.

By itself Section 242(1) does not divest a police officer of the jurisdiction conferred upon him either under Sections 154, 156 or 157, Criminal P.

C. No more than Section 630 of the Act does Section 242 bar the exercise of the Jurisdiction of respondent 3 to investigate into a complaint of the

commission of cognizable offences punishable under Sections 406 and 409, Penal code.

17. I have pointed out earlier that even if there was any irregularity or even illegality attendant on the letter dated 8-6-1955 which was treated as a

complaint by the police for purposes of investigation, neither the Jurisdiction to investigate nor the exercise thereof by the police officer could be

affected.

The learned Advocate-General pointed out that it was not in the discharge of any statutory duties imposed upon him that the Registrar sent the

letter dated 8-6-1955, asking for an investigation by the police. Even as a citizen he had the right to bring to the notice of the police that one or

more cognizable offences had been committed. He set the machinery of law in motion, and that he was entitled to do. It may not be necessary to

discuss this aspect further for the disposal of this application.

I am unable to accept, the contention of the learned counsel for the petitioner, that the Registrar did something illegal, something prohibited by the

Act, when he addressed the letter on 8-6- 1955, without availing himself of the powers vested in him by Section 234 and other relevant provisions

of the Act. True, nothing in the Act specifically authorised him to prefer a complaint to the police.

But then, there was no prohibition in the Act against asking the police to investigate into a case, Where cognizable onenees punishable under

Sections 406 and 409, I. P. C. were suspected to have been committed. There was nothing illegal about the letter dated 8-6-1955 which was

eventually treated as a complaint in writing to a police officer within the meaning of Section 154(1), Criminal P. C.

18. The learned counsel for the petitioner referred to H.N. Rishbud and Inder Singh Vs. The State of Delhi, , where the learned Judges said down

that where the cognizance of the case has in fact been taken and the case has proceeded to termination, the invalidity of the precedent investigation

does not vitiate the result, unless miscarriage of justice has been caused thereby. Their Lordships laid down further:

When such a breach is brought to the notice of the Court at an early stage of the trial the Court will have to consider the nature and extent of the

violation and pass appropriate orders for such investigation as may be called for, wholly or partly, and by such officer as it considers

appropriate....

Apparently the learned counsel relied upon this principle to support his contention, that he was entitled to a writ of prohibition. But as I have held,

he failed to establish that respondent 3 was doing anything illegal, anything prohibited by the statute in conducting the investigation with which he

has been entrusted. The writ asked for is one of prohibition. If respondent 3 had jurisdiction to undertake and continue the investigation, the writ

asked for cannot issue. Respondent 3 has that jurisdiction. This application fails.

19. The rule is discharged and this petition is dismissed. There will be no order as to costs.