

Nayan Chand Das Vs. the State

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Court : Guwahati

Decided On : Feb-01-1950

Judge : Ram Labhaya, J.

Appellant : Nayan Chand Das

Respondent : The State

Judgement :

Ram Labhaya, J.

1. This petition of revision is directed against the order of the learned Sessions Judge, U. A. D., dated 3 9-1949 by which what was virtually a petition of revision assailing the correctness of the orders of the Magistrate, let Glass, Silchar, dated the 19th and 21st April 1948, was rejected. The learned Sessions Judge disallowed the petition holding that he had no power to quash the proceedings against the petitioner under Section 182, which had been initiated in pursuance of the order of 10th April. The petitioner has come up to this Court on revision.

2. On 29-3-1948, the petitioner reported to the officer-in-charge Silchar P. S., that his godown had been broken open on the previous night and that a considerable quantity of yarn had been stolen away. The usual police investigation followed and on 12 4-1948 a report embodying the result of the investigation was submitted to the Magistrate at Silchar. The Police Report was to the effect that the case under Section 457/380, Penal Code, was false but that there was insufficient evidence to

prosecute the complainant. The learned Magistrate passed his order on this report on 19-4-1948. The order was to the following effect:

False under Section 457/380, Penal Code. Police to file complaint under Section 182, Penal Code against Nayan Chand Roy.

On 21-4-1948, the Officer in-charge, Silchar P. S, again reported to the Magistrate, Silchar, presumably in pursuance of the orders issued by him on 19-1-1948 that during investigation of the P. S. case No. 47 (3) 48, under Section 457/380, Penal Code, the report had been found to be false. He farther prayed that Nayan Chand Boy, who had made the report, be prosecuted tinder Section 182, Penal Code.

3. On the same day the learned Magistrate disposed of a Naraji-petition of Nayan Chand Bay, the present petitioner, asking for an inquiry into the matter, The learned Magistrate rejected the petition and remarked that the final report had already been disposed of and the Police had been asked to prosecute the complainant under Section 182, Penal Code, who will have sufficient opportunity to adduce evidence in the case.

4. The petition of revision filed in the 'Sessions Court was directed against the order of the learned Magistrate passed by him on the 19th and slat April 1948 as stated above. The learned Sessions Judge declined to interfere on the ground that he had no jurisdiction. It is now contended by the learned Counsel for the petitioner that the order of the learned Magistrate dated 19-4-1948 directing the officer-in-charge Silchar P. S., to lodge a complaint against the petitioner under Section 182, Penal Code, was without jurisdiction. The Magistrate could act only under Section 476, Criminal P.C. Under that section he could make a complaint to some other Magistrate of the 1st Class if on a petition made to him or otherwise, he was of the opinion that it was expedient in the interests of justice that an inquiry should be made into any offence referred to in Section 195, Sub-section (d), Clause (b), or Clause (c), which appeared to have been committed in or in relation to a proceeding in that Court. The learned Counsel points out that none of the conditions necessary for the exorcise of jurisdiction under Section 476, Criminal P.C. exist in this case. The alleged offence in this case is not covered by Section 195, sub -a. (1), Clause (b) or Clause (c). The offence had not been committed in

or in relation to the proceedings in the Court. The learned Magistrate could not come to the conclusion that it was expedient in the interests of justice that an enquiry should be made into the matter. This order was wholly without jurisdiction.

5. I think this contention is well founded. The order of the learned Magistrate directing the prosecution of the petitioner under S 182, Penal Code cannot possibly be brought under , 476, Criminal PC. It is not covered by any other provision of the Code either.

6. Under Section 195, Criminal P.C., a complaint about an offence under Section 182, Penal Code, could be made by the Public Servant concerned or some other public servant to whom he was subordinate. The report was made to the officer, in-charge of the Police Station. He had the power to make a complaint directly and the only other public servant who had the authority to make a complaint would be the public servant to whom the officer-in-charge of the Police Station was subordinate, but the Police Officer was not subordinate to the Magistrate. In directing prosecution of the petitioner under Section 182, the learned Magistrate, therefore, has clearly exceeded his jurisdiction and his order cannot stand.

7. The officer-in-charge, Silchar P. S., however, had the power to make a complaint under Section 182, if in his opinion the report made by the petitioner was false. Instead of making a complaint, a report was submitted by him. It referred to the previous report in which the conclusion was that though the report about loss of yarn was false there was no sufficient material for the prosecution of the petitioner who was responsible for making that report. It was evident that the Police Officer would not have preferred a complaint if the matter had been left to him. His report of 21-4 1943, which has been treated as complaint and by which he asked that the petitioner be proceeded against under Section 182, was evidently in pursuance of the order passed by the learned Magistrate though it does not refer to the order. The report does not satisfy the requirements of the complaint. No facts are stated. All that is said is that action be taken against the petitioner under Section 183. If the previous report is read along with the present complaint, the statement of the prosecution case would be that the petitioner be proceeded against under Section 182, though material for prosecution is

insufficient. A necessary ingredient of an offence under Section 182, is that the information which the person sought to be prosecuted gave must have been known or believed to be false by him. This necessary ingredient has not been alleged in the complaint. In the absence of such an allegation, an offence under Section 182, is not disclosed. The prosecution was initiated virtually in pursuance of a direction which had no force in law.

8. The order of the learned Sessions Judge is correct to this extent that he could not quash the proceedings himself. He could however, refer the case to this Court under Section 438, Criminal P.C. for necessary orders.

9. For the reasons given above, the orders of the Magistrate dated 19.4-1948 and the subsequent proceedings under Section 182, Penal Code, against the petitioner are quashed, The bail bond furnished by him shall stand cancelled.

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