

(1997) 01 AP CK 0019

In the Andhra Pradesh High Court

Case No : Writ Petition No. 27249 of 1996

T. Purshotham

APPELLANT

Vs

Circle Inspector of Police and Others

RESPONDENT

Date of Decision : 22-01-1997

Acts Referred:

Constitution of India, 1950 — Article 20, 22

Penal Code, 1860 (IPC) — Section 147, 148, 149, 188, 302

Citation : (1997) 1 ALD(Cri) 674 : (1997) 2 ALT(Cri) 12

Hon'ble Judges : Prabha Shankar Mishra, C.J.; D.H. Nasir, J

Bench : Division Bench

Advocate : S.R. Sanku and B. Buru Gopal, for the Appellant; Government Pleader, for the Respondent

Judgement

P.S. Mishra, C.J.—Petitioner herein, who is a practising Advocate, has made a grievance that for what he thought was his legitimate duty and accordingly informed this Court by telegrams that quite a few persons were kept at different police stations of the district of Mahbubnagar illegally, have been subjected to serious harassment by respondents 1 to 7 and called by them by notices u/s 160(2) of the Code of Criminal Procedure, 1973 to appear before them for interrogation in matters with which he has absolutely no concern and on the allegation that he has failed to respond to such notices, he has been subjected to the charge u/s 188 of the Indian Penal Code.

2. In response to the notice issued by this Court, only 7th respondent has filed a counter and has stated as follows :

"It is also true that the petitioner is in the habit of giving telegrams to the High Court without any material, only on presumptions and surmises. The allegations in para 3 of the affidavit that the police of Mahabubnagar are notorious for torturing of suspects in criminal cases and they want the police of other Districts to emulate them is totally false. The incident referred to by the petitioner regarding the lockup death of a tribla is an old one and it was a stray incident

and on that account it cannot be said that the entire police in the district are indulging regularly in illegal detentions. It is also false to say that because the petitioner has been agitating against the police, the police want to do away with the petitioner and also harass him. As and when the petitioner gave paper statement on any police station referring to the names of accused etc., the concerned Police Officers have issued summons to the petitioner to appear and to give statement on the subject. The Police Officers making an investigation under Chapter XII Cr.P.C. have powers to require attendance of any person u/s 160 Cr.P.C. before them. The petitioner gave paper statement on police stations referring to the names of accused persons and with other allegations, and also sent telegrams to the superior officers, on which he was summoned by the police to record his statement, but not for involving him in cases as alleged in the affidavit under counter It is submitted that the petitioner was summoned in writing to appear before the police in the cases referred in para under reply. The petitioner being an Advocate knows well that the police have powers to summon any body to give evidence touching the facts of the case and disobedience of such summon also results in a penal offence. Sub-section (2) of Section 160 Cr.P.C. lays down that the State Government may, by rules made in this behalf provide for the payment by the Police Officer of the reasonable expenses of every person attending at any police stations. But the State Government has not provided any provision to the police to pay T.A. and D.A. to attend the police stations as required under u/s 160(2) Cr.P.C. It is a fact that the petitioner has pointed out the investigation of the police as illegal in the news papers as if he is fully aware of the entire facts of each case and about the accused. Under the said provision of law, the concerned police have issued summons to the petitioner, but he is not booked in any case except in Crime No. 97/96 of Wanaparthy Town for the offence u/s 188 IPC, for failing to appear before the Investigating Officer for the summons issued in Crime No. 54 of 1994 of Wanaparthy Town and Cr. No. 50 of 1996 of Gopalpet P.S. As per the directions of the High Court, whenever the police require information from the petitioner, they are issuing questionnaire to the petitioner vide WPMP No. 33657/96 in W.P. No. 27249/96. It is submitted that questionnaires were served on the petitioner by C.I. of Police, Wanaparthy Town for investigation in Cr. Nos. 54/94 u/s 302 IPC of Wanaparthy town and Crime No. 87/96 u/s 395 IPC of Wanaparthy Town PS on 7-1-1997. The petitioner has acknowledged the receipt of questionnaire and submitted that he will send the questionnaire on 27-1-1997. It is further submitted that there is no intention on the part of police in Mahabubnagar District to involve the petitioner in any cases and it is also not the intention of the police to cause fear in the mind of the petitioner or to divert his mind from his practice."

3. The statement that the petitioner was summoned in writing to appear before the police in the cases referred to in paragraph 4 of the affidavit filed in support of the writ petition is relevant for appreciating the fact that the petitioner had sent a telegram to this Court on 11-11-1996 informing the Court that as many as

five persons were illegally detained by the police and he had issued a press note to the said effect. According to the petitioner, alerted by these developments, the police produced the said five persons before the Judicial First Class Magistrate at Achampet and they were remanded to judicial custody. Circle Inspector of Police, Achampet, Mahbubnagar District, however, was irked, it appears for the above reason and, according to the petitioner, issued summons on 5-12-1996, purportedly u/s 160 Cr.P.C. which is as follows :

"It is learnt that you are acquainted with the facts of the case in Cr. No. 51/96 under Ss. 147, 148, 452, 364, 324, 302 r/w 149 IPC, 5 of E.S. Act, 25(a) I.A. Act and 3(1) APPS Act 1992 of Lingal Police Station. Hence you are hereby summoned to appear before me on 14-12-1996 at 10-00 hours at my office Achampet to record your evidence.

This was followed by summons pertaining to Crime No. 41/96 and as is seen from the affidavit of the 7th respondent, the District Superintendent of Police, in other cases in respect of which, he had issued telegrams and/or statements. We have no reasons to think that respondents, who are seasoned police officers, and particularly, 7th respondent, who is the District Superintendent of Police, are unaware of the laws and the bounds of law, under which they are required to function. Chapter 12 of the Code of Criminal Procedure deals with the matters pertaining to information to the police and their powers to investigate and includes therein Section 160, which provides as follows :

"160 (1) Any police officer making an investigation under this Chapter may, by order in writing, require the attendance before himself or any person being within the limits of his own or any adjoining station who, from the information given or otherwise, appears to be acquainted with the facts and circumstances of the case; and such person shall attend as so required :

Provided that no male person under the age of fifteen years or woman shall be required to attend at any place other than the place in which such male person or woman resides.

(2) The State Government may, by rules made in this behalf, provide for the payment by the police officer of the reasonable expenses of every person, attending under sub-section (1) at any place other than his residence."

The seventh respondent has stated that rules in this behalf have not been framed, as contemplated under sub-section (2) of Section 160. Thus, as on date, when the petitioner is summoned to appear in connection with the case, in which he is neither named as a suspect nor as a witness or in course of investigation, there is no disclosure of any fact leading to the information that he is acquainted with the facts of the case. When called to appear at different police stations, as to do so at his own expenses and since the command in the summons so issued are to appear at a particular time, at a particular police station, he has to, in obedience thereto, give up his routine practice as a lawyer at least for such time as he is detained for interrogation by the police.

4. The Scheme of the law in the above mentioned Chapter of the Code of Criminal Procedure is, if, from information received or otherwise, an officer incharge of a police station has reason to suspect the commission of an offence, which he is empowered u/s 156 to investigate, he is required forthwith to send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and to proceed in person or to depute one of his subordinate officers, not below such rank as the State Government, may, by general or special order, prescribe in this behalf, to proceed, to the spot, to investigate the facts and circumstances of the case, and, if necessary, to take measures for the discovery and arrest of the offender.

5. Law enjoins the person investigating the case to take instructions of the superior officers and while making investigation, require attendance before himself of any person acquainted with the facts and circumstances of the case. A person called thus to make a statement, if any, before the police, in the course of the investigation, has an obligation to disclose all facts and circumstances with respect to the crime, if within his knowledge, save his right under Article 20 of the Constitution of India, inasmuch as he is not expected to make any statement incriminating himself. The statement made before the police by any such person is not required to be signed by him and any such statement is also not usable as a statement in evidence, except for the purpose of contradiction in case he is called upon to depose in course of the trial of the case. The order in writing requiring attendance of any person, who appears to the investigating officer to be acquainted with the facts and circumstances of the case, however, presupposes that he is called to be examined orally by the Investigating Officer as contemplated u/s 161 of the Criminal Procedure Code, and "such person shall be bound to answer truly all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture". The above, thus, leaves no manner of doubt that before any person is summoned by the police officer u/s 160(1) of the Code of Criminal Procedure, he has to be one, who, from the information given to the Investigating Officer or otherwise, appears to him to be acquainted with the facts and circumstances of the case.

6. Respondents 1 to 6 have not chosen to file any counter affidavit. We have already referred to the counter affidavit filed on behalf of the 7th respondent. The above shows that the Investigating Officers have chosen to summon the petitioner, who is a practising Advocate, only because he has informed this Court about illegal detentions at the respective police stations or in the District by the police and because he informed the public by press statements that he has informed this Court by sending telegrams that police had kept some persons under illegal detention. It is not possible, only from the above, to say, that there has been any information or there was any reason, otherwise for the Investigating Officer of any of the above cases, to think that the petitioner is acquainted with the facts and circumstances of the offences in respect of which cases are registered against such persons, who were kept by them at police

stations, according to the petitioner, under illegal detention.

7. The circumstances, under which the respondents have chosen to issue orders in writing under sub-section (1) of Section 160 of the Code of Criminal Procedure for appearance of the petitioner in connection with the cases with which he is not shown to have any concern at all, speak loudly and clearly that respondents have shown their anger to the petitioner, for what, according to them, was his habit, in the words of the 7th respondent, District Superintendent of Police, "on giving telegrams to the High Court without any material only on presumptions and surmises." Law has given no power of judgment of any ones intentions or crime to the police. This is a well known preserve of the Courts in India and when actions are taken by the Court upon informations given to it by the petitioner and the respondents are summoned, it is open to them to plead that the petitioner has sent information, upon which the Court has acted, without any material whatsoever and that he has been habitually doing so. The Court can always take notice of any false information or information based on no material and take suitable action against the person giving to it false information or information without any material. The Court can also take notice of the conduct of any person, who has developed the habit of giving false informations. Such person, who is found to give to the Court false information, can always be legally dealt with and suitably be punished. The police, investigating the case, however, cannot evolve its own mechanism of inflicting punishment by summoning unnecessarily and making some person to squat at the police station at the desire of the Police Officer. The respondents have been persecuting the petitioner instead of prosecuting him for doing any illegal act by summoning him to appear before them as and when called and using the above as a weapon to punish him without ever putting the matter before a Court of law for being judged whether the petitioner has been giving true or false information. We have felt concern by the disposition of the seventh respondent, the District Superintendent of Police, in the counter affidavit, who has chosen to justify the actions of the subordinate officers in the District, instead of pulling them for going beyond the bounds of law and abusing their power. The power given to the police to investigate and thus, in course of investigation, to examine any person and, if necessary, to summon him to appear before him, is important for investigation of any case and its abuse shall make it suspect in the eyes of the public at large. Once such conduct of the police is exposed and its actions become suspect, even in genuine cases, when they propose to interrogate some one or to summon some one to appear, they find themselves accused of doing something wrong. The District Superintendent of Police should have taken notice of the importance of the role of the police in investigating cases than in judging for himself that the subordinate officers, within his jurisdictions have not been illegally detaining persons. He would have made such statement before this Court on oath only after fully verifying the facts and not chosen to be on the side of his subordinate officers without being fully informed of the facts.

8. An order in writing u/s 160 of the Code of Criminal Procedure is not an order

promulgated by a public servant to attract Section 188 of the Indian Penal Code. An order, which is directed to summon some one to do a certain thing or to abstain to do some thing either in personem or in rem can, no doubt, be taken to be an order promulgated, but the order in writing as contemplated u/s 160 of the Code of Criminal Procedure will obviously be outside of such promulgation, which is contemplated for the offence u/s 188 of the Indian Penal Code. Section 188 of the Indian Penal Code speaks of the orders, to abstain from a certain act, or with respect to certain property in his possession or under his management and makes disobedience punishable if it causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, to any person lawfully employed and to cause or tend to cause danger to human life, health or safety or to cause or tend to cause a riot or affray. Such a blatant disregard of law, as exhibited by the respondents, cannot, but make the Court feel sorry for them and find without hesitation that they have chosen to prosecute the petitioner for the alleged offence u/s 188 of the Indian Penal Code most illegally and without any sanction of law. We are not making any specific orders, in the instant case, hoping that the respondents shall realise that they are responsible officers and they are answerable to the Court of law for every action they take in course of the investigation of the case. They are expected to know the law of the land and the right of every person to move the Court for appropriate action against any person or authority, who, in his/her opinion is indulging in any unlawful act. Petitioner has been within his rights in informing the Court about illegal acts of the police and if his allegations were/are true, the District Police has acted in defiance of the mandate of Article 22 of the Constitution of India. If he has sent untrue informations to the Court for action against the District Police, he can be suitably dealt with in the proceedings before the Court and prosecuted for the offence including perjury, but obviously not subjected to harassment by the police, who are charged by him of violating the law. It is a fit case, in our opinion, for issuing a direction to the respondents to restrain from summoning the petitioner in connection with the cases booked against others and being under investigation by the police, unless there is information or otherwise reason to suspect him to be an offender and/or being a witness, who is in know of the facts referable to the offences allegedly under investigation. The respondents are accordingly required to be restrained from proceeding against the petitioner and cautioned that they are indulging in such acts, as they have done in the case of the petitioner, against persons, who moved the Court of law in accordance with law, and will be viewed seriously.

9. In the result, the application is allowed. The respondents are restrained from proceeding any further and all notices issued to him u/s 160(1) of the Code of Criminal Procedure by the respondents are quashed and accordingly consequent proceedings are quashed.

Let a copy of this order be forwarded to the State Government for necessary instructions to the District Superintendent of Police to abstain in future from indulging in such methods to prevent persons from moving the Courts of law for

action against any person, who, according to him/her, has done any illegal act.

10. Application allowed.