

In Re: Amba Rao

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Court : Andhra Pradesh

Decided On : Nov-28-1958

Reported in : AIR1959AP235; 1959CriLJ558

Judge : S.R. Nayudu, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 195(3), 476, 476(1) and 476A; Railways Act, 1890 - Sections 84; Indian Penal Code (IPC) - Sections 193 and 420

Appeal No. : Criminal Revn. Case No. 158 of 1958 and Crl. Revn. Petn. No. 123 of 1958

Appellant : In Re: Amba Rao

Advocate for Pet/Ap. : D.M. Deshmukh, Adv.;D.J. Jagannadha Raju, Adv. for ;Addl. Public Prosecutor

Disposition : Petition allowed

Judgement :

ORDER

S.R. Nayudu, J.

1. This criminal revision petition is filed against the order of the Dist. Magistrate Hyderabad City dated 28-11-1957 rejecting the objections taken by the petitioner

herein to the said Dist Magistrate proceeding with the complaint filed against the petitioner by the Deputy Registrar of this Court.

2. The facts out of which this revision has arisen are as follows: The petitioner filed a claim before the Claims Commissioner appointed by the Government under the provisions of the Indian Railways Act to enquire into and to decide the claims arising out of the railway accident which took place on 27-9-1954 at Jangaon. In this accident a large number of passengers travelling by train lost their lives.

The petitioner claimed that he was the brother of one Hanumantharao who was a passenger on the train which was involved in this accident and that the said Hanumantharao lost his life and belongings in this disaster. The Claims Commissioner who was vested with the jurisdiction of deciding the truthfulness and validity of all the claims arising out of this accident duly enquired into the claim put in by the petitioner and held that the petitioner's claim was in order and accordingly allowed the claim to the extent of Rs. 1950/-.

This decision of the Commissioner became final and is not subject to any appeal. It is however conceded by the learned counsel for the petitioner that had the claim been disallowed wholly or in part, he would have had a right of appeal to the High Court. In other words, while there is an appeal to the High Court against the order disallowing the claim wholly or in part, there is no right of appeal by the State against an order awarding compensation.

3. It is pointed out by the learned Public Prosecutor in this case that it has come to light subsequent to the decision of the claims Commissioner in this case, that there are reasons to believe that the petitioner's brother Hanumantharao did not, in fact, die in the accident, that he had met with natural death in his own village, that consequently the petitioner's claim is a bogus claim which the petitioner sought to support by examining himself and other witnesses whose evidence, according to the Public Prosecutor, would be false evidence.

He contends that if the premises relied on him is conceded, the petitioner must be deemed to have committed various offences involving cheating under Section 420 and 193 I. P. C. for giving false evidence and also for fabricating false evidence

besides a criminal conspiracy to bring about a wrong decision by the Commissioner. Apparently on the basis of these allegations, the High Court was moved on the administrative side to make a complaint to the District Magistrate of Hyderabad under Section 476 Cri. P. C. to prosecute the petitioner for the above mentioned offences. Accordingly the High Court appears to have directed its Deputy Registrar by an order dated 29-11-1956 directing that a complaint be filed under Section 195(IX) of the Code of Criminal Procedure. In compliance with this direction the Deputy Registrar forwarded a complaint to the Chief City Magistrate's Court at Hyderabad alleging in the complaint the facts relied on by the learned Public Prosecutor. In that complaint it is stated as follows:

'It is seen from the above that neither Ambarao (petitioner) is a resident of Sumba Village nor his brother Hanumantharao died in the train accident on 27-9-1954, leaving behind him a minor son to the care of Ambarao Making the aforesaid false statement, Ambarao received Rs. 1800/-for loss of life and Rs. 150/- for loss of property.....'

The petitioner complains that the High Court was not the court competent to file a complaint under Section 476 A read with Section 476, Criminal Procedure Code as the Claims Commissioner who decided the claim in this case was net a Subordinate Court to the High Court within the meaning of Section 195(3) of the Criminal Procedure Code, that under Section 195(3), Criminal Procedure Code it is only in cases where a tribunal or Court could pass a decree or sentence that a superior court could file the complaint, that the High Court is not such a Court or the Railway Claims Commissioner such a Court and as the Railway Claims Commissioner has ceased to exist having been abolished in 1955, the present complaint by the High Court is incompetent. Sections 476A and 476 Criminal Procedure Code are as follows: Section 476A:

'The power conferred on Civil, Revenue and Criminal Courts by section 476, Sub-section (1), may be exercised, in respect of any offence referred to therein and alleged to have been committed in or in relation to any proceeding in any such, court, by the Court to which such former court is subordinate within the meaning of Section 195, Sub-section (3) in any case in which such former court has neither

made a complaint under Section 476 in respect of offences nor rejected an application for the making of such complaint; and, where the superior court makes such complaint, the provisions of Section 470 shall apply accordingly.'

'476 (1). When any civil. Revenue or Criminal Court is, whether on application made to it in this behalf or otherwise, of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in Section 195 Sub-section (1), Clause (b) or Clause (c), which appears to have been committed in or in relation to a proceeding in that court, such court may, after such preliminary inquiry, if any, as it thinks necessary, record a finding to that effect and make a complaint thereof in writing signed by the presiding officer of the court, and shall, forward the same to a Magistrate of the 1st class having jurisdiction and may take sufficient security for the appearance of the accused before such Magistrate or if the alleged offence is non-bailable may, if it thinks necessary so to do, send the accused in custody to such Magistrate, and may bind over any person to appear & give evidence before such Magistrate: (Provided that, where the court making the complaint is a High Court, the complaint may be signed by such officer of the court as the court may appoint).

For the purposes of this Sub-section, a Presidency Magistrate shall be deemed to be a Magistrate of the First Class.

(2) Such magistrate shall thereupon proceed according to law and as if upon complaint made under Section 200.

(3) Where it is brought to the notice of such Magistrate, or of any other Magistrate to whom the case may have been transferred, that an appeal is pending against the decision arrived at in the judicial proceeding out of which the matter has arisen, he may, if he thinks fit, at any stage adjourn the hearing of the case until such appeal is decided.'

Under the section the power conferred on a Court by Section 476 Sub-section (1) may be exercised by the court to which such former court is subordinate within the meaning of Section 195 Sub-section (3).

4. Section 195 Sub-section (3) is as follows :

'(3) For the purposes of this section, a court shall be deemed to be subordinate to the court to which appeals ordinarily lie from the appealable decrees or sentences of such former court, or in the case of a civil court from whose decrees no appeal ordinarily lies to the principal court having ordinary original civil jurisdiction within the local limits of whose jurisdiction such a civil Court is situate:

Provided that:

(a) where appeals lie to more than one court, the appellate court of inferior jurisdiction shall be the court to which such court shall be deemed to be subordinate; and

(b) where appeals lie to a civil and also to a revenue court, such court shall be deemed to be subordinate to the civil or revenue court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed.

According to this Sub-section a court shall be deemed to be subordinate to the court to which appeals ordinarily lie from the appealable decrees or sentences of such former court or in the case of civil court from whose decrees no appeals ordinarily lie, to the principal court having ordinary original civil jurisdiction within the local limits of whose jurisdiction such civil court is situate.

5. It is conceded by the learned public Prosecutor as already indicated, that in this case no appeal lies against the decision of the Claims Commissioner awarding compensation so that the order made by the Claims Commissioner even if regarded as a Civil Court, is not appealable and as the High Court is not a court of original civil jurisdiction, that court would not come within the second category of cases referred to under Sub-section 3 to Section 195.

In either view of the matter therefore it is not competent for the High Court to make a complaint in this regard, that is, in respect of the offence alleged to have been committed in or in the course of the proceedings before the Railway Claims Commissioner.

6. There is another serious objection to allowing the alleged prosecution against the petitioner to continue, for in this case the Railway Claims Commissioner appointed to adjudicate upon the claims arising out of the Jangaon accident above referred to, has upheld the claim of the petitioner, accepted the evidence adduced by him and awarded him compensation and this award has become final. The State was a party to this adjudication.

Under the Railways Act, the Claims Commissioner so appointed is the only Court of competent jurisdiction to adjudicate upon the claims arising out of the accident in respect of which the Commissioner has been so appointed. Such a court vested with the jurisdiction of deciding the claim having upheld the claim, the inevitable and necessary inference in law is that the claim is a good one. This adjudication and the award of compensation involved the following assumptions:

1. The deceased Hanumantharao in fact died in the course of and as a result of the Railway accident in question;
2. that the claimant as the nearest relation of the said Hanumantharao was entitled to the compensation awarded to him.

The truthfulness, or genuineness or the maintainability of this claim are all recognised, upheld and approved of by the Railway Claims Commissioner who was the only court competent to adjudicate on this matter. So long as that adjudication stands, carrying with it the necessary implication of the findings above mentioned, it would be inconsistent and in my opinion totally unjust and improper to start the prosecution of the petitioner, the foundation thereof would be the assumption that the claim put forward by him was bad and that the deceased Hanumantharao in fact did not die during the accident and the evidence adduced by him or on his behalf was false.

It is unknown to law that such a situation could arise which would involve such totally antagonistic and mutually inconsistent attitudes in respect of the same tribunal and with reference to the same transaction. It is not open to the State to go back on the adjudication of the Claims Commissioner, an adjudication which is not competent for the State to question even by way of an appeal and to reargue

the matter, to reopen the issue on assumptions which in the nature of filings it is not open to the State to assume or allege. In my considered opinion to allow a prosecution of this nature to continue would necessarily imply the defeating of the ends of justice apart from a lack of jurisdiction and the impropriety involved.

7.. The learned Public Prosecutor asks what is the State to do when subsequent events disclosed that a certain claim has been wrongly allowed. This question is not easy to answer. It is open to courts of law and justice to make wrong decisions and when a wrong decision is made, if it is not appealed against or if no appeal is provided against it, the decision will have to stand notwithstanding that it may have been wrong decision and so long as such a decision stands it binds the parties thereto unless appropriate proceedings are taken to have that decision set aside.

The learned Public Prosecutor seems to assume that the case of the prosecution as embodied in the complaint forwarded by the Deputy Registrar of the High Court is truthful. If it be so, the proper time to have placed all the material was during the investigation of the Claims Commissioner.

Having allowed that opportunity to lapse, it is not open to the State now to contend that the matter should be reopened on the criminal side while the decision on the civil side reached by the Claims Commissioner stands and continues to be fully binding on the state. Taking all the facts and the circumstances into consideration I am clearly of opinion that this revision petition must be allowed.

The complaint made by the Deputy Registrar being incompetent should be returned to him and any proceedings taken in pursuance thereof by the courts below, that is either by the Dist. Magistrate, Hyderabad City or by any of the City Magistrate to whom the same may have been transferred for disposal, being devoid of jurisdiction, are quashed.

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