
(2000) 06 AP CK 0021

Andhra Pradesh High Court

Case No: Criminal Revision Case No. 993 of 2000

M. Sudhakara Rao

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision: June 20, 2000

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 195, 345, 446
- Penal Code, 1860 (IPC) - Section 143, 174, 175, 178, 179

Citation: (2000) 2 ALD(Cri) 230 : (2000) 2 ALT(Cri) 142 : (2001) CriLJ 448

Hon'ble Judges: T. Ch. Surya Rao, J

Bench: Single Bench

Advocate: Ch. Dhanamjaya, for the Appellant; Public Prosecutor, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

T. Ch. Surya Rao, J.

Under the impugned order the learned Assistant Sessions Judge, Narasapur has sentenced the revision petitioner to pay a fine of Rs. 100/-. A case in S.C. No. 246 of 1997 was pending before the learned Assistant Sessions Judge for trial for the alleged offence under Sections 143, 354, 326, 324 and 506, I.P.C. The revision petitioner was the Investigating Officer and the case stood posted for his appearance to give evidence before the Court. In fact, summons was issued and it was served upon him. Pursuant to the said summons, the revision petitioner failed to appear before the Court on the date of adjournment. So, for his absence, the learned Sessions Judge ordered a bailable warrant to be issued. He was directed to execute a bond for Rs. 5,000/- with one surety for a like sum thereby binding himself to appear before the Court on the set date and incorporated a condition to that effect in the bond. Accordingly, he appeared before the Court not on the date fixed but on the next adjournment date. He was examined as a witness on that date i.e. 13-8-1998. After his examination had been completed, the Court passed the

impugned order.

2. The impugned order is unsustainable under law. The reasons are not far to seek. Section 174 of I.P.C. says that if a person who is legally bound to attend in person at a certain place or time in obedience to the summons issued by the public servant legally competent to issue such summons, intentionally omits to attend that place or time, he shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to Rs. 5,000/-, or with both. So the act on the part of the revision petitioner, who failed to obey the summons issued by the Court, falls squarely within Section 174, I.P.C. and is therefore liable for punishment. But the offender has to be prosecuted for the said offence of disobeying the summons of the Court, a charge has got to be framed, he has to be tried and the procedure as is envisaged by the relevant provisions of the Cr.P.C. has to be followed. A competent Court who can try the accused for the said infraction should try the case on a complaint filed by the Court. But there is a limitation for that competent Court to take cognizance of the offence and in the absence of necessary complaint in writing filed by the public servant whose orders have been flouted, that competent Court is precluded from taking cognizance. Section 195 of Cr.P.C. engrafts, a bar for the Court to take cognizance of the offence alleged against the person who has violated the orders of the Court in having failed to appear before that Court pursuant to the summons issued which as afore discussed is an offence punishable u/s 174, I.P.C. In the absence of any such written complaint filed by the public servant whose order has been infringed, no Court can take cognizance of the offence and there can be no punishment.

3. However, Section 345 of Cr.P.C. envisages a procedure, where a Court can invoke its summary powers and punish the contemnor who has violated the orders of the Court by taking cognizance of the offence and by calling for the explanation from him and for that purpose by ordering detention of that person till the end of the summary trial and at the end the Court is empowered to inflict the sentence of fine not exceeding Rs. 200/-. But this summary power of the Court can be exercised in respect of an offence enumerated under Sections 175, 178, 179, 180 or 228 of the I.P.C. The offence enumerated u/s 174, I.P.C. is not the offence that can be tried summarily u/s 345 of Cr.P.C. Therefore, if the Court is of the opinion that there has been infraction of the order of the Court by committing default in making appearance before that Court pursuant to the summons issued by it, such violation on the part of the person responsible can be effectively dealt with only by ordering prosecution by filing a complaint in writing before a competent Court of Magistrate empowered to take cognizance. No such written complaint has been ordered to be filed in this case. The order is conspicuously silent as to under what provision the learned Assistant Sessions Judge imposed a fine of Rs. 100/- against the revision petitioner.

4. Be that as it may, here is a case where on the default of the revision petitioner in making his appearance before that Court on the set date, the present impugned order has not come to be passed. Instead, the Court has ordered to issue a non-bailable

warrant. The revision petitioner executed a bond binding himself to appear before the Court and in default to forfeit the bond amount of Rs. 5,000/-. In such circumstances, when there is default in making an appearance before the Court, notwithstanding the fact that he bound himself to appear before that Court, the proper course for the Court is to forfeit the bond executed by the man and to follow the procedure enjoined u/s 446 of Cr.P.C. For the default, the Court has, at the first instance, to forfeit the bond and initiate the proceedings laid down u/s 446, Cr.P.C. Such a course has not been followed in this case by the learned Assistant Sessions Judge. Therefore, the order per se is illegal. No fine amount can be imposed for an alleged offence without there being a trial in accordance with the procedure established under law, which is a constitutional mandate. The order is therefore liable to be set aside.

5. The criminal revision case is allowed.