

Om Prakash Vs. State

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Court : Allahabad

Decided On : Aug-01-1961

Reported in : AIR1962All157

Judge : D.P. Uniyal and ;Kailash Prasad, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 12 and 13

Appeal No. : Criminal Revn. No. 1491 of 1960

Appellant : Om Prakash

Respondent : State

Advocate for Def. : S.C. Asthana, Adv.

Advocate for Pet/Ap. : D.P. Agarwal, Adv.

Judgement :

Kailash Prasad, J.

1. This is a petition for revision by Om Prakash

2. Om Prakash resides within the jurisdiction of the Sub-Divisional Magistrate, Pilibhit. Srimati Ram Dulari, alleging herself to be the wife of Om Prakash, filed a case Under Section 488 Criminal Procedure Code. Sri R.S. Agarwal, Sub-divisional Magistrate, Bisalpur ordered notice to be issued to Om Prakash. On

receipt of this notice Om Prakash raised an objection to the effect that the Sub-Divisional Magistrate, Bisalpur had no jurisdiction to take proceedings against him under Section 488 Cri. P. C., as Om Prakash was not residing within his jurisdiction. The objection was disallowed by the Magistrate.

3. Against the order of the magistrate, Om Prakash filed a revision before the Sessions judge of Pilibhit. The learned Sessions Judge held that proceedings under Section 488 Cri. P. C. can be taken against any person in any district where he resides or last resided with his wife. He accordingly rejected the revision

4. Om Prakash then filed the present revision application in this Court. It came up for hearing before a learned Single Judge. In view of the conflict between the decisions in the case of 'Kunj Behari v. Lanua', AIR 1921 All 123 and in 'State v. Tilakdhari' 1961 All LJ 179 he referred the following question to be decided by a larger Bench :

'Whether a Sub-Divisional Magistrate can exercise the powers of a First Class Magistrate in portions of the district, to which he is posted that lie outside his, own sub-division.

5. In the present case the proceedings are under Section 488 Cri. P.C. and the notice against the applicant Om Prakash was issued by the S. D. M. Bisalpur though the applicant is a resident of a place within the jurisdiction of S. D. M., Pilibhit The contention of the learned counsel for the applicant is that under Section 12 of the Cr. P. C. a Magistrate incharge of a sub-division can exercise jurisdiction only within his sub-division and not within a local area which forms another subdivision

6. Section 12 runs to the following effect:

'(1) The State Government may appoint as many persons as it thinks fit, besides the District Magistrate to be Magistrate of the first, second or third class in any district outside the presidency-towns; and the State Government or the District Magistrate, subject to the control of the State Government, may, from time to time, define local areas within which such persons may exercise all or any of the powers

With which they may respectively be invested under this Code.

(2) Except as otherwise provided by such definition, the jurisdiction and powers of such persons shall extend throughout such district.'

7. The State Government posted Sri Radhey Shyam Agrawal to Pilibhit and under notification dated December 1, 1959 invested him the powers of a Magistrate of the first class exercisable within the district to which he was posted.

8. It appears that the district of Pilibhit is divided into several local areas known as subdivisions. The order of the State Government or the District Magistrate defining the local areas has not been produced before us. It cannot, therefore, be said that the order defining the local areas also provides that a person appointed as a Magistrate in the district of Pilibhit and placed incharge of a particular sub-division shall exercise his magisterial powers within the local area of that subdivision only. A person who is appointed as a magistrate of the first, second or the third class in the district of Pilibhit is to exercise the powers, with which he may be invested', in the entire district.

9. The contention of the learned counsel, however, is that the mere carving of a district into defined local areas implied that a magistrate incharge of a particular local area could not exercise jurisdiction in another local area. In support of his contention he relied upon AIR 1921 All 123. With due respect we find ourselves unable to agree with the view taken in that decision. It is well recognised that any order, which seeks to impose restrictions on the exercise of powers generally conferred, should be clear and definite. It is, therefore, obvious to Our mind that the mere definition of areas cannot be taken as a provision excluding jurisdiction in the rest of the district, for if it did, Sub-section (2) of Section 12 Cri. P. C. would be meaningless. We think the sub-section clearly requires some provision excluding jurisdiction in the rest of the district. We are fortified in this view by a Division Bench case of the Bombay High Court, Gulabrao Laxmanrao v. Emperor, AIR 1965 Bombay 409.

10. Sri Radhey Shyam Agarwal was posted to Pilibhit under orders of the Government. The notification containing the order is dated September 12, 1959.

Under notification dated December 1, 1959 the State Government invested him with first class powers and further directed that those powers were exercisable by him in the district to which he was posted for the time being. The State counsel showed us a copy of the order of the Collector of Pilibhit under which Sri Radhey Shyam Agrawal was posted as S.D.M./S.D.O., Bisalpur, The order is dated 17th May, 1960. When the State Government appointed Sri Radhey Shyam Agrawal to exercise powers of a first class magistrate throughout the district of Pilibhit, the District Magistrate could not curtail those powers and limit, the exercise of those powers within the sub-division of Bisalpur only. The position would, however, be different if there were an order of the State Government or, with its approval, of the District Magistrate dividing the district into various sub-divisions and also providing that a magistrate in charge of a particular sub-division was to exercise his magisterial powers in that sub-division only. As stated above, no such order has been brought to our notice. The order of the District Magistrate posting Sri Radhey Shyam Agrawal as S. D. M. Bisalpur, therefore, Only amounts to an arrangement regarding distribution of work for administrative convenience

11. Schedule III of Cri. P. C. contains an enumeration of the ordinary powers of magistrates. Ordinary powers of a magistrate of the third, the second and the first class are enumerated in Parts I, II and III respectively. Power to make orders of maintenance under Section 488 is mentioned at serial No. (10) of part III. Part IV contains an enumeration of the powers of a Sub-Divisional magistrate. A Sub-Divisional magistrate is also a magistrate of the first class. It appears that the powers which are exercisable by him as a Sub-Divisional magistrate can be exercised by him only within 'the local area of his sub-division., but he can exercise the powers of a first class magistrate throughout the district to which he is posted unless the order forming any local areas into a defined sub-division also provides that the Sub-Divisional magistrate of the area is to exercise his ordinary powers as a magistrate first class in that area only.

12. Our answer to the question referred to us is to the following effect: .

13. A Sub-Divisional Magistrate can exercise the powers of a first class magistrate in portions of the district to which he is posted that lies outside his own sub-

division unless the order defining a local area into a sub-division contains a provision which restricts the exercise of those powers to that sub-division only.

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