

Queen-empress Vs. Jagjiwan and ors.

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Court : Allahabad

Decided On : Dec-31-1969

Reported in : (1888)ILR10All55

Judge : Mahmood, J.

Appellant : Queen-empress

Respondent : Jagjiwan and ors.

Judgement :

Mahmood, J.

1. In this ease one Musammat Sheo Kumari, a Hindu widow whose husband died in 1885, filed a complaint in the Court of the Joint Magistrate on the 25th March 1887, alleging that certain acts were committed by the accused on the previous day, and that those acts amounted to offences under Sections 322, 448, and 382 of the Indian Penal Code. In the petition of complaint no reference was made to any other offence, and the Joint Magistrate thereupon dealt with the case as falling under Sections 323 and 448 of the Indian Penal Code, and, as such, he tried the case summarily under Section 260 of the Criminal Procedure Code, and, holding that the evidence for the prosecution was untrustworthy, dismissed the complaint. The offences to which those two sections of the Indian Penal Code relate are triable summarily under Section 260 of the Criminal Procedure Code, under clauses (c) and (h) respectively, and there can, therefore, be no question that the action of the Magistrate to this extent was not illegal. As to the remaining Section 382 of the Indian Penal Code, under which the accused had been charged by the complainant, it seems to me enough to say that the facts as stated in the complainant's petition of the 25th March 1887, themselves fell short of showing any such offence as is contemplated by that section, and the Magistrate was, therefore, right in not charging the accused under that section.

2. It then appears that the prosecutrix, Musammat Sheo Kumari, preferred an application for revision to the learned Sessions Judge on the 25th June 1887, asking for interference under Sections 435 and 438 of the Criminal Procedure Code and in that petition the main contention was that the complaint amounted to a charge of offences under Sections 147, 451, 452, and 382 of the Indian Penal Code, and that the action of the Joint Magistrate in trying the case summarily was, therefore, illegal. This contention appears to have been accepted by the learned Sessions Judge, who, acting under Section 438 of the Criminal Procedure Code has referred this case for the exercise of the revisional powers of this Court. It appears from the learned Judge's order of the 11th August 1887 that he was labouring under a misapprehension in thinking that the prosecutrix's complaint of the 25th March 1887, made any mention of Sections 147, 451 and 452 of the Indian Penal Code; and although Section 382 of that Code was mentioned in the complaint, it is clear to me that the facts stated in the petition of complaint itself would furnish no foundation for a charge under that section. The mistake as to the sections under which that charge was brought appears to be shared by the Joint Magistrate in the explanation which he has submitted in conformity with the rules of this Court, and he seems to think that charges under Sections 147, 451, and 452 formed part of the original charge brought by the

complainant against the accused.

3. All I have now to consider is whether the circumstances of the case require me to interfere in revision under the powers vested in this Court by Section 439 of the Criminal Procedure Code. In deciding this question, I have felt some difficulty at the outset as to whether the mere circumstance that the prosecutrix, in preferring her complaint of the 25th March 1887, included a charge under Section 382 of the Indian Penal Code, is a circumstance which by itself ousts the summary jurisdiction of the Joint Magistrate under Section 260 of the Criminal Procedure Code. The learned Judge has expressed the view that the decision of the question whether a complaint is or is not summarily triable is to be regulated by the complaint itself. The learned Sessions Judge observes: 'The charge may be exaggerated, but the law does not allow the Magistrate to pre-suppose this in order that he may try the case summarily.'

4. This view seems to be to some extent in accord with the rulings of the Calcutta High Court in *Ramchunder Chatterjee v. Kanhye Laha*, 25 W. R., Cr., 19; *Chundtr Seekor Sookul v. Dhurm Nath Tewaree*, 1 Cal. L. R.; 434, *Beputoolla v. Najim Sheikh*, 3 Cal. L. R. 374, and *Empress v. Abdool Karim I. L. R.*, 4 Cal., 18. The facts of those cases are, however, distinguishable from those of this case now before me. In the last-mentioned ruling the learned Judges in expressing their opinions laid down the rule that if a charge of an offence 'not triable is laid and sworn to, the Magistrate must proceed with the case accordingly, unless he is at the outset in a position to show from the deposition of the complainant that the circumstances of aggravation are really mere exaggeration and not to be believed.'

5. I agree in the rule so laid down, but I must say that I am not prepared to hold that the mere circumstance of a complaint charging an accused person of offences not summarily triable would oust the summary jurisdiction of a Magistrate under Section 260 of the Criminal Procedure Code. It is far from being an uncommon circumstance that complainants, either bond fide suffering from a grievance or out of ill-will towards the accused, exaggerate the heinousness of the facts complained of; and if I were to hold that the terms of the complaint are in themselves conclusive to decide the question as to whether the case might be summarily tried or not, I should virtually be holding that the summary jurisdiction can be evaded at the choice of the complainant. In this class of cases no hard-and-fast rule can be laid down, and much depends upon the facts and circumstances of each individual case. The Criminal Procedure Code has empowered Magistrates, under certain limitations, to decline to proceed with a complaint; and even in cases not summarily triable, it is only when a Magistrate sees sufficient ground for proceeding against the accused that a charge is framed. This, speaking in general language, is the effect of Sections 210 and 254, Criminal Procedure Code, and I think that whether a complaint does or does not afford sufficient grounds for a summary trial, or requires a trial under the ordinary procedure, is a question which must be left in a great measure to the discretion of the Magistrate, which discretion of course must be exercised with due care and caution according to judicial methods, with reference to the circumstances of each case. In this case, the facts as stated by the complainant might possibly have fallen under Sections 147, 451, or 452 of the Indian Penal Code, none of which offences was summarily triable. But before the Magistrate could charge the accused under those sections, he would have to satisfy himself that there was ground for proceeding under any of those sections. The Magistrate, in the present case, does not appear to have rejected any evidence for the prosecution, and his judgment shows that he disbelieved the entire evidence adduced on behalf of the prosecution. Under these circumstances, I do not think that the case requires any interference in revision. I therefore decline to interfere. The record will be returned.