

Ganga Singh Vs. State

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Court : Allahabad

Decided On : Aug-30-1961

Reported in : AIR1962All150

Judge : W. Broome, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 195(1); Indian Penal Code (IPC) - Sections 193 and 218

Appeal No. : Criminal Revn. No. 199 of 1961

Appellant : Ganga Singh

Respondent : State

Advocate for Def. : Asst. Govt. Adv.

Advocate for Pet/Ap. : V.K.S. Chaudhary and ;Devendra Bahri, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

W. Broome, J.

1. Ganga Singh, the applicant in this criminal revision, has been convicted by the Fourth Assistant Sessions Judge of Agra for an offence under Section 218 I. P. C.

and has been sentenced to three years' R. I, His conviction and sentence were confirmed in appeal by the Sessions Judge of Agra.

2. The prosecution allegations were that the accused-applicant, while working as Secretary of the Gaon Sabha of Semra, made a false entry in the birth and death register of the Gram Sabha in question in respect of the death of one 'Lekhraj Singh. According to the prosecution Lekraj Singh actually died on 8-1-1957, but the accused Ganga Singh made a false entry in the register, purporting to have been made on 30-10-1956, showing the date of Lekhraj Singh's death as 30-9-1956. Litigation was going on at the time between Lekhraj Singh and Deshraj Singh over the partition of certain agricultural plots. The suit was decreed in favour of Lekhraj Singh on 3-1-1957, five days before he died; but Deshraj Singh, it is alleged, induced the applicant Ganga Singh to make the aforesaid false entry in the birth and death register, So as to afford a basis for arguing that the suit had abated on account of the failure to bring on the record the heirs of Lekhraj Singh within 90 days of his death, An application to this effect was moved by Deshraj Singh in the course of the appeal which he filed in the court of the Additional Commissioner against the decree; and in support of this allegation relied upon the false entry that had been made by Ganga Singh.

3. The material on record is amply sufficient to prove that Lekhraj Singh actually died in January 1957 and that the entry made by the accused-applicant in the birth and death register showing him to have died on 30-9-1956 was false; and I can see no reason to go behind the findings of fact arrived at by the courts below. Learned counsel for the accused-applicant, however, argues that even if the facts are taken as proved, the conviction is not legally sustainable because the crime committed by the accused was essentially the offence of fabricating false evidence for the purpose of being used in a judicial proceeding, punishable under Section 193 I. P. C., and by virtue of Section 195(c) Cr. P. C. could not be taken cognizance of without the complaint in writing of the Additional Commissioner of Agra, who heard the appeal for the purpose of which the false evidence in question was fabricated.

4. It must be conceded that the facts alleged against the accused in this case make out an offence both under Section 218 I. P. C. and Section 193 I. P. C. The question, is whether it was open to the Judge to take cognizance of the offence under Section 218, in respect of which a private complaint could be filed, and to ignore the Offence under Section 193, in respect of which a complaint by the Additional Commissioner was necessary before cognizance could be taken. On behalf of the accused-applicant, reliance¹ is placed on *Ram Harsa Tewari v. Rex* : AIR1950 All465 , which dealt with a case in which the facts alleged made Out offences both under Section 193 and under Section 465 I. P. C. Quashing the private complaint confined to the offence under Section 465 I. P. C., Malik G. J. observed :

'The nature of the offences is the same, one being considered to be more serious than the other, for which a severer punishment has been provided. It is not open, therefore to the complainant to circumvent the provisions of law and, though the allegations made in the complaint amount to an offence under Section 193, to say that he would confine his case to an offence for forgery under Section 465.'

5. One must not however lose sight of the fact that whereas all the ingredients of an offence under Section 465 are included in an offence under Section 193 Section 218 contains certain important ingredients which are not at all covered by Section 193. In other words, an offence under Section 218 is not a minor form of the offence under Section 193 but a completely distinct species of crime. Even in the ruling relied upon by the applicant, it has been remarked that where two independent offences have been committed, there is no reason why the accused should not be prosecuted for one of those offences merely because the other requires some special sanction before it can be taken cognizance of. Similarly in *Basirul Haq v. State of West Bengal* : 1953 CriLJ1232 , the Supreme Court has observed :

'Section 195 does not bar the trial of an accused person for a distinct offence disclosed by the same facts and which is not included within the ambit of that section.'

In the present case there can be no doubt that the offence under Section 218, I. P. C. is quite distinct from that under Section 193. As already remarked, all the necessary ingredients of the one are not included in the other. Section 218 is concerned with bringing erring public servants to book for falsifying the public records in their charge; while Section 193 on the other hand, makes no reference to public servants or their records but punishes the falsification of evidence (whether in public records or not) by any person (whether a public servant or not) for the purpose of being used in a judicial proceeding. These offences may at times overlap, as in the present case, but that does not make them any the less distinct; and I can see no justification for refusing to allow the accused-applicant to be prosecuted for his misdeeds as a public servant, merely because his falsification of the records in his charge happens also to constitute an offence punishable under Section 193, on account of his presumed intention to allow the said records to be used as evidence in a judicial proceeding. The restriction of the complaint to the offence under Section 218 was thus legally justified and cannot be looked upon as a mere camouflage or device on the part of the complainant to evade the provisions of Section 195, Cr. P. C.

6. I am satisfied therefore that the trial of the applicant and his conviction under Section 218 alone suffer from no legal flaw and accordingly reject this revision application. The applicant is at present on bail, but shall surrender forthwith to serve out the remainder of his sentence.

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