

In Re: Chatur Jethaji

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Court : Mumbai

Decided On : Jun-17-1932

Reported in : AIR1932Bom551; (1932)34BOMLR1247; 140Ind.Cas.619

Judge : Barlee and ;Wadia, JJ.

Appeal No. : Criminal Application for Revision No. 218 of 1931

Appellant : In Re: Chatur Jethaji

Disposition : Application dismissed

Judgement :

Wadia, J.

1. The three petitioners were charged with having committed the murder of one Amritlal Vithaldas on the evening of May 15, 1930, and were tried by the Additional Sessions Judge of Ahmedabad with the help of a jury. They were unanimously acquitted on December 17, 1930. The case against the petitioners was that the first petitioner was present and abetted the murder by one Hamid who shot Amritlal dead on May 15, 1930, and that the second and the third petitioners conspired to get Amritlal shot and murdered. It was found at the commencement of the police investigation that the case was a complicated one, and an application was made that it should be handed over for investigation to the C.I.D., but as no officer of the C.I.D., was available at the moment, the investigation was handed

over to Inspector Pathan some time about June 13, 1930, The learned Judge in his long and forceful charge to the jury has made some scathing allegations against Inspector Pathan and the character and the manner of his investigation, especially with regard to the extorting of confessions from Chatur the first petitioner and from Hamid, and also with regard to the getting up of false evidence in order to involve innocent men in a heinous crime. The petitioners. therefore, now apply that criminal proceedings may be taken against the opponents, or, in the alternative, that a preliminary inquiry may be first made as to why they should not be prosecuted for having given false evidence and brought false charge against the petitioners. On August 10, 1931, this Court ordered notices to issue to the opponents. Admittedly opponent No. 2 has not yet been served, but the office note says that the applicants' advocate waives notice as against him.

2. The Additional Sessions Judge was transferred from Ahmedabad to another place some time after March 10, 1931. Thereafter the petitioners first sent a notice of demand to the opponents as well as to Inspector Pathan claiming damages from them to the extent of nearly Rs. 50,000. That notice was sent on April 22, 1931. The petitioners filed their present petition on July 29, 1931, and they pray that complaints may be filed or sanction be accorded for taking proceedings against the opponents in respect of the offences shown against their names and which according to the petitioners' belief have been committed in the course of the inquiry and the trial of the case in which the petitioners were acquitted. The petition further proceeds to state that, in the event of this Court being of opinion that further inquiries should take place before the complaints are filed and sanctions asked for are granted, the petitioners pray that the case may be sent down for inquiry to the Court of the learned Sessions Judge at Ahmedabad with a direction that the necessary inquiries may be made and evidence recorded in order to enable him to pass proper orders. The principal sections that are mentioned against the names of the opponents are Sections 193 and 194 of the Indian Penal Code and also Section 211 as far as opponent No. 1 is concerned. Section 193 deals with the offence of intentionally giving or fabricating false evidence, Section 194 deals with the offence of giving or fabricating false evidence in order to secure a conviction of an offence which is a capital offence either under the law prevailing in British India or the law of England. Section 211 of the Indian

Penal Code deals with the offence of making a false charge in respect of an offence punishable with death without just or legal ground, meaning, I take it: to use the familiar expression, without reasonable and probable cause.

3. This application is made to us under Section 195 of the Criminal Procedure Code. Section 185(l)(b) provides that no Court shall take cognizance of any offence punishable under any of the following sections of the Indian Penal Code, inter alia, Sections 193, 194 and 211 when such offence is alleged to have been committed in, or in relation to, any proceedings in any Court, except on the complaint in writing of such Court or of some other Court to which such Court is subordinate. In this particular case the petitioners cannot ask the Court in which they were acquitted to make a complaint in writing, because, as I have already stated, Mr. Vyas, the Additional Sessions Judge who tried the case, has been transferred to another place. Under the circumstances a complaint can also be made under Section 195(3) by the Court to which the Court of the Additional Sessions Judge is subordinate, and this Court is the Court to which the Court of the Additional Sessions Judge would be deemed to be subordinate within the meaning of Section 195(3), as this is the Court to which appeals would ordinarily lie from the appealable sentences of that Court. Section 476 of the Criminal Procedure Code lays down inter alia that when any Criminal Court is, whether on application made to it in this behalf or otherwise, of the opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in Section 195, Sub-section (l), Clause (b) or Clause (c), which appears to have been committed in, or in relation to, a proceeding in that Court, such Court, may, after such preliminary inquiry, as it thinks necessary, record a finding to that effect and make a complaint thereof in writing signed by the presiding officer of the Court, and forward it to a Magistrate for further investigation and trial. The important words in that section which must be noted are that the Court must be of opinion that it is expedient in the interests of justice that an inquiry should be made. These words, in my opinion, are the key-note to the section, and in order to prosecute a man it must be shown that he has not merely given evidence which is contradictory or which has not been believed, but evidence which is intentionally false, so as to form the basis of an inquiry or a complaint. I may also refer to Section 476A of the Criminal Procedure Code which says that the power conferred

on criminal Courts by Section 476, Sub-section (1), may be exercised, in respect of any offence referred to therein and alleged to have been committed in, or in relation to, any proceeding in any such Court, by the Court to which such former Court is subordinate within the meaning of Section 195, Sub-section (3), and, as I have already stated, the Court of the Additional Sessions Judge who tried the case was a Court subordinate to this Court.

4. The petitioners have filed a suit in February last for damages for malicious prosecution against the opponents. They have not impleaded in that suit Inspector Pathan, though a notice claiming damages was originally also served upon him. That suit, we have been informed, is at present proceeding in the Court at Ahmedabad. The learned Counsel for the opponents has asked us not to express any opinion which might be prejudicial to his clients in their defence in that suit. He has also stated that this is not a bona fide application for prosecution, in furtherance of the ends of justice, but it is an application made in order to serve a private grudge of the petitioners as there are factions, and the petitioners belong to one faction and the opponents to another. We do not wish to express any opinion on this petition which might be prejudicial either to the opponents in their defence or to the petitioners in the prosecution of their suit at Ahmedabad. We also do not wish to refer to the alleged grudge or the factions and say anything one way or the other.

5. In paragraph 24 of the present petition the petitioners say that they crave leave to point out at the hearing, presumably of this petition, the nature of the part played by the opponents and the false evidence given by them at the trial which renders them guilty of the offences for which they are sought to be proceeded against. That evidence has not been pointed out to us, except that we were told that it is all on the record, and the record should be read if we were so minded. But this does not help us, ' At present all we are concerned with is to find out whether or not there is such a strong prima facie case which can serve as a foundation for making a complaint or for ordering an inquiry, and in the absence of any particular items or bits of evidence which have not been pointed out to us, we are certainly not in a position to say whether such a, prima facie case has been made out. It has been stated that it would be highly prejudicial to the opponents and

inconvenient if the civil suit in the Court at Ahmedabad and any complaint that may be made under this petition or any inquiry that may be ordered under the petition were to be allowed to run side by side. It is true that civil proceedings are entirely independent of criminal proceedings, and if we do not allow this application, it is because we do not see any reason for ordering any inquiry or for making a complaint on the materials such as are before us at present, and not because of any prejudice or inconvenience. The learned Counsel for the petitioners stated that there was enough prima facie material even in the charge of the Additional Sessions Judge to the jury. But, as far as we have been able to read it, the gravamen of the charge is the improper and unsatisfactory manner of investigation of the case made by Inspector Pathan. There is nothing in the charge which clearly indicates to us in what particular manner or in what particular statements the evidence of the opponents is false. In the absence of such materials we cannot say that a prima facie case has been made out, and this application must, therefore, be rejected.

Barlee, J.

6. It is necessary that there should be an end of this criminal litigation and witnesses must be protected from a rash prosecution, and therefore the legislature has advisedly enacted Section 195, We cannot then give sanction to the prosecution of these present opponents unless we are satisfied that there is a strong prima facie case. That means that there is a case which seems to us likely to succeed. I have a good deal of experience of prosecutions for perjury and my experience is that it is very difficult to bring home a charge of perjury to an accused person except in instances where he has on different occasions made contradictory statements, Now we are told that there is in the record of the Sessions case, in which the present applicants were accused, ample material for a prima facie case against the present opponents who were then witnesses. But it is conceded that no evidence was led for the defence and the material on which the prosecution will have to rely will be the depositions of the persons who were then accused and nothing more. The applicants have no doubt been misled to a certain extent by the charge to the jury, that is by misunderstanding the charge to the jury. In the Sessions Court the onus of proof was on the other side and the question

was whether the witnesses were telling the truth and whether the evidence led was sufficient to prove guilt. The learned Additional Sessions Judge for reasons which he has given with considerable force disbelieved the statements made to him on oath by the witnesses who are now defendants. But now the onus is shifted and I cannot find that there was any positive evidence in the case to show that the evidence was false. It, therefore, seems to me that it would be wrong in principle to give sanction, and I agree with my learned brother that we must dismiss this application.

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