

In Re: Dosabhai Ardeshir Cooper

In Re: Dosabhai Ardeshir Cooper

SooperKanoon Citation : sooperkanoon.com/339993

Court : Mumbai

Decided On : Apr-17-1950

Reported in : (1950)52BOMLR625

Judge : Gajendragadkar and; Vyas, JJ.

Appeal No. : Criminal Revision Application No. 106 of 1950

Appellant : In Re: Dosabhai Ardeshir Cooper

Disposition : Application allowed

Judgement :

Gajendragadkar, J.

1. The short point which arises in this case is whether Section 516AA of the Code of Criminal Procedure is retrospective in its operation. This question arises in this way :

2. The petitioner had filed a complaint under Sections 447 and 506 of the Indian Penal Code, 1860, against one Karimkhan Sherali before the police on March 21, 1948. Subsequently a charge-sheet was submitted and the case was forwarded to the Court of the Resident Magistrate, First Class, Surat. At the end of the trial the learned Magistrate acquitted the accused of the offence charged and made an order under Section 516AA of the Criminal Procedure Code that the complainant

should pay Rs. 40 as costs to the accused. The learned Magistrate held that the complaint which had been filed by the complainant before the police was neither reasonable nor probable as it was not a bona fide or a genuine complaint at all. This order was challenged by the complainant by preferring a revision application in the Court of the learned Sessions Judge at Surat. The learned Sessions Judge, however, confirmed the order, with the result that the complainant, has come to this Court in the present revision application.

3. Mr. Patwardhan has not challenged the finding of the learned Magistrate that the complaint in the present case was given without any reasonable and probable cause. Indeed, this finding could not be challenged in a revision application. The only point which he has raised is that Section 516AA was added to the Criminal Procedure Code by Bombay Act XLVI of 1948 which came into force on May 22, 1948. The complaint was filed, as I have already mentioned, on March 21, 1948. Mr. Patwardhan contends that Section 516AA which has been added to the Code of Criminal Procedure on May 22, 1948, cannot apply against complaints which were filed before the said date, though it may be that the final order in the criminal proceedings started by such complaints may have been passed subsequent to May 22, 1948. That is how the only question which we have to decide in the present revision application is whether this new section is retrospective in its operation.

4. Now, it is clear that under the Code of Criminal Procedure there was no power to order costs. The only power which had been conferred upon criminal Courts was to make an order as to compensation under Section 250 of the Criminal Procedure Code. That was, however, available in cases where it was found that the complaint was false, frivolous or vexatious, and it could be exercised by those Courts alone that are mentioned in Section 250. The question as to whether, apart from the provisions of Section 250, it was competent to the criminal Courts to make an order as to costs where they find that the complaint was filed without a reasonable and probable cause was considered by this Court in *Emperor v. Lasu Janu* (1947) 49 Bom. L.R. 812 and it was pointed out that no such power vested in the criminal Courts. It may be noted that it was partly because of the observations in this judgment that the Legislature thought of introducing Section 516AA in the

Criminal Procedure Code. There is also another point which must be borne in mind in dealing with the question as to whether Section 516AA is retrospective. It is true that even before the present amendment if a complaint had been filed without a reasonable and probable cause and the accused had been acquitted, he would have been entitled to claim damages for such prosecution by filing a suit in a civil Court, but in such a case he could have succeeded only if he showed not only that the complaint was without a reasonable and probable cause but that it was also actuated by malice. Claims of this kind have always been entertained by civil Courts as claims for damages for malicious prosecution. In other words without the proof of malice a claim for damages even in such civil actions could not have been sustained. This means that the provision made by Section 516AA that costs could be awarded against a complainant if it is shown that the complaint was filed without any reasonable and probable cause imposes upon the complainant a new liability altogether and in our opinion this is a very material circumstance in deciding whether such a new liability could be retrospectively enforced. It is a well-settled rule of law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act or arises by necessary and distinct implication. On the other hand, statutes dealing merely with procedural matters apply to proceedings pending at the time when the statutes are passed. In this sense a clause newly enacted in any procedural law would normally be treated as retrospective on the ground that it affects merely procedure and change of procedure cannot be said to affect any vested rights. It may also be conceded that costs are usually a matter of discretion and a party cannot be said to have any vested right in respect of an order as to costs. But in the present case Section 516AA really imposes a new obligation upon a complainant if his complaint is found to have been filed without a reasonable and probable cause and in that sense the new section cannot be regarded as being merely procedural. It undoubtedly imposes a new liability, and if that is so, it could not be treated as retrospective on the ground that it is a part of the procedural law. It seems to us that there can be no doubt that statutes which affect vested rights or create new obligations would not normally be taken to be retrospective unless they use clear words to show that intention. We, therefore, think that Section 516AA is not retrospective in operation. It is obvious that the complaint in the present case

was filed before the new section was enacted, and so we must hold that the learned Magistrate had no jurisdiction to pass the order under the said section. The application accordingly succeeds and the order as to payment of costs is set aside.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com