

APPELLATE CRIMINAL

Before Mr. Justice Shah and Mr. Justice Vyas.

STATE v. DATTATRAYA TULSHIRAM BHUJBAL.*

1955
Oct. 31

Criminal Procedure Code (Act V of 1898) s. 549—Rules framed under s. 549—Indian Navy (Discipline) Act (XXXIV of 1934) ss. 43, 45, 46—Indian Penal Code (Act XLV of 1860) s. 366—Accused serving in the Indian Navy committing offence under s. 366, Indian Penal Code, while on leave—Whether ordinary Criminal Tribunals have jurisdiction to try the accused without following provisions of s. 549, Criminal Procedure Code.

The accused, a naval rating serving in the Indian Navy, was committed to the Court of Sessions by a Magistrate for an offence under s. 366 of the Indian Penal Code. The offence was alleged to have been committed while the accused was on leave. On the question whether the committal order was bad inasmuch as the Magistrate did not follow the provisions of s. 549 of the Code of Criminal Procedure, 1898, and the rules framed thereunder.

Held, that an offence under s. 366 of the Indian Penal Code not being one of the offences mentioned in s. 45 of the Indian Navy (Discipline) Act, 1934, and not having been committed at any of the places specified in the first paragraph of s. 46 of the Act, and not being one falling expressly within the terms of ss. 2 to 42 of the Act, the ordinary criminal tribunals had jurisdiction to try the accused without following the provisions of s. 549 of the Criminal Procedure Code, 1898.

Held, further, that as the accused was on leave and not discharging any duty at the time of the alleged commission of the offence he could not be said to be guilty of any act, disorder or neglect to the prejudice of good order and naval discipline within the meaning of s. 43 of the Indian Navy (Discipline) Act, 1934.

Criminal Reference by V. S. Bakhle, Esquire, Sessions Judge, Poona, for quashing the order of commitment made by M. K. Angdi, Esquire, Judicial Magistrate, First Class, 8th Court, Poona.

The facts are sufficiently set out in the Judgment.

H. M. Choksi, Government Pleader, for the State.

V. H. Gumaste, for the Accused.

Shah J.—This is a reference made by the Sessions Judge, Poona, recommending that the order of commitment made by the Judicial Magistrate, First Class, 8th Court, Poona, committing the accused Dattatraya Tulshiram Bhujbal to stand his trial for an offence under s. 366 Indian Penal Code be quashed and that the Magistrate be directed to deal with the case in accordance with the provisions of s. 549 of the Code of Criminal Procedure and the Rules framed thereunder.

The accused Dattatraya Tulshiram Bhujbal was charge-sheeted before the Judicial Magistrate, First Class, 8th Court, Poona, with having committed an offence punishable under s. 366,

*Criminal Reference No. 85 of 1955.

Indian Penal Code. The prosecution examined one Shakuntala, who was alleged to be below the age of 18 years, in support of the case that the accused had committed the offence. The learned Magistrate on a consideration of the evidence of Shakuntala and other prosecution witnesses held that there was *prima facie* evidence against the accused and directed that the accused be committed to the Court of Session at Poona to stand his trial on a charge under s. 366 of the Indian Penal Code.

The accused is a Naval Rating. From his identity card, which was produced before the Sessions Court, it appears that he was serving in the Indian Navy (till August 19, 1954, if not later). It was the case of the prosecution that the offence was committed on February 24, 1955, when the accused while on leave of absence had gone to Khed in the Poona District. According to the learned Sessions Judge the committing Magistrate in passing an order of committal ignored the provisions of s. 549 of the Code of Criminal Procedure and the Rules framed thereunder. He was of the view that the Magistrate before committing the accused to the Court of Sessions should have informed the Commanding Officer about the proceedings against the accused and having failed to do so the committing Magistrate had passed an order which he had no jurisdiction to pass. In coming to that conclusion the learned Sessions Judge relied upon cls. 3 and 4 of the Rules framed in exercise of the powers conferred by s. 549 of the Criminal Procedure Code. Clause 3 of the rules provides:

“Where a person subject to Military, Naval or Air Force law is brought before a Magistrate and charged with an offence for which he is liable to be tried by a Court-Martial, such Magistrate shall not proceed to try such person or to inquire with a view to his commitment for trial by the Court of Sessions or the High Court for any offence triable by such Court, unless (a) he is of opinion, for reasons to be recorded, that he should so proceed without being moved thereto by competent Military, Naval or Air Force authority or (b) he is moved thereto by such authority.”

Clause 4 provides:

“Before proceeding under cl. (a) of r. 3 the Magistrate shall give written notice to the Commanding Officer of the accused and until the expiry of a period of seven days from the date of the service of such notice he shall not (a) convict or acquit the accused under ss. 243, 245, 247 or 248 of the Code of Criminal Procedure, 1898 (V of 1898), or hear him in his defence under s. 244 of the said Code; or (b) frame in writing a charge against the accused under s. 254 of the said Code; or (c) make an order committing the accused for trial by the High Court or the Court of Sessions under s. 213 of the said Code; or (d) transfer the case for inquiry or trial under s. 192 of the said Code.”

It appears from cls. 3 and 4 that the jurisdiction of a Magistrate to convict, acquit, to frame a charge or to commit an accused person subject to Military, Naval, or Air Force Law, when the accused is charged with an offence for which he is liable to be

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tried by a Court-Martial is severely restricted. The Magistrate has no jurisdiction to try or enquire into an offence for which the accused is liable to be tried by a Court Martial, unless the Magistrate is of opinion that he should proceed without being moved by a competent Military, Naval or Air Force authority. Before the proceeds to try or enquire into the case against the accused without being moved by a competent Military, Naval or Air Force authority the Magistrate must give intimation to the competent authority in the manner prescribed by cl. 4.

In this case it appears that the committing Magistrate did not record an opinion that he should commit the accused for trial without being moved by a competent authority and he did not give the requisite notice to the Commanding Officer and there is no evidence that he was moved in that behalf by any competent naval authority. An enquiry or trial held by a Magistrate contrary to the provisions of cls. 3 and 4 of the Rules which expressly put restrictions upon a Magistrate in exercising the powers of convicting, acquitting or committing an accused person to the Court of Session or even framing a charge must be regarded as illegal.

If, therefore, the accused is a person subject to naval law and is charged with an offence for which he is liable to be tried by a Court Martial, the committing Magistrate had no jurisdiction to commit him to the Court of Session for his trial. That the accused is subject to the naval law cannot be disputed in view of the finding recorded by the learned Sessions Judge that on the date of the commission of the alleged offence the accused was a Naval Rating serving in the Indian Navy. But the question whether he is liable to be tried for the offence under s. 366, Indian Penal Code alleged to have been committed by him when on leave by a Court-Martial presents some difficulty. The Rules framed under s. 549 of the Code of Criminal Procedure do not set out the offences for which a person subject to naval law is liable to be tried by a Court-Martial. For ascertaining whether the accused is liable to be tried by a Court Martial, we must refer to the provision of the Indian Navy (Discipline) Act XXXIV of 1934. In the first part of that Act there are described various misdemeanours and misconducts which are regarded as offences and made punishable. Sections 2 to 5 deal with misconduct in the presence of the enemy. Sections 6 and 7 deal with communications with the enemy. Section 8 deals with improper communication with the enemy. Section 9 deals with neglect of duty. Sections 10 to 16 deal with mutiny. Sections 17 and 18 deal with insubordination. Sections 19 to 26 deal with desertion and absence without leave and ss. 27 to 43 deal with miscellaneous offences. A majority of these sections also provide for penalties which may be inflicted upon offenders for misconduct, misdemeanour or infractions described therein.

Section 45 provides penalties for various offences under the Act as well as under other provisions. The first paragraph of s. 45 provides penalties for offences punishable under ss. 302, 304, 304-A, 377, 377-A, read with ss. 511, 379, 380, 381, 382 and 392 of the Indian Penal Code. In the second paragraph penalty is provided for other criminal offences. That paragraph states *inter alia*:

"If any such person shall be guilty of any other criminal offence which if committed in India would be punishable by the law of India, he shall, whether the offence be or be not committed in India, be punished either in pursuance of the first part of this Act as for an act to the prejudice of good order and naval discipline not otherwise specified, or the offender shall be subject to the same punishment as might for the time being be awarded by any ordinary criminal tribunal competent to try the offender if the offence had been committed in India."

It is evident that it is open to the trying authority to punish the offender when the offence is not one which falls within the first paragraph of s. 45, as if it is an act to the prejudice of good order and naval discipline not otherwise specified, or to punish the offender in the same manner in which an ordinary criminal tribunal would punish him.

Section 46 prescribes punishment for certain offences. That section consists of two parts. The second part deals with the trial of offences specified as "misconduct in the presence of the enemy", "communications with the enemy", "neglect of duty", "mutiny", "insubordination", "desertion and absence without leave" or "miscellaneous offences", if committed by any person subject to the Act at any place on shore, whether in or out of India. The first part deals with

"offences [which are] specified or referred to in this Act if committed by any person who is subject thereto in any harbour, haven, or creek, or on any lake or river, whether in or out of India, or anywhere within the jurisdiction of the Admiralty, or at any place on shore out of India or in any of the dockyards, victualling yards, steam factory yards belonging to the Government or on any gun wharf, or in any arsenal, barrack or hospital belonging to the Government or in any other premises held by or on behalf of the Government for naval or military purposes or in any canteen or sailors' home or any place of recreation placed at the disposal of or used by officers or men of the Indian Navy."

It is clear from the terms of s. 46 that the offences which are described in ss. 2 to 44 may be tried under the Act even if committed at any place on shore whether in or out of India. But the other offences must be offences committed in any of the places specified in the first part of s. 46 before they can be tried by the authority specified in the Act, viz. the Court-Martial.

Section 366 of the Indian Penal Code is not one of the Sections referred to in the first paragraph of s. 45. It is true that it is within the meaning of the second paragraph of s. 45 as "any other criminal offence." It is, however, not an offence of the nature described in ss. 2 to 44 of the Indian Navy (Discipline)

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Act XXXIV of 1934, and in order that the Court-Martial may have jurisdiction to try the accused the offence must have been committed within the jurisdiction of the Admiralty or in any harbour, haven or creek or any of the places specified in the first part of s. 46. It is clear from the charge-sheet and the judgment of the committing Magistrate that the offence is not one which is alleged to have been committed in any of the places specified in the first part of s. 46 and the Court-Martial has, in our judgment, no jurisdiction to try the accused for the offence alleged to have been committed by him, the offence not having been committed in place specified in the first part of s. 46.

Mr. Gumaste, who appears on behalf of the accused, contended that the offence committed by the accused falls within the terms of s. 43 of the act. Alternatively he contended that the conduct of the accused in abducting the prosecution witness Shakuntala may be regarded by the Naval Authorities as prejudicial to good order and naval discipline and, it would be open to the Naval Authorities to charge the accused for an offence under s. 43 of the Indian Navy (Discipline) Act XXXIV of 1934, and if they so regard the conduct of the accused, the ordinary tribunals of the State can have no jurisdiction to try the accused for the offence alleged to have been committed by him. In our view, there is no substance in that contention. Section 43 of the Act provides a penalty for any act, disorder or neglect to the prejudice of good order and naval discipline which is not specified in ss. 2 to 42. In order that an act, disorder or neglect may be regarded as prejudicial to good order and discipline, it must have some direct relation to the duty which is required to be performed by a person subject to Naval duty. In the present case the accused was on leave and he was not discharging any duty at the time of the commission of the offence. Every immoral act may in a larger sense be regarded as an act to the prejudice of good order or naval discipline but we do not think that the Legislature intended by enacting s. 43 which penalises "miscellaneous offences" to render every act done by a person subject to Naval law, which may be regarded as an offence under the ordinary law of the land, or which may be regarded as contrary to good morals, punishable under s. 43. Section 43, in our judgment, is intended to punish acts, disorders or neglects which tend to prejudice good order and naval discipline, and it is necessary that at the time of doing the act or being guilty of disorder or neglect the offender was on active duty.

As the accused was at the time of the alleged commission of the offence not on active duty, we are unable to hold that the conduct of the accused falls within the terms of s. 43 of the Indian Navy (Discipline) Act XXXIV of 1934. It is unnecessary for us to consider whether the naval authorities may, notwithstanding the fact that the accused was not on duty, proceed against him for misdemeanour and inflict any penalty upon

him other than the penalty which is prescribed by the Indian Penal Code for offences under s. 366. In our view, the offence not having been committed at a place specified in the first part of s. 46, and the offence not falling expressly within the terms of ss. 2 to 42 of the Act, the ordinary Criminal Tribunals have jurisdiction without reference to the competent naval authorities to try the accused for the offence alleged to have been committed by him. The committing Magistrate, in our judgment, did not err in failing to give intimation of the proceedings before him to the Commanding Officer of the accused. We are, therefore, unable to accept the reference made by the learned Sessions Judge and make no order on the reference.

Reference rejected.

K. B. S.

APPELLATE CIVIL

Before Mr. M. C. Chagla, Chief Justice and Mr. Justice Dixit.

SHANKARAPPA RAMAPPA SIDALATE AND OTHERS, PETITIONERS
v. THE STATE OF BOMBAY AND OTHERS, OPPONENTS.*

Bombay Village Panchayats Act (Bom. VI of 1933), ss. 102, 99 (1), 11, 107 (2)—Government superseding Village Panchayat—Whether order of supersession can operate beyond the lifetime of the Panchayat—Collector suspending execution of Village Panchayat's resolution being of opinion that it was likely to lead to breach of peace—Whether Collector's opinion can be examined by Court—Government revising order of Director of Local Authorities under s. 107 (2)—Whether Court can go into merits of Government's order.

The power of supersession which Government possesses under s. 102 of the Bombay Village Panchayats Act, 1933, is confined to superseding a Village Panchayat for the period of its normal existence as provided in s. 11 of the Act.

Where the Collector, acting under s. 99 (1) of the Bombay Village Panchayats Act, 1933, suspends the execution of a resolution of Village Panchayat on the ground that he was of the opinion that the execution of the resolution was likely to lead to breach of peace, the Court cannot examine and scrutinize the opinion.

When the Government, acting under s. 107 (2) of the Bombay Village Panchayats Act, 1933, revises, annuls or modifies any order made by the Director of Local Authorities, it is exercising its power of supervision and control over its subordinate officers. Where the order of the Government is passed with jurisdiction and within the ambit of that section the Court cannot call upon the Government to justify its order on merits.

*Special Civil Application No. 1743 of 1955.

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