

Emperor Vs. Haidar Raza

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Court : Allahabad

Decided On : Feb-06-1914

Reported in : (1914)ILR36All222

Judge : Piggott, J.

Appellant : Emperor

Respondent : Haidar Raza

Judgement :

Piggott, J.

1. This is an application in revision against an order by the Sessions Judge of Gorakhpur dismissing the appeal of one Saiyid Haidar Raza against his conviction of an offence punishable under Section 161 of the Indian Penal Code, before a magistrate of the first class in that district, in which he had been sentenced to three months' rigorous imprisonment. The following facts are material: On the 26th of June, 1913, a bench of honorary magistrates consisting of two magistrates, sitting at Tamkohi in the Gorakhpur district, had before it a petty criminal case in which one Sukhari was the complainant. The magistrates were informed that the parties were inclined to compromise, and as the offence was a compoundable one, they gave the parties an opportunity to discuss matters out of court. Later in the day the magistrates were informally told of a difficulty which had arisen in arranging the terms of the compromise, and Sukhari made a statement to the

effect that he had paid certain money as an illegal gratification to two officials of the court. The magistrates administered solemn affirmation to Sukhari and then and there recorded in the English language a brief memorandum of the statement which Sukhari proceeded to make. It is not quite clear whether the present applicant Saiyid Haidar Raza, who at the time occupied the position of clerk to the bench of honorary magistrates, was present or not while Sukhari's statement on solemn affirmation was being recorded. If he was not present while this was being done, he must have been called before the magistrates shortly afterwards, for it is in evidence that certain further conversation took place between the magistrates, Sukhari and Saiyid Haidar Raza. A brief note was recorded in the English language by the honorary magistrates regarding the facts thus ascertained. That note includes a memorandum of the substance of what was then stated by Saiyid Haidar Raza. The magistrates made some further inquiries into the matter, and later on formally recorded a statement by Saiyid Haidar Raza, in the course of which he denied all the allegations against him. This was recorded on the 20th of September, 1913, and is obviously in the form of an explanation offered by an official against whom proceedings are being taken departmentally. Finally, the honorary magistrates reported the matter to the District Magistrate with a recommendation that Saiyid Haidar Raza should be dismissed but not criminally prosecuted. The District Magistrate, however, ordered his prosecution, with the result already indicated. The question before me is as to the admissibility or otherwise of some of the evidence on the record. The Sessions Judge has ruled that the honorary magistrates were precluded by the provisions of Section 91 of the Indian Evidence Act, (No. I of 1872), from giving oral evidence as to what took place before them on the 26th of June, 1913, in so far as that evidence involved the proving of any confession then made by Saiyid Haidar Raza. I am perhaps not quite clear regarding the view taken by the learned Sessions Judge of the record made on that day of Sukhari's statement on solemn affirmation. The result at any rate has been this, that the Sessions Judge has ruled out the oral evidence of the confession alleged to have been made by the applicant on the 26th of June, 1913, but has convicted him upon the oral evidence as to something which was stated by Sukhari in his presence and as to his own conduct when Sukhari made this statement. The point taken in revision is that the evidence thus accepted does not

warrant the conviction of the applicant in respect of the offence charged. I have felt it incumbent on me to deal with the case as a whole and to re-consider the finding recorded by the learned Sessions Judge as to the admissibility of the oral evidence given by the honorary magistrates regarding Saiyid Haidar Raza's confession. The Sessions Judge has held that any statement which Saiyid Haidar Raza may have made to the honorary magistrates on the 26th of June, 1913, if of the nature of a confession, would be a matter which the said honorary magistrates were required by law, namely, by Section 164 of the Code of Criminal Procedure, to reduce to writing in a particular way. If this view is correct, it would certainly follow that the rough note or memorandum recorded by the honorary magistrates in which Saiyid Haidar Raza's confession is embodied would not be a proper record of his confession and could not be accepted in evidence. It would also follow that oral evidence of the substance of this document would be excluded by Section 91 of the Indian Evidence Act. Now the original statement made by Sukhari to the honorary magistrates, by which their attention was first drawn to the commission of an offence punishable under Section 161 of the Indian Penal Code, was certainly not a 'complaint' within the meaning of the definition given in Section 4 of the Criminal Procedure Code. It is clear to me that Sukhari had no intention of asking the Magistrates to take action under the Criminal Procedure Code. When he made that statement, he was merely explaining to them why he was holding out for certain terms before he could consent to compound the offence in the case in which he appeared as complainant. If, therefore, the honorary magistrates proceeded to take cognizance of this offence, they could only do so under Section 190, Clause 1 (c). The learned Sessions Judge's view of the proceedings which followed seems either to be coloured by the assumption that the honorary magistrates, being empowered by law to take cognizance of the matter under the clause aforesaid, were legally bound to do so, and to do so immediately, or else to rest on the supposition that their examination of Sukhari on solemn affirmation shows that they had so taken cognizance. I am not prepared to admit either of these propositions. A magistrate is also a citizen and is also the head of an office. Matters may come to his notice in either of these capacities regarding which he may consider it advisable to question other people, without its being necessarily presumed that he was acting in his magisterial capacity. From any point of view

the examination of Sukhari on solemn affirmation was mistake. Sukhari's statement is itself a confession, that he had been guilty of offences punishable under Section 161/107 of the Indian Penal Code. If it was to be recorded at all by the magistrates as such, it should have been recorded in the manner provided for confessions and not as a deposition on solemn affirmation. As a matter of fact the proceedings of the honorary magistrates read as a whole show clearly that they conceived themselves to be conducting a departmental inquiry into the allegations of misconduct suddenly made to them against certain of their subordinates. I have conducted inquiries of a very similar nature myself, and it certainly never occurred to me that, in questioning any one of my subordinates against whom allegations of misconduct had been made, I was bound to act in my magisterial capacity and could only record any statement which they might see fit to make subject to the formalities and safeguards prescribed by law, i, e. by Section 164 of the Code of Criminal Procedure. In my opinion the statements made by Saiyid Haidar Raza to the honorary magistrates, when he was called into their presence and confronted with Sukhari on the 26th of June, 1913, were not matters, required by law to be reduced to the form of a document. Consequently Section 91 of the Indian Evidence Act has no application. The honorary magistrates have been examined in the courts below and have proved what took place before them on the date abovementioned, and what Saiyid Haidar Raza stated when the matter was unexpectedly sprung upon him. I have considered the evidence, and I see no reason to doubt that the applicant was surprised into the making of true admissions against himself, and that the oral evidence on which the first court based its conviction of the applicant was reliable as well as legally admissible. I have considered the provisions of Section 24 of the Indian Evidence Act, and am satisfied that they do not apply to the circumstances of this case. The result is that I dismiss this application.