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Court : Allahabad

Decided On : Jun-10-1910

Reported in : 7Ind.Cas.51

Judge : Chamier, J.

Appellant : Bholu and ors.

Respondent : Emperor

Judgement :

ORDER

Chamier, J.

1. On September the 20th of 1903, one Bholu filed a complaint against Hira Charan under Section 279, Indian Penal Code, in the Court of the Sub-divisional Officer at Roorkee, the presiding officer being then Chaube Salig Ram. In October that Officer dismissed the complaint as false and called upon Bholu and some of his witnesses to show cause why action should not be taken against them under Section 476, Code of Criminal Procedure. Before the case came on for hearing, Chaube Salig Ram had reverted to his substantive appointment as Deputy Magistrate in the District and was succeeded as Sub-divisional Officer by Mr. Chamier. The latter, after taking some evidence, came to the conclusion that he had no power to act under Section 476, Code of Criminal Procedure, but that he had power to act under Section 195(1)(b) of the same Code, being of opinion, it

appears, that Chaube Salig Ram was subordinate to him within the meaning of that Section, and he proceeded to direct that Bholu should be tried under Section 211, Indian Penal Code, and his witnesses under Sections 211, 109, and Section 193, Indian Penal Code. Being of opinion that there was no Court at Roorkee competent to try the case, he sent the case to the District Magistrate who made it over to Mr. Shaw, Magistrate first class at Saharanpur. On behalf of the accused, objection was taken before that officer to the legality of the proceedings, firstly, on the ground that Mr. Chamier had no power to proceed under Section 195, Code of Criminal Procedure, and, secondly, on the ground that the sanction had been given in very general terms, and the accused were not in a position to know what statements were alleged to be false. In particular it was pointed out that the order was that they should be prosecuted in respect of a complaint dated September the 21st, whereas there was no complaint of that date. Mr. Shaw accepted these contentions and asked the District Magistrate to give fresh sanction. The District Magistrate refused.

2. In my opinion, it is quite clear that Mr. Chamier had no authority to act under Section 195, Code of Criminal Procedure, on the ground that Chaube Salig Ram was subordinate to him. See Sub-section (7) of Section 195. But he had power to act under Section 195 because the offences were committed in his Court, though not when he was the presiding officer. His order is, however, objectionable on the score of vagueness. There is no complaint of September the 21st.

3. The order does not show the statements in respect of which the witnesses are to be prosecuted. It was contended here that Mr. Chamier as Sub-divisional Officer could not act under Section 476, Code of Criminal Procedure, and that the only person who could act was Chaube Salig Ram. I cannot accept this contention. It has been held in *Begu Singh v. King-Emperor* 34 C. 551 : 5 C.L.J. 508 : 11 C.W.N. 568 : 5 Cr. L.J. 398 : 2 M.L.T. 298 (F.B.), by five Judges to one, that, the only person who can act under Section 476 is the Magistrate or Judge who tried the case ; but that view was not accepted by this Court in the case of *Girwar Prasad v. King-Emperor* 6 A.L.J. 392 : 1 Ind. Cas. 306 : 9 Cr. L.J. 209. As stated above, Chaube Salig Ram commenced proceedings under Section 476. He did so immediately after the dismissal of the complaint, and I find it impossible to

hold that his successor in office had no power to continue the proceedings initiated by him. I hold that Mr. Chamier had power to proceed either under Section 195 or under Section 476, but his order is open to the second objection stated by Mr. Shaw in his order of the 24th of March, 1910. I, therefore, set aside the order of the Sub-divisional Magistrate dated the 11th of March 1910, and direct him to take up the case under Section 476, Criminal Procedure Code, and dispose of it according to law, with reference to these remarks.

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