

Emperor Vs. Sana Mathur

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Court : Mumbai

Decided On : Oct-04-1929

Reported in : AIR1930Bom155; (1930)32BOMLR98

Judge : Patkar and ;Wild, JJ.

Appeal No. : Criminal Appeal No. 280 of 1927

Appellant : Emperor

Respondent : Sana Mathur

Disposition : Appeal dismissed

Judgement :

Patkar, J.

1. In this case two accused were tried on charges under Sections 379, 411 and 414 of the Indian Penal Code, before the First Class Magistrate, Kaira. The learned Magistrate held that there was no direct evidence as to the commission of the offence of theft, but relying on Section 114, ill. (a), of the Indian Evidence Act, convicted the accused under Section 379 and in the alternative under Section 411 of the Indian Penal Code. The offence under Section 414, Indian Penal Code, did not, in the opinion of the learned Magistrate, fall within his jurisdiction as the certificate from the Political Agent was not obtained.

2. Accused No. 2 appealed to the Sessions Court but accused No. 1 did not file an appeal. On the appeal of the accused No. 2 the learned Sessions Judge came to the conclusion that the offence under Section 379, Indian Penal Code, was not made out as there was no direct evidence as to the commission of the offence. With regard to the offence under Section 411, Indian Penal Code, he came to the conclusion that a certificate of the Political Agent was necessary under Section 188 of the Criminal Procedure Code. He, therefore, acquitted accused No. 2 and made a reference to this Court to acquit accused No. 1 on the same ground. The Government of Bombay have appealed against the order of acquittal of accused No. 2.

3. It is urged on behalf of the Crown that the lower Court erred in acquitting the accused under Section 379 of the Indian Penal Code and that under Section 114, ill. (a), a presumption ought to have been drawn that both the accused were either the thieves or the receivers of stolen property. There appears to be no evidence on the record that the accused committed the theft in question, and there is considerable lapse of time from the date of the offence to the date of the alleged receipt of the stolen property and its disposal by the accused in a village in the Idar State. We think, therefore, that the acquittal of the accused under Section 379, Indian Penal Code, is correct.

4. The next question is, whether the Magistrate had jurisdiction to try the accused with regard to the offence under Section 411, Indian Penal Code, without a certificate from the Political Agent of Mahi-kantha Agency under Section 188 of the Criminal Procedure Code. It is conceded that the offence under Section 411 was committed beyond British India. Under Section 181, Clause (3), of the Criminal Procedure Code, 'the offence of theft, or any offence which includes theft or the possession of stolen property, may be inquired into or tried by a Court within the local limits of whose jurisdiction such offence was committed or the property stolen was possessed by the thief or by any person who received or retained the same knowing or having reason to believe it to be stolen.' Illustration (h) to Section 180 is to this effect :-

A charge of receiving or retaining stolen goods may be inquired into or tried either by the Court within the local limits of whose jurisdiction the goods were stolen, or by any Court within the local limits of whose jurisdiction any of them were at any time dishonestly received or retained.

5. Under Section 177 of the Criminal Procedure Code

Every offence shall ordinarily be inquired into and tried by a Court within the local limits of whose jurisdiction it was committed.

6. That section embodies the general rule of jurisdiction. The following Sections 179 to 184 lay down the alternative jurisdiction conferred on other Courts in certain cases. Section 188 of the Criminal Procedure Code says that-

When a Native Indian subject of Her Majesty commits an offence at any place without and beyond the limits of British India...he may be dealt with in respect of such offence as if it had been committed at any place within British India at which he may be found :

Provided that notwithstanding anything in any of the preceding sections of this Chapter no charge as to any such offence shall be inquired into in British India unless the Political Agent, if there is one, for the territory in which the offence is alleged to have been committed, certifies that, in his opinion, the charge ought to be inquired into in British India.

7. In the case of Sessions Judge, Tanjore v. Sundara Singh (1910) 11 Cr. L.J. 306, where a dacoity was committed in British territory and a Native Indian British subject was found in possession of the stolen property in a Native State and a charge under Section 412 of the Indian Penal Code was preferred against him, it was held that, though under Section 180 of the Criminal Procedure Code the offence could be tried at the place where the property was retained or where the theft or dacoity took place, yet under Section 188 of the Code a certificate of the Political Agent was necessary if the charge was to be tried in British India. In Irroperator v. Tribhun (1911.) 13 Cr. L.J. 530, where a charge had been framed against the accused of an offence of criminal breach of trust under Section 408 of

the Indian Penal Code and a complaint had been filed in British India on the assumption that the Court had jurisdiction under Section 181, Clause (2), of the Criminal Procedure Code, it was held that Section 181, Clause (2), only applied as between Courts of different local areas whose jurisdictions have been limited under Section 12 of the Criminal Procedure Code and to which the Code of Criminal Procedure applied, and had no application to an offence committed in a Native State, and that the Magistrate could not take cognizance of such an offence without a certificate from the Political Agent. In the case of *The Assistant Sessions Judge, North Arcot v. Ramaswami Asari* I.L.R. (1914) 38 Mad. 779, where the accused, who was entrusted with certain jewels, pledged some of them in Bangalore contrary to the arrangement that he should return the jewels or their price at Vellore, it was held that the Vellore Court had jurisdiction to try the accused for criminal breach of trust or misappropriation without a certificate under Section 188. The judgment proceeded on the ground that the fact that loss of the jewels which was the consequence occurred to the complainant at Vellore in British India, was sufficient under Section 179 to give jurisdiction to the British Indian Court to try the offence, and that Section 188 of the Criminal Procedure Code did not control the operation of the previous Sections 179 to 184. After the decision in *Ramaswami Asari's* case the Code has been amended and Section 188, proviso, says that notwithstanding anything in any of the preceding sections of this Chapter no charge with regard to an offence committed outside British India shall be inquired into in British India without a certificate of the Political Agent. The amendment makes it clear that the Madras decision is no longer good law, and that Sections 179 to 184 can have no application where the offence is committed outside British India unless a certificate of the Political Agent is obtained under Section 188 of the Criminal Procedure Code. The same view appears to have been taken in *Emperor v. Narain* I.L.R. (1919) 41 All. 452. It would, therefore, follow that Sections 179 to 184 of the Criminal Procedure Code are controlled by the provisions of Section 188 of the Criminal Procedure Code and the alternative jurisdiction conferred by those sections can be exercised on the production of the certificate of the Political Agent according to the special provisions of Section 188 of the Criminal Procedure Code.

8. It is urged on behalf of the Crown that in the present case there is an alternative charge under Sections 379 and 411 of the Indian Penal Code. Section 188 refers to an offence committed without and beyond the limits of British India. It is conceded that the offence under Section 411 was committed beyond the limits of British India. The framing of an alternative charge in the present case does not confer jurisdiction on the Magistrate, and, under the express terms of Section 188, he cannot exercise it without a certificate from the Political Agent. We think, therefore, that the order of acquittal by the lower Court is correct.

9. We would, therefore, dismiss the appeal against the order of acquittal, and in the reference made by the learned Sessions Judge we would direct accused No. 1 to be acquitted and discharged. The bail bond of accused No. 1 is cancelled.

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