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MaqbooluddIn Vs. Rex

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Court : Allahabad

Decided On : May-25-1949

Reported in : AIR1950All5

Judge : Malik, C.J.

Acts : Indian Penal Code (IPC), 1860 - Sections 161; Prevention of Corruption Act, 1947 - Sections 6; Code of Criminal Procedure (CrPC) , 1898 - Sections 109(1) and 529

Appeal No. : Criminal Revn. No. 106 of 1948

Appellant : Maqbooluddin

Respondent : Rex

Advocate for Def. : Kanhaiyalal Misra, Deputy Government Advocate

Advocate for Pet/Ap. : Mohammad Baqar Osmani, Adv.

Judgement :
ORDER

Malik, C.J.

1. These are two connected revisions against the convictions and sentences passed against the applicants Under Section 161, Penal Code. The case for the prosecution was that in June 1947, one Moizuddin found that a mare, which he

had lost about two years before, was yoked to an ekka, which was being driven by one Buddhu. He stopped the ekka and asked Buddhu from where he had got the mare. Buddhu told him that he had bought it from one Sharda. A report was thereupon made to Maqbuluddin, head constable, at the George Town outpost. Maqbuluddin, according to the prosecution, approached Sharda and demanded a bribe and threatened Sharda that if he did not pay the money he would be prosecuted for theft of the mare. Sharda was the tenant of one Ganesh Dutt. Ganesh Dutt, Sharda and Vachaspati Tripathi, head clerk in the District Supply Office, decided to lay a trap and informed the Additional District Magistrate, Mr. D.S. Rathor that Maqbuluddin was demanding bribe. The Magistrate had a trap laid and Yar Mohammad, the applicant in Criminal Revision No. 141, was caught red-handed by the Magistrate with the marked notes in the house of Brij Nandan Sahu, where the bribe was paid. Yar Mohammad, on his arrest, stated that he was innocent and that he had been sent by the head constable to collect the money which the head constable had stated was an outstanding debt due from Ganesh Dutt to the head constable.

2. The learned Magistrate, Mr. Brij Beharilal, convicted the accused and sentenced the head constable, Maqbuluddin, to two years' rigorous imprisonment and a fine of Rs. 100/- and Yar Mohammad to 18 months' rigorous imprisonment and a fine of Rs. 60/-. Two appeals were filed before the learned Sessions Judge. The learned Sessions Judge has accepted the evidence of the witnesses for the prosecution and maintained the convictions and the sentences.

3. On behalf of Yar Mohammad nothing is said on the merits. Learned counsel has, however, advanced two arguments. He has urged that Yar Mohammad was wrongly convicted Under Section 161, Penal Code and that he could be convicted only Under Section 213, Penal Code. Section 161 deals with cases of public servants taking gratification other than legal remuneration in respect of an official act, while Section 213 deals with other cases of receiving money to screen an offender from punishment. The argument of the learned counsel is that Yar Mohammad was a police constable attached to the George Town outpost while Sharda was a resident of Colonelganj, and, therefore, Yar Mobammad could not be convicted Under Section 161, Penal Code. This argument is clearly

misconceived. George Town outpost is under the police station Colonelganj, and is a part thereof, but apart from that the mere fact that a constable is posted at a particular police outpost does not make him cease to be a public servant when he is dealing with a man resident of another outpost. Both Maqbooluddin and Yar Mohammad were police officers and were acting as such and they were, there, fore, clearly guilty Under Section 161, Penal Code.

4. The other point is that the sentence is severe. I do not consider that a constable, who goes to collect a bribe, can expect a lenient sentence. To my mind, the sentence does not err on the side of severity.

5. In the other ease of Maqbooluddin Mr. Baqar Usmani has urged two points : first, that the learned Judge not having accepted the evidence of Sharda, Ganesh Dutt and Tripathi against accused 3, Wiladat Husain, on the ground that there was enmity between these witnesses and Wiladat Husain, he should not have accepted their evidence against Maqbooluddin only because it was corroborated by an independent witness 'Vachaspati. Both the Courts below having accepted the evidence of the witnesses, I see no sufficient reason to set aside that finding. The learned Sessions Judge gave the benefit of the doubt to Wiladat Husain on the ground that it would not be safe to convict him on the testimony of Ganesh Dutt and Tripathi who were not on good terms with Wiladat Husain. 6. The other point raised by the learned counsel is that Under Section 6, Prevention of Corruption Act (II [2] of 1947) the sanction of the authority competent to remove the applicant was necessary before the Court could take cognizance of an offence punishable Under Section 161, Penal Code. The learned Assistant Government Advocate has urged that the section only applies to persons who are employed in connection with the affairs of the Federation or in connection with the affairs of a province and does not apply to police officers like the accused. I find it difficult to accept this argument. Section 6, Prevention of Corruption Act is as follows:

'No Court shall take cognizance of an offence punishable Under Section 161 or Section 165, Penal Code or under Sub-section (2) of Section 5 of this Act, alleged to have been committed by a public servant, except with the previous sanction,--

(a) in the case of a person who is employed in connection with the affairs of the Federation and is not removable from his office save by or with the sanction of the Central Government or some higher authority, Central Government;

(b) in the case of a person who is employed in connection with the affairs of a Province and is not removable from his office save by or with the sanction of the Provincial Government or some higher authority, Provincial Government;

(c) in the case of any other person, of the authority competent to remove him from his office.'

Clause (c) applies to all those public servants who are not protected under clauses (a) and (b) of Section 6. The sanction of the Superintendent of Police for the prosecution of the accused was, therefore, necessary before the Court could take cognizance of the offence. The sanction of the Superintendent of Police was obtained on 23rd September 1947. It is admitted that after the sanction dated 23rd September had been obtained Mr. Brij Beharilal, the learned Magistrate, took cognizance of the case. The case had been transferred to his Court by the Sub-Divisional Magistrate of Handia before the receipt of the sanction by the Superintendent of Police. The learned Sessions Judge has held that Mr. Brij Beharilal had taken cognizance of the offence and had issued notice to the accused only after the requisite sanction had been obtained. Learned counsel has, however, urged that the cognizance of the offence must be deemed to have been taken by the Sub-Divisional Magistrate of Handia when the case first came before him and as there was no sanction it could not be said that he was legally seized of the case, and, therefore, the order of transfer passed by him must be deemed to be a nullity. Learned counsel has relied on Sub-section (l) of Section 190, Criminal P. C., which provides that:

'Except as hereinafter provided, any Presidency Magistrate, District Magistrate or Sub-Divisional Magistrate, and any other Magistrate specially empowered in this behalf, may take cognizance of any offence:

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a report in writing of such facts made by any police officer; and

(c) upon information received from any person other than a police officer, or upon his own knowledge or suspicion, that such offence has been committed.'

Mr. Brij Beharilal was not a Presidency Magistrate, a District Magistrate or a Sub-Divisional Magistrate, Learned counsel has, therefore, urged that it was necessary for the prosecution to prove that Mr. Brij Beharilal was specially empowered to take cognizance of cases Under Section 161, Penal Code, before he could take cognizance of this case. Sub-sections (2) and (3) of Section 190, Criminal P. C., are as follows:

'2. The Local Government or the District Magistrate subject to the general or special orders of the Local Government, may empower any Magistrate to take cognizance Under Sub-section. (1), Clause (a) or Clause (b), of offences for which he may try or commit for trial.

(3) The Local Government may empower any Magistrate of the first or second class to take cognizance Under Sub-section (1), Clause (c). of offences for which he may try or commit for trial.'

The point was not taken before the learned Magistrate and it does not seem to have been taken in the form that it was taken before me before the learned Sessions Judge with the result that it is not possible for me to say whether Mr. Brij Beharilal was or was not empowered by the Local Government or the District Magistrate to take cognizance of offences Under Section 161, Penal Code. I do not consider it necessary, however, to make any further enquiries on the point as Under Section 529 (e), Criminal P. C., if any Magistrate not empowered by law to take cognizance of an offence Under Section 190 (1), Clause (a) or Clause (b) erroneously but in good faith does take cognizance the proceedings are not to be set aside merely on the ground of his not being so empowered. It is only when the case comes Under Clause (c) of Section 190 that Section 580 (k) provides that the proceedings shall be void. The proceedings in this case were started on a report by a police officer Raghupal Singh, Inspector Anti-Corruption Department, and on a complaint made by Mr. V.S. Katara, Magistrate. The case, therefore, comes

under Clause (a) and (b) of Sub-section (l) of Section 190, Criminal P. C.

7. Learned counsel has urged that the sentence of two years' rigorous imprisonment and a fine of Rs. 100/- is excessive. In view of the seriousness of the crime, I do not consider the sentence errs on the side of severity. The revision is rejected.

8. After I had dictated the above order but before I had signed it learned counsel Mr. Baqar Usinani stated that he would produce a notification under which Mr. Brij Beharilal was only entitled to take cognizance of cases transferred to him by the District Magistrate. On Saturday he filed au affidavit in which he says that the papers relating to the appointment of Mr. Brij Beharilal were inspected and the counsel found only one paper No. 2538 dated 12th July 1947, under which Mr. Brij Beharilal had been given powers of a Magistrate of the first class with summary powers. This affidavit does not to my mind affect the matter even if it be assumed that the transfer of the case by the Additional District Magistrate to Mr. Brij Beharilal was null and void as the sanction had not been received before the date of the order of transfer.

9. Mr. Baqar Usmani has appeared today. I have heard him again in the presence of the Assistant Government Advocate. On behalf of Maqbooluddin he has admitted that there was a complaint made by Mr. Katara and there was a report made by Mr. Raghupal Singh. He has, however, urged that the complaint and the report having been made to the Sub-Divisional Magistrate it could not be said that Mr. Brij Beharilal had received the complaint or that the report had been made to him as was required by Clause (a) and (b) of Sub-section (l) of Section 190. The argument, in short, is that if a report has been made by a police officer to a Magistrate not specially empowered or the complaint has been received by him and he wrongly takes cognizance of the case, it may be an irregularity and Section 529 (e) may apply to such a case but where the report or the complaint has been received by a Sub-Divisional Magistrate and he has then sent it on to the Magistrate concerned then the case does not come Under Section 529 (e) Criminal P. C. Learned counsel is not able to give any reason for his submission and I see no force in this argument. Whether the complaint or the report has been

made to a Magistrate in person or through counsel or by post or through some other agency does not appear to be a matter of much consequence. In this case the papers were handed over to the Sub-Divisional Magistrate and he sent them on to Mr. Brij Beharilal who thereupon took cognizance of the case and though the complaint and the report were received by Mr. Brij Beharilal through the Sub-Divisional Magistrate, to my mind, the case would be governed by Section 529 (e), Criminal P. C.

I, therefore, see no reason to change my view that I have already expressed above.

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