# K.V. Krishnamurthy Iyer And Ors. vs The State Of Madras on 6 October, 1952

## Equivalent citations: AIR1954SC406

## Author: Chandrasekhara Aiyar

## Bench: Chandrasekhara Aiyar

JUDGMENT

Mahajan, J.

1. The above batch of appeals against the order of the High Court of Judicature at Madras dated 14-8-1951 is before us by special leave.

2. The appellants preferred a number of petitions to the High Court in what is known as the Hanuman Bank Conspiracy Case to quash no less than 67 charges framed against them by the Special Magistrate, Tanjore. The High Court quashed all the charges but directed a retrial of the appellants (who were some of the accused) on the charge of conspiracy between October 1946 and April 1947 to falsify bank accounts and to bring into existence a false balance-sheet. It also decided to withdraw the case under Section 526 (1) (e), Criminal P. C. to itself and added a direction under Section 526 (2) that the case be tried by warrant procedure but without a jury. A strong recommendation was made to the Govt. for the appointment of a Director of Prosecutions on a fixed salary not much below that of a High Court Judge for handling this and other complicated cases.

3. The facts giving rise to these appeals are these: The Hanuman Bank was incorporated in Tanjore in 1933 with an authorized capital of Rs. 20,000/-. This was increased to five lakhs in 1943, and to seven lakhs in 1946. Accused 1, a retired Chief Engineer of the Public Works Department, was the President of the Board of Directors of the Bank. Accused 2, an ex-clerk of the Registration Department, was its Managing Director. Accused 3, an ex-clerk of some coffee plantations, was one of the promoters of the bank and also its director. Accused 4, a doctor practising at Nagapattinam, was another director. Accused 5 was the auditor of the bank from its inception, while accused 6 was his assistant. Accused 7 to 10 held the office of Secretary, Accountant, Assistant Secretary and Inspector respectively. Accused 11 was the agent of the Nagapattinam branch, while accused 12 was an ordinary clerk. Accused 13 was the agent at Madras from 1945 after having been in employ since 1937. Accused 14 is the son of the Managing Director (accused 2) and after enrolment as an advocate is said to have been appointed agent of the Mathura branch. Accused 15 joined the bank in 1943 as a clerk and from 1948 was a branch agent. Accused 16 is the elder brother of accused 2. He was director from 1937 to 1940. Accused 17 is the brother of accused 2 and has no official connection

with the bank Accused 18 is the nephew of accused 2. He was director till 1940. Accused 22 to 28 are all bank constituents of long standing who were given substantial overdraft facilities.

4. On 9-12-1946 the Reserve Bank wrote a confidential letter to the Secretary of the Hanuman Bank inviting attention to Section 42 (6) (a), Reserve Bank Act, which required an application for registration as a schedule bank to be made as the previous balance-sheet disclosed an authorized capital which exceeded five lakhs. It is alleged that in December 1946 and January 1947 the officials of the bank desperately resorted to wholesale and fictitious manipulation of accounts to cover up a shortage in assets amounting to Rs. 5,31,704-12-0 and that in fact a false balance-sheet was prepared and passed and signed by accused 1 to 4, 5, 7 and 8 and also by other directors. On 15-7-1947 the bank suspended payment. An application was made in the High Court on 26-7-1947 to wind up the bank and a winding up order was made on 5-11-1947 and Brahmayya & Co. were appointed official liquidators.

A complaint filed by accused 1 in August 1947 against accused 2, 7, 8, 9, 10 and 14 was directed to be investigated by the C. I. E, and eventually a charge-sheet was drawn up against 28 persons on 29-9-1948, alleging conspiracy commencing from 1938 to commit criminal breach of trust under Section 409, I. P. C. and falsification of the accounts of the bank under Section 477A, I. P. C.

5. The actual trial of the accused commenced in November 1948 in the course of which over 6,000 exhibits were filed and 203 witnesses examined. The trial went on for two years and after completing the prosecution evidence the magistrate made the following order on 8-7-1950:

> "The prosecution has been closed today. The evidence let in speaks of several facts and acts against the accused committed individually, jointly and collectively at various branches and at several places spreading over a period of nearly ten years. The charge-sheet is a bald one in that it does not make mention of many of such facts and acts..... It is therefore necessary before proceeding further with the case that the prosecution should place before the Court in writing briefly a summary of its case as has been disclosed by the evidence against the accused individually or jointly and the section of law under which such acts constitute an offence."

In response to this order the prosecution presented to the Court a statement of the case covering 78 typed pages, which the High Court says it glanced through in amazement. The Magistrate then proceeded to examine the accused and spent four months over it. Arguments in the case started in December 1950 and were continuing till March 1951. No wonder that at this moment of time the Magistrate fell ill and went into retirement. Meantime, an application had been filed by the Assistant Public Prosecutor to convert this into a preliminary register case and commit it to sessions.

6. A new magistrate then took charge of the case and passed an order directing the accused to be tried by the Court of session. This order was set aside in revision by the High Court (Mack J.) and the magistrate was directed to frame charges, if any, against the several accused after discharging those accused against whom no case was made out. The Assistant Public Prosecutor was directed to give full assistance to the Court by crystallising and simplifying the prosecution case so far as

possible. In pursuance of this direction the Assistant Public Prosecutor supplied the magistrate with a draft of 67 charges, who then proceeded to frame them against all the accused, except 19, 20 and 21, who were discharged. At this stage the petitions giving rise to these appeals were made to the High Court and these again came up at first before Mack J. and later before a Division Bench.

7. Before the Bench the Public Prosecutor said that it was utterly impossible to try any of the accused at one trial on such unintelligible and impossible charges. He urged that the trial should be for conspiracy to falsify bank accounts wholesale in December 1946. It was suggested that a way out of the impasse was to isolate the charge of conspiracy to falsify the accounts and try it separately.

8. The High Court examined the respective contentions of the Public Prosecutor and of the counsel for the petitioners and after referring to the observations of Lord Wright in -- 'Emperor v. Gopal Raghunath', AIR 1929 Bom 128 (A), observed as follows :

> "We do not think Lord Wright could have visualized the possibility of a case such as this, where after a trial before a magistrate lasting for 2 1/2 years a confused conglomeration of charges has resulted, bewildering not merely to any defending counsel, but also to any trying Court and on the basis of which no further trial can possibly proceed on a vast accumulation of matter indiscriminately flung into the case. As regards magisterial discretion it has unfortunately been quite impossible for the magistrate who framed these charges to exercise any at all. He was called upon to deal with what appears to us an impossible situation and to frame charges on a vast mass of material with which even his predecessor, who sedulously piled it up at the instance of the prosecution, found it beyond his capacity to deal. He therefore merely accepted the draft charges presented to him by the Assistant Public Prosecutor. We are in sympathy with his helplessness and the predicament in which he found himself. He is a revenue magistrate without any legal training and we cannot blame him for accepting the guidance of the Assistant Public Prosecutor of Madras who must bear full responsibility for the charges framed in this case.
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> The present impasse is not the result of the law which presumes a certain amount of commonsense, practicability and responsibility not only in the accusation of a criminal conspiracy but also in its conduct of such a prosecution. We can find nothing whatsoever wrong or 'mala fide' in the accusation of conspiracy to falsify accounts from December 1946 but everything wrong with the way in which books, documents and papers of this bank under liquidation have been flung into this case without any attempt at selection or crystallising specific charges on which the prosecution sought to bring home the guilt to offenders. The Assistant Public Prosecutor has in fact tied himself, the case, the trying magistrate and also ourselves in a Gordian-knot of complication which is capable of no unravelling and one which can now, as it appears to us, be only cut through with a hatchet. We have no hesitation in quashing all the charges framed not on the legal ground of misjoinder, but for the other reasons we have given."

One would have thought that in view of these observations the petitions should have been allowed and proceedings terminated. It was quite dear that not only were the charges vague and unintelligible but it was impracticable to try them without confusion at one trial and in these peculiar circumstances the High Court was justified in quashing them in the exercise of its inherent powers even before the conclusion of the trial. We find no justification in the High Court's judgment for ordering a 'de novo' trial in the situation that had arisen. All these persons had stood a protracted trial for two and a half years which, according to the High Court, resulted in charges which were impossible to be tried at a single trial.

The Public Prosecutor had conceded that it was impossible to try the accused persons on those unintelligible and impossible charges. It would be placing a premium on the inefficiency of the prosecution by ordering a retrial in such circumstances which is bound to result in prejudice to the appellants and which may even lead to miscarriage of justice. During the two and a half years of the trial the accused must have exhausted all their resources of defending themselves land when the High Court made a strong recommendation to government to appoint a Director of Prosecutions for the case on a salary of RS. 4,000 and also transferred the case to its own records, it ignored altogether the prejudice that such a procedure was sure to cause to the accused persons. The procedure adopted by the High Court tends to divert the due and orderly administration of law into a new course and is likely to serve as an unwholesome precedent.

9. The most extraordinary part of the judgment of the High Court is that it proceeded without any enquiry or trial, to let go certain persons in an arbitrary manner from retrial without determining their culpability. It said as follows :

> "We are unable to accept the suggestion that accused 22 to 28 should also be included in this conspiracy charge. They were constituents of the bank whose accounts were juggled with in a manner of which they may not have been aware. The auditor's assistant, accused 6, accused 11, the agent of the Nagapattinam branch against whom several charge-sheets are pending, accused 17 and 18, 'we do not consider need be tried any further on any count in this unwieldy conspiracy case. Accused 4, though a director who signed the balance-sheet, is a doctor practising in Nagapattinam. The prosecution has not made all directors who signed it vicariously liable and in fact has examined two of them, K. Narayanaswami Ayyar, P. W. 181, and S. Swaminatha Sastri, P. W. 139, as prosecution witnesses. In quashing these charges we do not think there should be any further trial of accused 4, 6, 11, 16, 17, 18 and 22 to 28 on any counts in this charge-sheet, though we do not exonerate them from culpability, in view of the protracted trial to which they have been subjected."

The grounds given for absolving these accused during the pendency of a prosecution in the exercise of the powers under Section 561-A, Criminal P. C., are absolutely untenable. These persons having been left out of the case, retrial of the rest leaves the prosecution with a maimed case and may well not have been ordered, particularly when it was open to the liquidator to seek redress against the delinquents on the civil side. Any further trial of these cases would mean unnecessary harassment of the accused persons and is likely to result in injustice.

10. We have further not been able to follow why it was necessary to transfer the case to the High Court and to deny the accused persons the right of trial by jury under Section 267, Criminal P. C. We think that the High Court overstepped the limits of its jurisdiction inasmuch as it exercised it in an arbitrary manner without keeping in mind the prejudice it would cause to the accused. Instead of leaving the prosecution to decide for itself what it should do after the charges have. been quashed, the High Court took upon itself the duty of advising as to how this prosecution should be conducted and for what charges the accused might he tried and in what manner. The High Court completely failed to observe that the direction for the trial of twelve accused who are residents of Tanjore district in a costly place like Madras, 200 miles away, was fraught with serious consequences to the accused and might in all probability result in depriving thorn of their legitimate means of defence and thus lead to miscarriage of justice. It also failed to sea that the procedure adopted by it may result in depriving the accused of their usual rights of appeal and might place them under the risk of incurring heavier penalties than they would otherwise incur.

11. We are fully alive to the fact that owing to the inefficient manner in which the prosecution was handled by the lawyers appearing for the Government and by the magistrates before whom the case was tried, the unfortunate result may be that persons who may have committed serious crimes might escape but if during all these years the accused have not been given the charges which they could reasonably follow and meet, such a result is unavoidable. We consider that further trial of these accused will not in any way advance the course of justice.

12. The result is that we feel constrained to quash the order of the High Court directing a 'de novo' trial of the appellants. The appeals are therefore allowed, the order of the High Court directing a 'de novo' trial of the appellants before itself is set aside and the order quashing the charges is upheld.