

Venkangouda Vs. Siddappa

Venkangouda Vs. Siddappa

SooperKanoon Citation : sooperkanoon.com/379224

Court : Karnataka

Decided On : Dec-04-1986

Reported in : ILR1987KAR297

Judge : Patil, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 340

Appeal No. : Crl. R.P. No. 365 of 1984

Appellant : Venkangouda

Respondent : Siddappa

Advocate for Def. : F.V. Patil, Adv.

Advocate for Pet/Ap. : R.B. Deshpande, Adv.

Judgement :

ORDER

Patil, J.

1. In this petition, the petitioner has sought to challenge the legality and correctness of the order passed by the Sessions Judge, whereby he has set aside the order passed by the JMFC directing to prosecute the respondent for the offence punishable under Section 211 IPC.

2. The respondent had filed a private complaint against the petitioner and three others for the offences punishable under Sections 323, 504 & 506 R/W 34 IPC. The case ended in acquittal. During the course of the Judgment, the Magistrate observed that the respondent had filed a false complaint. He however did not think of taking cognizance of any such offence as provided under Section 344 Cr P.C. or make any complaint. The petitioner however thought of prosecuting the respondent and made an application as provided under Section 340 Cr.P.C. with a request to prosecute the respondent. The Magistrate, on some inquiry, accepted the application and made the order in these terms :

'Thus viewed in any angle in detail and considered the entire matter, I have to clearly differ and reject the case of the oppt. and receipt the case of the petitioner. Consequently, the prayer of the petitioner is squarely acceptable. Hence, I have to order that this petition is hereby allowed with costs of Rs. 500/- (five hundred) to be paid by the oppt. to the petitioner. It is further ordered and directed that as per the provisions of Sections 195 r/w 340 Cr. P.C. the Head Munshi of this Court is hereby directed to file a complaint for taking criminal action against him for the offence under Section 211 of I.P.C. before the concerned Police authority on or before 18-10-1983 without fail.'

Being aggrieved, when the respondent approached the Session Judge, that learned Sessions Judge set aside the order on the ground that the order was made behind the back of the respondent and having in view the observations made by the Supreme Court in the case of Chajoo Ram v. Radhey Shyam, : 1971 CriLJ1096 ; the correctness of which is sought to be challenged in this Petition.

3. The contention of Mr. Deshpande, learned Counsel for the petitioner, is that in a case like this where the remedy by way of appeal was available, revision was not competent and therefore the order passed by the Sessions Judge in revision was without jurisdiction. Nevertheless, he was the Appellate Authority to whom the appeal would ordinarily lie against such order directing prosecution. Of course, having regard to the provisions contained in Sub-section (4) of Section 401 Cr.P.G., appeal being the remedy, revision was not competent and on that ground it may be said that the order passed by the Sessions Judge was without

jurisdiction. But, if that was all to be stated, then the order passed by the Sessions Judge deserves to be set aside and the order passed by the Magistrate restored. Even if the findings of the Magistrate that the offence of perjury was committed is accepted, there being no consideration by the Magistrate as to the expediency of prosecution, direction to prosecute the respondent as made by the Magistrate cannot be sustained. It is not in every case of perjury that the Court would mechanically take cognizance or punish summarily or direct to prosecute. It is only in cases where it is considered expedient to prosecute, such prosecution has, to be, launched. As pointed out by their Lordships of the Supreme Court in the case referred to above, the prosecution for perjury should be sanctioned by Courts only in those cases where the perjury appears to be deliberate and conscious and the conviction is reasonably or likely Prosecution should be ordered when it is considered expedient in the interest of justice to punish the delinquent and not merely because there is some inaccuracy in the statement which may be innocent or immaterial. There must be a prima facie case of deliberate falsehood on a matter of substance and the Court should be satisfied that there is reasonable foundation for the charge. As pointed out by their Lordships of the Supreme Court in the case of *Patel Lalji Bhai v. State of Gujarat*, : 1971 CriLJ1437 ; the purpose and object of the Legislature in creating the bar against cognizance of private complaints in regard to the offences mentioned in Section 195(1)(b) & (c) is both to save the accused person from vexatious or baseless prosecutions spiced by feelings of vindictiveness on the part of the private complainants to harass their opponents and also to avoid confusion which is likely to arise on account of conflicts between findings of the Courts in which forged documents are produced or false evidence is led and the conclusions of the criminal Courts dealing with the private complaint. It is for this reason that the Legislature has entrusted the Court, whose proceedings had been the target of the offence of perjury to consider the expediency in the larger public interest of a criminal trial of the guilty party. As stated earlier, the Magistrate has failed to consider the expediency of prosecution. Therefore, the order passed by the Magistrate cannot be sustained and it is liable to be set aside.

In the result, the order of the Magistrate is set aside and the revision is disposed of accordingly.

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