

State Vs. Prabhu Dayal

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Court : Andhra Pradesh

Decided On : Feb-23-1953

Reported in : 1953CriLJ1841

Judge : Palnitkar and ;Srinivasachari, JJ.

Appellant : State

Respondent : Prabhu Dayal

Judgement :

ORDER

1. This revision petition, preferred against the judgment of the lower Court, raises some legal issues. The facts of the case are that the police received information to the effect that the accused who was a teacher in the Kayasti Pathashala issued false and forged transfer certificates in lieu of some gratification to certain students purporting to show that they had passed in their examinations (though they had actually failed) and that they are eligible for admission to the higher standard. The transfer certificates for which they applied for, were required, as they wanted to enter and read in some other schools. The police, therefore, were of opinion that the accused had committed the offences mentioned in Sections 395 and 397 of the Hyderabad Penal Code corresponding to Sections 467 and 463 of the Indian Penal Code. As the offences were non-cognizable, the police wrote to the City Criminal Court for permission to investigate the offences under Section 156, Hyderabad Criminal P.C. corresponding to Section 155, I. Cr.P.C. The City

Criminal Court ordered the police to investigate the case. The police had also written to Government for permission to investigate. That permission was also obtained. On the basis of the said orders, the Police investigated the case against the accused and preferred four challans against him. Two of the challans were joined together in one case which is the subject-matter of consideration in case No. 479 of 1952 before us. The other two challans were preferred against him and they were tried together by the lower Court against which Revision No. 480 of 1952 has been preferred which is also before us for consideration today.

2. We have heard the arguments of the learned advocates of the parties in both the revision cases, and this decision will govern both the cases. A copy of this be made a part of the record in the latter revision case.

3. The learned Magistrate of the lower Court decided the cases on the ground that the institution of the charge-sheet was not proper and unauthorized because no permission was taken from Government, or the Magistrate to institute the charge. The point for decision therefore is whether after giving the order to the police to investigate the offence (being non-cognizable under Section 156H. Cr.P.C.), the law requires that a fresh permission should be given by the Government or the Magistrate concerned for preferring a charge-sheet after considering the result of the investigation held by the police. The provisions of Sections 156 and 157H. Cr.P.C. are the same as the provisions of Section 155, I. Cr.P.C. in it), it is laid down, that when information is given to an officer in charge of a police station of the commission of a non-cognizable offence he shall enter in a book the substance of such information and refer the informant to the Magistrate. It is further provided that no police officer shall investigate a non-cognizable offence without the order of the Magistrate of the 1st or 2nd class having power to try such case or commit, the same for trial. There is a further provision in the Hyderabad Code that Government may also issue such order empowering the police to investigate. Sub-section 3 of Section 155, I. Cr.P.C. which is equivalent to Sub-section 2 of Section 157H. Cr.P.C. provides that a police officer receiving such order may exercise the same powers in respect of the investigation (except the power to arrest without warrant) as an officer in charge of a police station may exercise in a cognizable case.

4. It is clear therefore from this sub-section that when a police officer in charge of a police station receives an order for an investigation of a non-cognizable offence he is empowered to proceed in the same manner and exercise the same powers in respect of investigations which he is empowered to exercise in a cognizable case except for power to arrest the accused without warrant. Thus once the order of investigation is received, there is no limitation or restriction on his powers of investigation and proceeding with the case (the Question of arrest without warrant does not arise in this case). Therefore as far as the section is concerned, it is clear that there is no direction that he should report the result of his investigation to the authority issuing the order to investigate and then wait for instructions to prefer his charge-sheet before a Magistrate. It is conceded that in the case of non-cognisable offences no permission is necessary to prefer a charge-sheet. We do not see any reason why such a permission is necessary in a non-cognisable offence which is investigated after getting the necessary order to investigate. At any rate, the sub-section has not provided for such a necessity. It is therefore clear to us that once a police officer takes up the investigation of a non-cognizable case (after getting due orders) the investigation which he holds becomes an investigation under Chapter 14, Cr.P.C. and he becomes invested with all the powers which are given to him under Chapter 14, including the power to file a challan.

5. The learned advocate for the respondent relied upon - Sana Ahmed v. The State 10 Deccan LR 28 (A), and argued that after investigation by the police a fresh order by the Magistrate directing the filing of charge-sheet on the report of the police is necessary. But we find that this ruling has been overruled in an unreported case by a Bench of seven Judges in - Sarkari Ali (State) v. Shanker Iyer Appeal No. 1 of 1355 F. (FB) (B) instituted on the 2nd of April 1355 F. and decided on 14.8.1355 F. The learned Judges decided in that case that they cannot agree with the opinion mentioned in - Sane Ahmed's case (A) and that it should not therefore be followed. It was held therein that Section 157H. Cr.P.C. is in that Chapter of the Hyderabad Criminal P.C. which deals with the powers of the police to investigate a case and therefore excepting the fact that in non-cognizable cases authority to investigate is necessary there are no other limitations on the powers of an investigating officer as laid down in that chapter. The learned advocate for the

respondent also relied upon - Abdul Ali Khan v. The State 35 Deccan LR 216 (C) in which 'Sana Ahmed's ruling (A)' was followed. As 'Sana Ahmed's case (A)' which has been overruled has been followed in - 35 Dec LR 216 (c), it is no longer binding. The lower Court has placed reliance upon - Appa Ragho v. Emperor AIR 1915 Bom 80 (D). After perusing the said ruling, we find that the facts are not very clearly stated, it appears that a Magistrate directed the police to investigate a non-cognizable offence and report. The police investigated the case but did not make a report and in the meanwhile the police instituted proceedings against the applicant under Section 211, I.P.C. The learned Judges held that the conviction of the complainant under Section 211 (viz., preferring a false charge with intent to injure) was not valid. It is clear from these short facts that it was not the person who was originally intended by the informant to be the accused who was convicted and punished but it was the other way; the informant was punished for giving false information. The learned Judges held that the report under Section 173 with regard to the original complaint of the informant (or the complainant) was necessary before there could be a charge against that informant for giving false information. Section 173 lays down that the police after investigating into a case should report to the Magistrate. That report when it takes the form of a charge-sheet is enquired into and tried and decided and it may lead ultimately either to the discharge or acquittal of the accused or of his being punished. Such a report is called a 'challan' or a 'charge-sheet' and is taken cognizance of by a Magistrate under Section 190(b), I. Cr.P.C.: Section 195(b)H. Cr.P.C. On the other hand, if that report be to the effect that the case was a false one then the Court may decide accordingly; and only then could a question whether the information was a false one, arise. Such a report is known as a 'referred charge-sheet'. Therefore in the Bombay case the question was different, as the police preferred a charge-sheet under an offence of giving information without making a report that the case was a false one. In the case before us, there is actually a report under Section 173 which was enquired into and tried by the lower court and the proceedings are at the stage of framing of charges. Hence - AIR 1915 Bom 80 (D) is not applicable in this case.

6. Thus in this case there was a report (challan or charge-sheet) which the Magistrate of the lower court has taken cognizance of and tried. There is therefore

no defect as regards the presentation of the challan and the view of the learned Magistrate of the lower Court that the challan was contrary to law, cannot be accepted.

7. We, therefore, set aside the order of the lower Court, remand the case to that Court and direct that the case be proceeded with and disposed of according to law.

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