

Ramzani Vs. State

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Court : Allahabad

Decided On : Sep-28-1959

Reported in : AIR1960All350; 1960CriLJ774

Judge : M.C. Desai, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 6, 195, 195(1), 476, 476B and 559; Indian Penal Code (IPC) - Sections 211

Appeal No. : Criminal Revn. No. 758 of 1958

Appellant : Ramzani

Respondent : State

Advocate for Def. : Asst. Govt. Adv.

Advocate for Pet/Ap. : M.H. Beg and ;Inamul Huq, Adv.

Disposition : Revision allowed

Judgement :

ORDER

M.C. Desai, J.

1. The applicant in this application challenges the validity of an order passed by Sri Ram Kumar, a Magistrate, first class, Muzaffarnagar, directing a complaint to be

made against him for an offence of Section 211, I. P. C. He had on 12-6-1950 filed a complaint against one Hukum Chand, Lekh-pal, for an offence of Section 218, I.P.C.; it was dismissed by a first class Magistrate, Sri Lalta Prasad, on 30-5-1951. Thereupon Hukum Chand applied to the Magistrate (Sri Lalta Prasad) for starting proceedings under Section 476, Cr. P. C. against the applicant for making a false complaint against him. The court, over which Sri Lalta Prasad presided, was abolished and the proceedings under Section 476, Cr. P. C. were transferred to another first class Magistrate, Sri Bhudeo Gupta.

On 31-7-1952 Sri Bhudeo Gupta ordered a complaint to be made against the applicant for the offence of Section 211, I.P.C. committed by making the complaint against Hukum Chand falsely. The applicant filed an appeal from the order and it was allowed by the Additional Sessions Judge on 28-1-1954; the learned Additional Sessions Judge set aside the order of Sri Bhudeo Gupta and remanded the case to him for further enquiry. In the meantime Sri Bhudeo Gupta's court had ceased to exist and the case was transferred to the court of another first class Magistrate, Sri Ram Kumar, who after carrying out the instructions of the learned Sessions Judge passed the impugned order directing a complaint to be made against the applicant for the same offence of Section 211, I.P.C.

2. The applicant challenges the order on two grounds, (1) that the learned Additional Sessions Judge had no jurisdiction to remand the case for further enquiry and that consequently the further proceedings held under Section 476, Cr. P. C. were null and void and (2) that Sri Ram Kumar could not be said to be the successor of Shri Lalta Prasad to whom the (alleged) false complaint was made by the applicant. As regards the first point the applicant stands on firm ground because in *Manni Lal v. Emperor* : AIR1937 All305 , a Full Bench of this Court held that Section 476 is self-contained and defines the powers of the courts exhaustively and that a Court hearing an appeal under Section 476-B has no jurisdiction to remand the case for further enquiry by the subordinate court.

The appellate Court can quash the order directing a complaint to be filed against the appellant or can maintain the order but cannot set it aside and direct the subordinate Court to make further enquiry into the matter. If it is dissatisfied with

the enquiry done by the subordinate Court or considers an enquiry necessary, it should itself hold it in exercise of its appellate jurisdiction and then decide whether the order should be maintained or quashed. The learned Additional Sessions Judge, therefore, acted illegally in remanding the case to Sri Bhudeo Gupta for further enquiry and all subsequent proceedings held by Sri Ram Kumar were null and void. The illegal order of the learned Additional Sessions Judge did not confer any jurisdiction upon Sri Ram Kumar to file a complaint.

3. A complaint for an offence of Section 211, I.P.C. can be made only by the Court (or some other court to which such Court is subordinate) in which the false complaint was filed by the accused; Section 195(1)(b), Cr. P. C. is clear. Here the false complaint was filed by the applicant in the court of Sri Lalta Prasad and only the court of Sri Lalta Prasad could make a complaint under Section 211, I.P.C.; the court of Sri Ram Kumar or Sri Bhudeo Gupta could not make it. The latter courts are admittedly not courts to which the courts of Sri Lalta Prasad was subordinate. What was contended on behalf of the State is that Sri Bhudeo Gupta was a successor of Sri Lalta Prasad and that Sri Ram Kumar way a successor of Sri Bhudeo Gupta,

What We are strictly concerned with is not whether a certain Magistrate is a successor of another Magistrate but whether the Court making a complaint under Section 195 (1) (b) is the Court in which the false complaint was filed by the accused. If the answer is in the negative the complaint made by the former Court is not a complaint of which any cognizance of the offence can be taken. Now there is nothing whatsoever to indicate that the court of Sri Bhudeo Gupta is the same court which was presided: over by Sri Lalta Prasad previously and by Sri Kant Kumar subsequently.

All the three Magistrates were first class Magistrates presiding over three courts of first class Magistrates and had no connection whatsoever with one another. There was nothing to indicate that they presided over the same court; merely because they held court in the same room or merely because they exercised the same territorial jurisdiction it could not be said that they presided over the same court. Criminal courts are created under the provisions of the Cr. P. C. There are the

courts of sessions, presidency Magistrates and Magistrates of the first class, Magistrates of the second class and Magistrates of the third class, vide Section 6.

Under Section 9 the State Government is required to establish a Court of Session and appoint a Judge-of such court; it may also appoint Additional Sessions Judges and Sessions Judges. The State Government is required by Section 10 to appoint a District Magistrate in every district. Under Section 12 it may appoint as many Magistrates of the first, second or thirds class as it may think fit and define the local areas-within which they may exercise all or any of the powers. Section 13 authorises it to appoint any Magistrate of the first or second class as a Sub-Divisional Magistrate.

4. It would be noticed that under these provisions there are some courts which are permanent such as the Courts of Sessions, the courts of the District Magistrate and the courts of Sub-Divisional Magistrate. These courts are created as courts and the State Government is empowered to appoint officers to preside over them. In respect of these courts it is possible to speak of one presiding officer being a successor or predecessor of another; since the courts are permanent, when one presiding officer ceases to preside over any of them and another officer is appointed to preside over it, the latter is the former's successor and the court remains the same.

Each of these courts is created with certain territorial limits and the court remains the same though the officers presiding over it change from the time to time. If a false complaint is filed in any of these courts, a complaint made by it under Section 195 (1) (b) for offence under Section 211 is competent regardless of the personality of the presiding officer. What Section 195 (1) requires is a complaint by the court and not by a particular presiding officer; so long as the court remains the same it can make a complaint even though it is presided over by a different officer.

5. In the case of remaining courts, such as the courts of Magistrates of the first class, Magistrates of the second class and Magistrates of the third class, they are not created independently of the appointment of the Magistrates. The court of a Magistrate of first class is created in a certain area through the appointment of a Magistrate of first class to exercise jurisdiction over it; naturally the court exists so

long as the Magistrate continues to exercise jurisdiction in the area. When he is transferred or otherwise ceases to exercise jurisdiction over the area the Court automatically ceases to exist. If another Magistrate of the first class is appointed to exercise jurisdiction over the same area another court comes into existence.

Since there is no permanent court of a Magistrate of the first class created as such, it cannot be said that the court of one Magistrate is same as the court of another Magistrate exercising jurisdiction over the same territory. It is always open to the Government to vary the territorial limits of the jurisdiction of the next Magistrate. Since the court of a Magistrate of the first class is not a permanent court the Government has the power of creating as many courts as it likes and can go on changing their territorial limits.

The difference between these courts and the Courts of Sessions, District Magistrate, and Sub-Divisional Magistrate is this that the former are not permanent courts with fixed territorial jurisdiction, their creation depends on the need, they can be created and abolished by the State Government at will, and they come into existence through the appointment of the Magistrates, whereas the latter are permanent courts and are created first and the appointments of the presiding officers are made subsequently. A first class Magistrate is appointed to preside over no court other than that constituted by his own appointment; evidently when his appointment comes to an end the court also comes to an end. Even if another Magistrate is appointed at once and even if he holds court in the same room and exercises the same powers and takes over the cases pending in his court, his court is another court created through his appointment and has no concern with the court of the previous Magistrate.

6. In the present case the only court competent to make a complaint against the applicant was the court presided over by Sri Lalta Prasad or the court to which it was subordinate; the courts over which Sri Bhudeo Gupta and Sri Ram Kumar presided were not such a court and neither of them had any power to make a complaint,

7. Neither Section 195 nor Section 476, Cr. P. C. refers to a successor-in-office. Section 559 which was added in the Code in 1923 lays down that subject to the

other provisions of the Code, the powers and duties of a Magistrate (or a Judge) may be exercised or performed by his successor-in-office and that if there is any doubt as to who is the successor-in-office of any Magistrate, the District Magistrate shall determine by order in writing the Magistrate who shall, for the purpose of the Code or of any proceedings or order thereunder, be deemed to be the successor-in-office. This provision cannot be interpreted to confer power upon the District Magistrate to declare a certain Magistrate to be the successor-in-office of another, if under the other provisions of the Code he is not.

The power of the District Magistrate to declare a Magistrate to be the successor-in-office of another is subject to the provisions of the Code, if under them there can be nothing like a Magistrate being the successor-in-office of another, the District Magistrate cannot declare one to be the successor-in-office of another. Only the power to resolve a doubt about the rights of a Magistrate has been given to the District Magistrate and not that of conferring rights upon a Magistrate. If the question whether a Magistrate is a successor-in-office of another simply cannot arise, there is nothing to be determined by the District Magistrate. If there cannot possibly be a successor-in-office of a Magistrate there cannot be any doubt as to who his successor-in-office is and there would arise no occasion for the District Magistrate's exercising the power.

The section does suggest that there may be a successor-in-office of a Magistrate but it does not follow that every Magistrate must have a successor-in-office. Some Magistrates' courts may be permanent, such as the court of a Sub-Divisional Magistrate in this State, and in respect of them a question can arise as to who is the successor-in-office of a Magistrate presiding over any of them. In this State the question cannot arise in respect of the court of a Magistrate other than a Sub-Divisional Magistrate or a District Magistrate, because this State has not created any other permanent magisterial courts. Section 559 is applicable only in respect of the courts which are permanent, though they are being presided over by one officer or another, and may be, with a gap.

8. There is another reason for not applying Section 559 in the present case; it is that no decision has been given by the District Magistrate declaring Sri Bhudeo

Gupta to be the successor-in-office of Sri Lalta Prasad and Sri Ram Kumar to be the successor-in-office of Sri Bhudeo Gupta. After the proceedings under Section 476, Cr. P. C. were initiated in the court of Sri Lalta Prasad, the court was abolished and all pending work of it was transferred by an order of the Additional District Magistrate (Judicial) to the court of Sri Bhudeo Gupta. The order of the Additional District Magistrate is not on the record but there is a reference to it in the order of Sri Bhudeo Gupta dated 31-7-1952 and it shows that the order was for transferring all the pending work to his court.

The order was not that Sri Bhudeo Gupta was to be deemed to be the successor-in-office of Sri Lalta Prasad. The very fact that an order had to be passed by the Additional District Magistrate transferring all the pending work from one court to the other means that the other court was not the successor-in-office of the former. If the other court had been the successor-in-office of the former, no order of transfer would have been required at all; if there was no doubt about its being the successor-in-office, it would have started exercising all the powers and duties of the former by virtue of Section 559(1) and if there was a doubt, the Additional District Magistrate exercising the powers of the District Magistrate, would have declared it to be the successor-in-office.

The applicant did object to Sri Bhudeo Gupta's continuing the proceedings under Section 476 on the ground of want of jurisdiction and the Lekhpal applied to Sri Bhudeo Gupta in writing for referring the question whether he was the successor-in-office of Sri Lalta Prasad or not to the Additional District Magistrate for his determination. Sri Bhudeo Gupta did not refer the question to the Additional District Magistrate because- he had no doubt that he was the successor-in-office of Sri Lalta Prasad, as explained by him in his order dated 31-7-1952, When there was no order of the District Magistrate declaring Sri Bhudeo Gupta to be deemed to be the successor-in-office of Sri Lalta Prasad, no reliance can be placed upon Section 559.

9. In re Krishna Govinda Dutt, 9 Cal WN 859, though it deals with the question whether one Munsif can make a complaint in respect of perjury committed before another Munsif, supports the view taken above. If there is no permanent Mun-siff's

court created by the Government, the court of Munsif created by the appointment of a Munsif stands on the same footing as the court of a Magistrate. The case was decided prior to the amendment in the Cr. P. C. in 1923 but this fact make no difference. The case was approved in Begu Singh v. Emperor. 11 Cal WN 568 (FB).

It was held in this case by a Full Bench that Only the Sub-Divisional Magistrate who tried the case was competent to make a complaint in respect of the perjury committed before him and not the succeeding Sub-Divisional Magistrate. The case is not of any help because though it dealt with a permanent court, namely that of a Sub-Divisional Magistrate, it dealt with the law as it existed before the amendment in the Code adding Section 559, Cr. P. C. In Jia Lal v. Phogo Mal, 19 Cr LJ 914 : (AIR 1918 Lah 53(1)), it was held that a City Magistrate had no jurisdiction to file a complaint in respect of perjury committed before the previous City Magistrate.

It was emphasized that there is no such court as court of a City Magistrate recognized by the Cr. P. C. and consequently when one Magistrate working as a City Magistrate was transferred and another Magistrate started working as City Magistrate in his place, the latter could not be said to be the successor of the former and could not be said to be presiding over the court over which the former presided. Maula Bakhsh v. Lal Chand, 18 Cr. L. J. 121 : (AIR 1917 Lah. 277) was another case in which the question arose whether a Munsif first class, could be said to be the successor-in-office of the preceding Munsif, first class, and was answered in the negative because there was no court of a Munsif, first class, as a permanent court with a perpetual succession of Munsifs, and it was observed that though one Munsif takes over the pending work of another Munsif he does not preside over the same court. I respectfully agree with these decisions.

10. I hold that the trial Court had no jurisdiction to take cognizance of the offence committed in relation to a proceeding started in the court of Sri Lalta Prasad on the complaint of Sri RamKumar. The application is allowed and the proceedings pending against the applicant for the offence of Section 211, I.P.C., are quashed and he is discharged.