In Re: Narayan Dhonddev Risbud

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SooperKanoon Citation : sooperkanoon.com/329339

Court : Mumbai

Decided On : Mar-16-1910

Reported in : (1910)12BOMLR383

Judge : Batchelor and ;Davar, JJ.

Appeal No. : Criminal Application for Revision No. 347 of 1909

Appellant : In Re: Narayan Dhonddev Risbud

Judgement :

Batchelor, J.

1. In a certain civil suit filed against a woman named Lakshmibai she propounded a will as part of her defence.

2. The first Court held that the will was genuine, but on appeal the Assistant Judge was of opinion that the will was a forgery. Eight months after that decision the original plaintiff obtained the sanction of the Court to prosecute Laxmibai and the attesting witnesses of the will and the writer under Sections 193 and 467, that is to say, the sanction was obtained to prosecute Lakshmibai under Sections 193 and 467, and to prosecute the attesting witnesses and the writer, who are the present petitioners, under Sections 193 and 467.

3. An application was made to the High Court against the grant of this sanction and the Chief Justice and my brother Davar set aside that sanction using the following language :-

Eight months afterwards an application is made to the District Judge for sanction to prosecute. The District Judge has considered the matter very carefully and has decided that sanction ought to be granted. But he has not had the advantage of seeing the witnesses as the Subordinate Judge bad and the grounds of his sanction are entirely based upon the circumstantial evidence. It is a case in which we think that having regard to all the circumstances sanction ought not to have been granted, and therefore acting under our powers under Section 195, Criminal Procedure Code, we revoke the sanction.

4. Thereafter the present opponents went to the Court, and moved the Court that their complaint' as against the present petitioners under Section 467 alone should be proceeded with on the ground that for that prosecution no sanction was needed under Section 467 inasmuch as the petitioners were not parties to the proceedings in the original civil Court.

5. The District Magistrate, having some doubt as to what order should be made, referred the matter to this Court and the reference was disposed of on 9th September 1909, by Sir Narayan Chandavarkar and Mr. Justice Heaton as follows :

Having regard to the grounds of this Court's judgment in the sanction proceeding, it may be that the prosecution to which this reference relates ought not to go on; but that cannot in law prevent the complainant from prosecuting parties for offences for which no sanction is required. With this expression of the Court's opinion the record and proceedings in this reference should be returned.

7. That ended the reference by the District Magistrate.

8. The present application has been made by the parties sought to be prosecuted and the question is whether the prosecution should be allowed to proceed against them.

9. Mr. Gadgil for the private individuals, anxious to prosecute, has relied mainly upon the terms of this Court's order of the 9th September 1909, suggesting that that order renders the present question rest judicata in his favour. But we do not so understand the order. We read it rather as meaning that the points now urged for the petitioners were left open for presentation by the petitioners, though the learned Judges did not feel obliged to pronounce upon them in a reference from the District Magistrate. If that were not the true meaning of the order it is difficult to see why their lordships so clearly gave expression to their opinion that the proceedings should in fact not be continued against the petitioners. We take it, therefore, that the matter is open for our decision now, and if that is so then we have no doubt that the petitioners ought to succeed.

10. There can be no question whatever as to the meaning of this Court's order in which the sanction to prosecute was revoked; for, that order says in plain language that the prosecution was one which in the circumstances of the case ought not to go on. It comes therefore to this that in so far as Section 193 is concerned, the sanction which was needed was refused and the prosecution whether of Lakshmibai or of these present petitioners is impossible. Lakshmibai cannot be prosecuted at all, and the petitioners cannot be prosecuted under Section 467; that much is admitted. But, say the opponents we can still prosecute the petitioners for their part in the alleged forgery, because they were not parties to the civil suit and under Section 195 of the Criminal Procedure Code sanction is needed only against a party to the suit.

11. Now if this plea were to be allowed it is manifest that the only result would be to allow the opponents to go behind this Court's order revoking the sanction, and by this device to institute these very prosecution which this Court has already restrained from proceeding. It seems to us that we cannot lend ourselves to proceedings of this character and that we must give effect to the order already made by this Court and must hold that the revocation of the sanction carried with it as a necessary consequence the termination of the prosecution of the petitioners. We do not find that there is any serious difficulty in coming to this view which accords, we think, with the provisions of section 195, (1), (c), of the Criminal Procedure Code, for, as we read that section the word ' offence' occurring as the

third word in the clause is designedly used in a somewhat abstract manner. It is the ' offence' in itself, not any particular offender's offence which the section aims at: and that is in accordance with Section 40, Indian Penal Code, where offence is defined as the thing made punishable by the Code. In other words, the clause deals with the case where there is a substantive offence committed by a party to a suit. If that condition is realized then, the, clause enacts that no Court can take cognizance of' such offence.' In this case ' such offence' would mean the offence generally of forgery, and it seems to us that if the criminal Court were to try Lakshmibai's abettors under Section 467, it would 1 fact be taking cognizance of the offence as those words are use in the clause, and that is the action which is specially forbidder This reading of the section appears to us to involve no undu straining of the language and to give a more reasonable interpretation than is arrived at by the rival construction; for, upon that construction while the prosecution of the main offend could not be instituted without a sanction, any minor aiders or abettors or accessories of his could be prosecuted without sanction. That, we think, is hardly a result likely to have bee contemplated, and we observe that Sub-section (5) of Section 195 appears t lend countenance to the view which we have adopted.

11. There is thus, we think, no technical difficulty in the way c our interfering in the manner prayed for by the petitioners, an upon the merits we entertain no doubt that we ought to interfere.

12. The rule, therefore, will be made absolute, that is to say, a criminal proceedings against these petitioners in respect of/the will in question will be stopped.