

## Public Prosecutor Vs S.A. Jabbar

**Court:** Madras High Court

**Date of Decision:** Sept. 2, 1966

**Acts Referred:** Criminal Procedure Code, 1898 (CrPC) â€” Section 196

Industrial Disputes Act, 1947 â€” Section 10, 29, 34(1)

Prevention of Food Adulteration Act, 1954 â€” Section 20

**Citation:** AIR 1967 Mad 335 : (1967) CriLJ 1339 : (1966) 2 LLJ 888

**Hon'ble Judges:** Ramakrishnan, J

**Bench:** Single Bench

### Judgement

@JUDGMENTTAG-ORDER

(1) This appeal is filed by the State of Madras against the acquittal of the accused in S. T. R. No. 248 of 1964 by the Additional First Class

Magistrate No. 2, Salem. In view of the limited scope of the enquiry before me, which is confined to a specific legal point, and in view of the

circumstances that the other facts are admitted, it is sufficient to refer to the facts very briefly.

The accused Jabbar is the proprietor of Koganapuram Transports, Salem. On palaniappan who was working as a cleaner in the said company

was dismissed from service. On the representation made by the Motor Workers Union, the State Government made a reference to the Labour

court at Coimbatore u/s 10 of the Industrial Disputes Act, for a determination of as to whether the dismissal of Palaniappan by the accused"s

company was proper. The Labour Court passed an award, holding that the dismissal was improper, and directing the reinstatement of

Palaniappan. Repeated attempts were made first of all by Palaniappan, and then by the Union to have the award relating to reinstatement enforced.

But the accused failed to comply with it. Thereafter the Government was moved to take action and G. O. Ms. No. 2008 (Labour) was issued on

6-4-1964 in the following terms:

Whereas the Labour Court, Coimbatore, in its award, dated 29-8-1962 published with G. O. Ms. No. 4434 (Labour) Industries, Labour and

Co-operation, dated 11-9-1963, at pp. 17 to 19 of the Supplement to the Part II, Section 1 of the Fort St. George Gazette, dated 25-9-1963,

has held that the non-employment of the worker Sri S. Palaniappan by the management of Kongapuram Transports, Salem, is not justified and that

he is entitled to reinstatement in service with back wages from the date of non-employment, namely the 17th July 1962 till he is reinstated in

service;

And Whereas Sri S.A. Jabbar, the proprietor of the said Konganapuram Transports, has not reinstated the said worker Sri. S. Palaniappan and

has not implemented the said award;

And whereas, by not implementing the above said award, the said S. A. Jabbar has committed a breach of the terms of the award and has thereby

committed an offence punishable u/s 29 of the Industrial Disputes Act 1947 (Central Act XIV of 1947);

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 34 of the said Act, the Governor of Madras hereby directs that

a complaint be made against the said Sri S.A. Jabbar for an offence punishable u/s 29 aforesaid.

2. The Collector of Salem is requested to take necessary action for the prosecution of Sri S.A. Jabbar, who is the proprietor of the said

Konganapuram Transports Salem, and submit a report to the Government in due course.

(2) Thereafter, the Asst. Public Prosecutor, Grade I Salem, purporting to represent the State filed a complaint in the lower Court against the

accused for contravening section 29 of the Industrial Disputes Act. The complaint also alleged that in pursuance of the orders of the Government in

the G. O. cited above, the Collector of Salem had directed the complainant to file the present complaint. With the complaint was enclosed a copy

of the Government Order and also the order of the Collector dated 3-4-1964, containing the necessary directions issued to the asst. Public

Prosecutor to file the actual complaint. The case was fully heard by the learned Magistrates and evidence was taken both for the complaint and the

accused. Notwithstanding the plea of "not guilty" by the accused, the finding of the learned Magistrate was that the accused did not implement the

terms of the award and consequently his failure to reinstate the worker concerned (P.W. 2) was certainly an offence u/s 29 of the Industrial

Disputes Act. This finding of fact by the learned Magistrate is not disputed before me. After going through the evidence. I am in agreement with it.

(3) But before the lower court, there was an argument based upon the legality of the complaint filed by the asst. Public Prosecutor, and whether it

involved a strict compliance with the provisions of section 34(1) of the Industrial Disputes Act, which contains the provisions for taking cognisance

of an offence under the Act, in the following terms:

No court shall take cognizance of any offence punishable under this Act or of the abetment of any such offence, save on complaint made by or

under the authority of the appropriate Government.

The argument for the accused, which is also pressed before me in this appeal, is that the Government order cited above, authorised only the

Collector to file the complaint, and further delegation by the Collector to the asst. Public Prosecutor for filing the complaint, is illegal, as not being in

compliance with the provisions of section 34(1) of the Act. Section 34(1) visualises two situations: (1) the complaint being made by the

appropriate Government and (2) the complaint being made under the authority of the appropriate Government. It will be useful to compose this

provision with analogous provisions in other enactments. Thus in section 196 Cr.P.C. where the prerequisite for taking cognisance of certain

offences specified in that section, is a complaint (1) made by the order of the State Government, or (2) under authority from the State Government,

or (3) by some officer empowered by the State Government in this behalf. Section 20 of the Prevention of Food Adulteration Act provides as a

prerequisite for a prosecution for an offence under that Act, that the prosecution should be instituted by or with the written consent of the State

Government (or Central Government), or a local authority or a person authorised in this behalf by the State Government (or Central Government)

or a local authority. The third alternative in Sec. 196, Cr.P.C. of an "officer empowered by the State Government" came for consideration in the

decision of this court in State G.S.I. Vs. P. Ramaswami, : In that case the Government Order sanctioning the prosecution of the Editor of a

paper for an offence u/s 295-A I.P.C., directed the Commissioner of Police, Madras, to deputy a suitable officer to make the complaint.

Thereupon, the Commissioner of police deputed a Sub-Inspector for the purpose, first of all to make an investigation, and later on by a fresh

authorisation to prefer a complaint.

Learned counsel appearing for the accused respondent before me stated. that the Government order in the present case authorised only the

Collector of Salem to make the complaint, but it did not permit him to make a further delegation to a lower authority to act on his behalf, when as

by way of contrast, in the Government Order referred to in the decision that cried, the authorised officer namely, the Commissioner of Police, was

also permitted to depute a suitable officer to make the actual complaint. But there appears to be a difference between the terms of the delegation in

the Government order referred to in the decision cited above and, those in the Government order in the present case. The terms of authorisation in

the present case are:

The Collector of Salem is requested to take necessary action for the prosecution." The words "to take necessary action for the prosecution" are

different from a specific direction to the Collector to prefer a complaint. These words used in the Government Order in the present case, are wide

enough to include a power in the Collector to authorise a subordinate officer also to make the complaint on his behalf. The third limb of section

196, Cr.P.C. refers to an officer empowered by the State Government for referring the complaint. But such a provision is absent in Section 34(1)

of the Industrial Disputes Act which provides only for two alternatives, namely, a complaint being made by the appropriate Government, or a

complaint being made under the authority of the said Government.

(4) The words "under the authority of the appropriate Government" which are found both in Section 34(1) of the Industrial Disputes Act as well as

in Section 196 Cr. P. C., have come in for interpretation in the two well-known cases: Queen Empress v. Bal Gangadhar Tilak, ILR 1898 22

Bom 12 which was quoted and followed with approval by Calcutta in Apurba Krishna Bose v. Emperor, ILR (1908) Cal 141, Bande Mataram

case, At page 149 of the Calcutta decision, after referring to the earlier Bombay decision, the learned Judges observed:--

But the real question in such a case is whether the prosecution was instituted under the authority of Government. To quote the judgment of the Full

Bench ILR (1898) Bom 112: "There is no special mode laid down in the Code whereby the order or sanction of Government is to be conveyed to

the officer who puts the law in motion. In this case the prosecution was conducted by the Government solicitor. It was instituted by the Oriental

Translator to Government, and he produced the written order of Government to institute the complaint." The prosecution of the petitioner was

mutates mutans, even more regular than the prosecution of Tilak.

(5) In the present case, we have to interpret only the phrase "under the authority of the appropriate Government" found in S. 34(1) of the Industrial

Disputes Act. The Government order in question provides the necessary authority, but it does not designate the Collector as the officer to make

the complaint in actuality. It designates the Collector as the person to take steps for the prosecution, and those terms are wider than a specific

direction empowering a particular officer to make complaint, and they would certainly cover a case where the Collector makes a further

delegation, as in this case, to the Asst. Public Prosecutor.

(6) The learned Public Prosecutor has drawn my attention to the decision of the Supreme Court in The State of Bombay Vs. Parshottam

Kanaiyalal, , which interprets the provisions of Section 20 of the Prevention of Food Adulteration Act, which I gave referred to earlier. After

referring to the words ""written consent"" found in the first part of Section 20(1) of the Act, their Lordships observed that the emphasis at that stage

was on the consent to the filing of the prosecution and not to the person filling it. ""The preliminary examination of the facts to ascertain the

desirability and propriety of the prosecution is in this last case, the responsibility of the person or authority"" giving the written consent-not of the

person who figures as the complainant"". But the relevant provision of Section 34(1) is somewhat different, and bears a clear analogy to the second

limb of Section 196, CrI. P. C. which refers to the ""authority from the State Government"". These words really imply a sanction by the Government

after the Government had considered the desirability of prosecution. No much emphasis is laid in the said provisions, on the identity of the officer

who has to make the complaint. It is presumably for this reason that the Government Order in this case, was couched in somewhat wide terms,

giving the Collector, a latitude to take necessary action for the prosecution, without specifying that the Collector was the person to file the criminal

complaint.

(7) For the aforesaid reasons, I am of the opinion that the prosecution in this case has been properly and legally instituted. I allow the appeal, set

aside the acquittal of the accused and convict him u/s 29 of the Industrial Disputes Act. He is sentenced to pay a fine of Rs. 250 with S. I. for one

month in default. The employee (P.W. 2) in his evidence states that he was getting Rs. 60 per month at the time of his dismissal. I direct that out of

the fine amount if collected Rs. 180 will be paid to him as compensation. Time for payment of the fine amount is three weeks from this date.

(8) Appeal allowed.