

(1960) 02 KAR CK 0004

Karnataka High Court

Case No: Criminal Revision Petition No. 385 of 1959

Fakirappa Ningappa
Chikkabagewadi

APPELLANT

Vs

The State

RESPONDENT

Date of Decision: Feb. 9, 1960

Acts Referred:

- Penal Code, 1860 (IPC) - Section 182

Citation: AIR 1960 Kar 208 : (1960) CriLJ 1113 : (1960) ILR (Kar) 484

Hon'ble Judges: K.S. Hegde, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

(1) This is a revision petition submitted by the petitioner from Jail. It is directed against the order of the first Addl. District Judge, Dharwar, in Cr. A. No. 124/1958. The petitioner is not represented in this Court. Hence I requested Sri Muralidhara Rao, Advocate, to assist me on behalf of the petitioner. He was good enough to examine the facts of the case carefully and present the same. In an able argument he has placed before me the relevant facts as well as the law bearing on the points arising in the case.

(2) The petitioner was convicted under S. 182 of the Indian Penal Code, on the ground that the information given by him to the Collector, Dharwar, as per Ex. 14 were known to him to be false or at any rate he believed them to be false and the same was given intending thereby to cause or knowing it to be likely that he will thereby cause the Collector to use his lawful powers to the injury or annoyance of Gangiah Chikmath who was at one time the chairman of the Sarvodaya Tenants Farming Co-operative Society, Aravattige. Ex. 14 is a petition sent by the petitioner on 15-5-1955. In that petition he made certain allegations against the aforesaid Gangiah Chikmath.

He alleged therein that the said Gangiah Chikmath had caused considerable loss to the Co-operative Society in question. He also stated therein that Gangiah Chikmath was not a desirable person and that he had been harassing the villagers and particularly the members of the Co-operative Society in more ways than one. He requested the Collector to enquire into the allegations made in Ex. 14 and to take appropriate action. This petition was sent by the Collector to the District Superintendent of Police of Dharwar on 21-5-1955. The District Superintendent of Police, in his turn, sent it to the Station House Office of Mugat on 28-5-1955.

The Jamadar held an enquiry on this petition on 4-1-1956 and a report was submitted to the Collector thereafter. In that report the Jamadar reported that the allegations found in Ex. 14 were false and they were deliberately made by the petitioner with a view to harm Gangiah Chikmath. On receipt of this report, the Collector launched the prosecution which has given rise to this revision petition.

(3) The Courts below have come to the conclusion that the Society in question did suffer loss during the management of Gangiah Chikmath; but the allegations made in Ex. 14 are not accurate and are exaggerated. It may also be noticed that the records of the Co-operative Society were not produced in the Courts below. The explanation given is that those records had been burnt. It is seen from the records in this case that the Co-operative Society building was burnt on 12-12-1957. So those records must have been available at the time when the Jamadar enquired into the case. The Jamadar did not seize those records.

He says that he looked into those records. But the absence of those records has given rise to a legitimate complaint by the petitioner that he is handicapped in establishing the case put forward by him in Ex. 14. Be that as it may, from the facts found, it cannot be definitely said that the allegation in Ex. 14 are wholly false. It is not the law that the accused must prove that the information given by him is true or that he believed it to be true. On the other hand, it is for the prosecution to prove satisfactorily that the allegations made by the petitioner were false and were false to his knowledge or, at any rate, he did not believe them to be true at the time when he made those allegations.

This aspect of the law was not borne in mind by the Courts below. They proceeded on the basis that the allegations were proved to be false. This is an incorrect approach. As held in *Empress of India v. Madho* ILR 4 All 498 the fact that belief of the accused turns out to be a wrong belief, is not sufficient to bring home a conviction under S. 182 I.P.C. The position of the law is correctly stated in *Sardar Khan v. Emperor* AIR 1930 Lah 54. In that case, His Lordship Tek Chand J. quoted with approval the remarks made by Plowden J. in *Murad v. Empress* 29 Pun Re 1894 Cr. Which are as follows:

"It is not enough to find that he has acted in bad faith, that is, without due care or enquiry, or that he has acted maliciously, or that he had no sufficient reason to

believe or did not believe the charge to be true. The actual falsity of charge, recklessness in acting upon information without testing it, or scrutinising its sources; actual malice towards the person charged they are relevant evidence more or less cogent, but the ultimate conclusion must be, in order to satisfy the offence, that the accused knew that there was no just or lawful ground for proceeding. It may be difficult to prove this knowledge, but however difficult it may be, it must be proved and unless it is proved the informer must be acquitted.

Same is the view taken by the Madras High Court in the case of *Rayan Hutti v. Emperor* ILR 26 Mad 640. In that case the learned Judges observed:

"To constitute an offence u/s 182, it must be shown that the person giving the information knew or believed it to be false, or that the circumstances in which the information was given were such that the only reasonable inference is that the person giving the information knew or believed to be false. The fact that an information is shown to be false does not cast upon the party who is charged with an offence under the section the burden of showing that, when he made it, he believed it to be true. The prosecution must make out that the only reasonable inference was that he must have known or believed it to be false."

(As summarised in the head-note).

Judging the evidence on record from the tests laid down in the above decisions, which, with respect I adopt, it is clear that the prosecution has not made out a satisfactory case against the petitioner.

(4) In the result, this revision petition is allowed and the petitioner acquitted. The fine, if paid, will be refunded to the petitioner.

DD/R.G.D.

(4) Revision allowed.