

In Re: Vasudeo Ramchandra Joshi

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Court : Mumbai

Decided On : Aug-24-1922

Reported in : AIR1923Bom105; (1922)24BOMLR1153; 71Ind.Cas.523

Judge : Lallubhai Shah, Kt. Acting C.J. and Crump, J.

Appeal No. : Criminal Application For Revision No. 158 of 1922

Appellant : In Re: Vasudeo Ramchandra Joshi

Disposition : Application allowed

Judgement :

Lallubhai Shah, Acting C.J.

1. The facts which have given rise to the present application are briefly these. Apparently in March last there was a proceeding before the Magistrate at Bhusaval against one Vana Khusal in respect of a charge under Section 401, Indian Penal Code. An application was made for bail on his behalf by the present petitioner as his pleader, but that application was refused on April 1, 1922. Then the statements of three witnesses were recorded under Section 164, Criminal Procedure Code on April 18, 1922, from which it appeared that on April 10 these witnesses had an interview with the present petitioner, and that the petitioner had instigated them to give false evidence.

2. On April 15, another case against Vana Khusal in respect of a dacoity, which has been described to us as the Budhgaon dacoity case, was sent up to the Magistrate; and the case for the Crown is that it was in connection with this case of dacoity which was sent up to the Magistrate on April 15, that the alleged instigation by the present petitioner instigated the witnesses to give false evidence.

3. On June 2, these witnesses were examined before the Magistrate in the Budhgaon dacoity case, and on June 7, a complaint was filed by the Police Officer against the present petitioner charging him with having abetted the giving of false evidence.

4. On June 14, the present petitioner made an application to the learned Magistrate before whom the complaint was filed that as no sanction was obtained under Section 195, Criminal Procedure Code, the Court had no power to take cognizance of the complaint. The learned Magistrate came to the conclusion that no sanction was needed because he was of opinion that the alleged offence was not committed in relation to any proceeding in any Court, and that the matter of abetment was never considered by any Court.

5. The present application is made to this Court on the ground that a sanction is needed under Section 195, Criminal Procedure Code, because the alleged offence, if committed at all, was committed in relation to the proceeding pending before the Magistrate against Vana Khusal. It is urged that the alleged offence would have relation to the proceedings, which were already before the Magistrate on April 10, in connection with the charge under Section 401, Indian Penal Code.

6. On behalf of the Crown it is urged that no sanction is necessary because at the date of the alleged abetment no proceeding, in relation to which the offence is said to have been committed, was pending. It is contended that the offence had no relation to the proceedings pending on April 10 and that the proceedings, to which it related, were sent up to the Magistrate on April 19 and were not pending at the time.

7. It is quite clear, however, from the very nature of the offence alleged against the present petitioner that if the offence was committed, it was committed in relation to

the proceeding in which those three persons were to be examined as witnesses, and it is difficult to understand how it could be said that the present proceedings against the petitioner could go on without the sanction of the Court before which these proceedings are pending at present, and in relation to which the offence is said to have been committed, I assume, without deciding, that the offence alleged against the petitioner related to the Budhgaon dacoity case and not to the case under Section 401, Indian Penal Code, then actually pending. Even then the offence related to proceedings which were clearly under contemplation then and which were sent up to the Magistrate on April 15. The expression used in Section 195(1)(b) is wide enough to cover such a proceeding: and the decisions of this Court in *In re Khanderao* : (1912)14BOMLR362 and *In re Mahadev Yadneshwar* : (1912)14BOMLR715 support that conclusion. I am unable to follow the reasoning adopted by the learned Magistrate in holding that no sanction is necessary. We, therefore, quash the present proceedings, without prejudice to any proceeding that may be taken after obtaining the necessary sanction.

8. I may also point out that the prosecution of a pleader defending an accused person while that proceeding is pending, and before the evidence of the witnesses who are said to have been instigated to give false evidence, has been appreciated by the Court, is inadvisable. If such a prosecution is to be started it ought to be started after the principal proceeding in relation to which the offence is said to have been committed has terminated. It is hardly necessary to refer to the observations in *Reg. v. Kashinath Dinkar* (1871) 8 B.H.C.R. 126. Those observations relate no doubt to the prosecution of witnesses before the proceeding has terminated but the reason of the rule appears to me to apply to a prosecution like the present prosecution.

Crump, J.

9. It is alleged in this case that the petitioner on April 10 instigated certain persons to give false evidence in a criminal proceeding which was about to come before a Magistrate, and did in fact come before that Magistrate on April 15. It is sought to be argued on behalf of the Crown that Section 195(b), Criminal Procedure Code, has no application to the offence so committed. In order to accept that view, it

would be necessary to cut down the meaning of the words 'in relation to' to an extent, which is I think unwarranted. The words are very general, and are wide enough, in my opinion, to cover a proceeding in contemplation before a criminal Court, though it may not have begun at the date when the offence was committed. If that is so it plain that sanction was necessary in the present case, and therefore, the proceedings which have been undertaken are null and void without such sanction. I agree therefore, that those proceedings must be quashed; and I also agree entirely 'with the remarks of the learned Chief Justice as to the impropriety of starting the present proceedings against the pleader of an accused person before the trial of that accused person has been finished. It is obvious that in the circumstances of the present case this cannot be done without coming to a conclusion as to the credibility of certain witnesses whose evidence will have to be recorded in the main case.

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