

In Re: Shivlingappa Bhagappa

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Court : Mumbai

Decided On : Apr-01-1930

Reported in : AIR1930Bom372; (1930)32BOMLR782

Judge : Mirza and ;Broomfield, JJ.

Appeal No. : Criminal Application for Revision No. 16 of 1930

Appellant : In Re: Shivlingappa Bhagappa

Judgement :

Mirza, J.

1. This is an application for revision of an order made by the Sub-Divisional Magistrate, First Class, III Division, Dhar-war, refusing to take action on an application made by the petitioner to that Court that the proceedings against him now pending in the Court of the same Magistrate may be terminated and he may be discharged. The petitioner is being tried for offences under Sections 164 to 165 and 109 of the Indian Penal Code, They are cognizable offences. Proceedings against the petitioner were started by Ex. 1A which was an application made to the District Magistrate asking that an investigation may be directed against the petitioner under the provisions of Section 155(2) of the Criminal Procedure Code. The District Magistrate having made an order for investigation under that section the police-officer, N. S. Gurtu, made an investigation and thereafter filed a charge sheet before the Court. The case has proceeded on the basis of this application

Ex. 1A and the charge sheet.

2. It is contended on behalf of the petitioner, firstly, that no report has been made to the Court as required by Section 173 of the Criminal Procedure Code, and, secondly, that if the charge sheet in the case is to be regarded as a report it is not a valid report under Section 190(1)(b) because it fails to set out the statement of facts which would constitute the offences with which the petitioner is being charged. It is also contended on behalf of the petitioner that the procedure followed in the case contravenes the provisions of Section 190 of the Criminal Procedure Code which are that the Magistrate may take cognizance of any offence (a) upon receiving a complaint of facts which constitute such offence; (b) upon a report in writing of such facts made by any police-officer.

3. It is clear from the facts stated that the application first made to the District Magistrate cannot be regarded as a complaint. It was not put forward as a complaint but as an application requiring sanction of the Court for making an investigation under Section 155(2) of the Criminal Procedure Code. The charge sheet subsequently filed before the Court, however, can, in my opinion, be regarded as coming under the description of a report. The District Magistrate has evidently treated this charge sheet as a report and has taken cognizance of the offence under Section 190(1)(b) on the strength of this report. Section 173(1)(a) provides that the police report on which the Magistrate is to take cognizance of the offence should be a report in the form prescribed by the local Government. The report has to set forth the names of the parties, the nature of the information and the names of the persona who appear to be acquainted with the circumstances of the case. The form used in this case appears to be the form sanctioned by the local Government. In column 7 of the charge sheet the offences with which the petitioner is charged are set out as follows :-

In connection with Hubli town C. R. Nos, 36 and 37 of 1927 the accused noted in the charge sheet and others conspired with each other and abetted one another in committing offences under Sections 161, 162, 163, 164, 165, and 109, Indian Penal Code.

From this description it is clear that the charge sheet, treating it as a report within the meaning of Section 190(1) (b), fails to comply with the requisites of that section in important particulars). Section 190(1)(a) states 'upon receiving a complaint of facts which constitute such offence' and Section 190(1)(b) states 'upon a report in writing of such facts made by any police-officer'. The facts to be stated in the report clearly are facts which would constitute the offences charged. The case before us seems to be covered by the authority of the rulings in *Lee v. Adhikary* ILR (1909) Cal. 49 and *Nagendra Nath Chakravarti, In re* ILR (1923) Cal. 402. The order here will be similar to the order which was made in *Lee v. Adhikary*.

4. The rule should be made absolute and the proceedings set aside. If the prosecution intend to proceed against the present applicant then the procedure of the Code as indicated in Section 190 and also in Section 173 if it be requisite to rely on that section must be followed.

Broomfield, J.

5. I agree. It appears to me that there is no doubt that what happened in this case was that the District Magistrate took cognizance of the offence under Section 190(1)(b) of the Criminal Procedure Code, that is to say, upon a report in writing made by the police-officer, N. S. Gurtu. The report was made in the form which appears to have been prescribed by Government for the purpose and if the form had been correctly filled in there would have been no difficulty about the case. The heading of column 7 of this form is 'Charge or information, name of offence and circumstances connected with it in concise detail and under what section of the Penal Code charged.' In filling in the column, however, the sections of the Indian Penal Code have been mentioned but no details or circumstances of any description have been set out. Plainly, therefore, the provisions of Section 173 of the Code, which require that the nature of the information should be stated, and those of Section 190(1)(b), which require that the facts constituting the offences should be stated, have been disregarded.

6. A suggestion was made by the learned Government Pleader that the charge sheet might, if necessary, be treated as a complaint and that it was, therefore,

open to the District Magistrate to take cognizance under Section 190(1)(a). The case to which we were referred, Emperor v. Shivaswami : AIR1927 Bom440 , is an authority for that proposition. But we do not understand how the prosecution case would be benefited thereby, inasmuch as the complaint, equally with the report of the police-officer, must contain the facts which constitute the offence. As my learned brother has pointed out there is no reason whatever why the previous application Ex. 1A asking the District Magistrate to direct an investigation should be treated as a complaint, and even if it could be so treated that also does not, in our opinion, contain sufficient details of the offences charged.

7. I agree with my learned brother that the case is covered by the two Calcutta authorities to which we have been referred and that a similar order ought to be made.

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