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Ramswarup Agarwalla Vs. the State

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Court : Guwahati

Decided On : Dec-20-1950

Judge : Thadani, C.J. and Ram Labhaya, J.

Appellant : Ramswarup Agarwalla

Respondent : The State

Judgement :

Ram Labhaya, J.

1. This case has been referred to this Court for orders by the Sessions Judge, U.A.D. The facts leading to the reference are as follows:

2. Ramswarup Agarwalla was prosecuted under Section 188, Penal Code, for an alleged contravention of an order under Section 144, Criminal P.C. This order was passed by Mr. H.N. Deka, Sadar Sub-Divisional Officer, Dibrugarh. The proceedings against Ramswarup Agarwalla were initiated by a Police report in the Court of Mr. Deka, whose order he was alleged to have disobeyed. He took cognizance of the case but after issuing summons for his attendance, he transferred the case to the Court of the Magistrate, 1st Glass, Dibrugarh, who tried and found him guilty. Ramswarup Agarwalla was sentenced to a fine of Rs. 40. He invoked the revisional jurisdiction of the learned Sessions Judge U.A.D. and assailed the validity of the order on the ground, amongst others, that the learned Magistrate had no jurisdiction as there was no proper complaint against him as

required by the provisions contained in Section 195(1), Criminal P.C., The learned Sessions Judge found the objection to be valid and has sent the case up with the recommendation that the proceedings are without jurisdiction and should, therefore, be quashed.

3. We agree with the view of the law taken by him and hold that the provisions of Section 195(1)(a), Criminal P.C., Contain an absolute prohibition against cognizance being taken by any Court of any offence punishable under Sections 172 to 188, Penal Code, except on the complaint in writing of the public servant concerned or some other public servant to whom he is subordinate. It is clear that the public servant concerned or any other public servant to whom he was subordinate did not put in any written complaint as required by law. In fact, the police report was presented to the very officer who should have complained. The proceedings in these circumstances were apparently without jurisdiction The Magistrate who heard the case could not take cognizance of the alleged offence. The proceedings and the conviction, therefore, must be quashed.

4. The learned Sessions Judge has mentioned certain other grounds in support of the recommendation he has made. It is not necessary to deal with these matters as the case can be disposed of on the point dealt with above.

5. The recommendation of the learned Sessions Judge is accepted. The petition of revision is allowed. The conviction is quashed. The fine, if paid, shall be refunded.

Thadani C.J.

6. I agree.

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