

Emperor Vs. Ranchhod Bawla

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Court : Mumbai

Decided On : Nov-14-1912

Reported in : (1913)15BOMLR61

Judge : Batchelor and ;Rao, JJ.

Appeal No. : Criminal Appeal No. 374 of 1912

Appellant : Emperor

Respondent : Ranchhod Bawla

Judgement :

Batchelor, J.

1. The question which arises for decision here is whether in a warrant case in respect of a non-com-poundable offence it is competent to the Magistrate on a private complainant's offering to withdraw from the prosecution, to enter an order of acquittal. We think that it is not so competent.

2. The facts in this particular case are these: A complaint was made to the police accusing certain persons of the offence of criminal breach of trust punishable under Section 406 of the Indian Penal Code. That is a non-compoundable offence. The police after inquiry committed the accused persons for trial to the Magistrate's Court. The complainant was examined and the trial was postponed till the 7th

June. On that day complainant applied to the Magistrate to be allowed to withdraw from the case, urging that the accused persons were his labourers ; that they had agreed to restore the property which he had accused them of misappropriating; and that as the rainy season was approaching he was unwilling to proceed. Thereupon the learned Magistrate made an order to the effect that ' the complainant is allowed to withdraw the case, and the accused fare therefore acquitted under Section 258 of the Criminal Procedure Code.' In support of this order the Magistrate relied upon' Queen-Empress v. Vithoba (1887) U. Cr. C 330.

2. We will revert to Vithoba's case in a moment. But it is desirable at the outset to consider the general provisions of the-Criminal Procedure Code in connection with the point before us. The only sections of the Code which contemplate the termination of a criminal prosecution by private arrangement are Sections 248 and 345. Section 248 occurs in Ch. XX of the Code, and that Chapter deals only with the trial of summons cases by Magistrates. As' the case before us was a warrant case, it is clear that Section 248 cannot be invoked to sustain the Magistrate's order. Section 345 is equally unavailing because it refers only to the compounding of offences which by law are allowed to be compounded, and the offence here does not belong to that class. The trial in this case was a trial falling under the provisions of Ch. XXI of the Code, and the only means by which an order of acquittal could legally be arrived-at, are the means described in Section 258 and the preceding sections; that is to say, an order of acquittal could be pronounced only, where after the framing of a charge the Magistrate is of opinion that the evidence is insufficient to justify a conviction. In this case no charge was framed, and the Magistrate, instead of exercising his own mind upon the evidence in the case, has allowed-the decision to be taken out of his hands by a private arrangement between the persons -interested. It seems to us clear, therefore, upon the provisions of the Code that the order under reference is unwarranted.

3. As to Queen Empress v. Vithoba (1887) U Cr. C. 330, that ruling on the face of it carries matters no further than they are let by the decision in Reg. v. Devama ILR (1875) 1 Bom. 64, upon which the rolling is professedly grounded. It is only necessary, therefore, for us to turn to Devama's case and ascertain whether there is anything in that decision which conflicts with the views we have expressed

above. We find that there is nothing. The facts in Devama's case were that a prosecution had been instituted on an accusation' of house-breaking in order to commit theft, an offence which was not legally compoundable; but after the inquiry had proceeded a certain length before the Magistrate, Mr. Middleton, he recorded an order saying that, since the parties had come to an agreement and the complainant had withdrawn her complaint, he dismissed the case. Subsequently, however, disagreements arose between the parties, and it was thought expedient to revive the prosecution. The question, therefore, which occurred was whether Mr. Middleton's order dismissing the case did or did not bar the revival of the prosecution. It was decided that there was no bar. But the propriety or impropriety of Mr. Middleton's order dismissing the case was not a matter which fell under the Bench's consideration. It was assumed and not decided that this order of dismissal was good and the only question was whether upon this assumption, it operated to bar the fresh proceedings. Since the question before us is whether a similar order is good in law, it follows that there is nothing in Devama's case which can now embarrass us in giving effect to the opinion we have formed on a consideration of the sections of the Code. Those sections satisfy us that in a case of this nature the Magistrate is not empowered to make an order of acquittal on the strength of the complainant's desire to withdraw his complaint.

4. We must, therefore, reverse the order under appeal and remand the case to the learned Magistrate in order that he may rehear it and dispose of it by a legal decision.

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