
(1957) 11 MAD CK 0055
In the Madras High Court

Meenal

APPELLANT

Vs

Subbiah Naidu, Sub-Inspector of Police

RESPONDENT

Date of Decision : 20-11-1957

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 245(1)

Citation : (1958) ILR (Mad) 411 : (1958) 71 LW 48 : (1958) 1 MLJ 162

Hon'ble Judges : Somasundaram, J

Bench : Division Bench

Judgement

Somasundaram, J.—This is an appeal against the order of the Sub-Divisional Magistrate of Ramanathapuram in Calendar Case No. 51 of 1957 on his file. The case was taken on file on a private complaint preferred by the appellant herein. The appellant is the wife of one Tirukkana Thevar, to arrest whom the police went on 10th March, 1957 at about 4 a.m. The police went with a posse of constables as Tirukkana Thevar was wanted in connection with a dacoity case. The appellant is said to have been sleeping in the pial of the house. The accused who was the Sub-Inspector went along with others, woke her up and asked her where her husband was. She told the Sub-Inspector that he had gone to Paramakudi. The accused was not satisfied with the answer and charged her with hiding her husband in the house. She was asked to open the door. The accused went inside the house and according to the allegations in the complaint, broke the vessels,—mud pots and chattis—inside the house and further questioned the appellant as to where she was hiding her husband, asking her to surrender him. She was also threatened that she would be put to disgrace if she did not speak the truth. So saying, it is alleged, the accused dragged her outside by her hand. When the appellant questioned him as to why she was being treated like that, the accused is said to have replied that unless she was dishonoured, her husband would not come. She shook off the grip of the Sub-Inspector, and immediately, it is said, the Sub-Inspector became furious and beat her on her head with the lathi that he had in his hand. Blood came out and it is said that he again beat her with the lathi. She mentions the names of the persons who were watching the

occurrence and how they tried to prevent it without any success. Next day, she went and obtained a medical certificate, and thereupon filed this private complaint.

2. The Sub-Inspector took a preliminary objection on the ground that the Madras District Police Act would apply to the facts of this case, and, according to Section 53 of this Act, notice in writing of the intended action should have been given to the District Superintendent of Police one month at least before the commencement of the action against the accused, and that, as there was no notice given, this case ought to be thrown out. The Sub-Divisional Magistrate upheld the contention that notice was necessary, and acquitted the accused u/s 245(1), Criminal Procedure Code. It is against this order that this appeal has been filed by the complainant.

3. The question is whether Section 53 will apply to the facts of this case and whether the complainant must give one month's notice of this action to the District Superintendent of Police. Section 53 runs as follows:

All actions and prosecutions against any person, which may be lawfully brought for (anything done or intended to be done, under the provisions of this Act, or under the provisions of any other law for the time being in force conferring powers on the police) shall be commenced within three months after the act complained of shall have been committed and not otherwise ; and notice in writing of such action and of the cause thereof shall be given to the defendant, or to the Superintendent or other superior officer of the District in which the act was committed one month at least before the commencement of the action; and no plaintiff shall recover in any such action, if tender of sufficient amends shall have been made before such action brought, or if a sufficient sum of money shall have been paid into Court after such action, brought by or on behalf of the defendant and though a decree shall be given for the plaintiff in any such action, such plaintiff shall not have cost against the defendant, unless the Judge, before whom the trial shall be, shall certify his approbation of the action:

Provided always that no action shall in any case lie where such officers shall have been prosecuted criminally for the same act.

4. It is clear from the wording of the section that it refers to two kinds of proceedings: (1) actions (2) Prosecutions. The very language used shows that actions are different from prosecutions. Both actions and prosecutions must be commenced within three months of the act complained of. But, in respect of action, notice in writing of the action and the cause thereof shall be given either to the defendant or to the Superintendent or other superior officer of the District in which the act was committed. It is further stated that no plaintiff shall recover in any such action, if tender of sufficient amends shall have been made before such action, brought, or if a sufficient sum of money shall have been paid into Court after such action brought by or on behalf of the defendant. It further refers that though a decree shall be given for the plaintiff in any such action, such

plaintiff shall not have cost against the-defendant, unless the Judge, before whom the trial shall be, shall certify his approbation of the action. There is a proviso to the section which shows that no action shall in any case lie where such officers shall have been prosecuted criminally for the same action. It is therefore clear that the expression " action " means civil action as distinguished from prosecutions which are criminal in nature. Though to both civil actions as well as prosecutions there is a limitation period prescribed, namely, three months, within which the actions or prosecutions should be brought, it is only in respect of an action that one month's notice must be given. The further expression that is used, namely, the defendant, clearly shows that action refers only to a civil suit. Throughout the section, wherever "action" is referred to, the expression "defendant" and the expression "plaintiff" and also the expression suggesting damages is mentioned. Therefore, it is only in respect of civil actions that one month's notice is necessary ; but in respect of criminal prosecutions, such notice is not at all necessary under the provisions of Section 53 of the District Police Act. So far as the complaint is concerned, it has been filed almost the next day, in any event, within three months after the act complained of and therefore, there is no bar to the criminal prosecution.

5. In these circumstances, the order passed by the Sub-Divisional Magistrate is liable to be set aside, and it is therefore set aside. The Sub-Divisional Magistrate will restore the case to his file and dispose of it according to law. The case will be heard by a Sub-Divisional Magistrate other than the one who has heard and passed order under appeal.