Sheo Prasad Vs. State

Sheo Prasad Vs. State

SooperKanoon Citation : sooperkanoon.com/456389

Court : Allahabad

Decided On : Oct-17-1958

Reported in : AIR1959All378; 1959CriLJ683

Judge : N. Beg and ;V.D. Bhargava, JJ.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 195 and 537; Indian Penal Code (IPC), 1860 - Sections 182

Appeal No. : Criminal Revision No. 776 of 1956

Appellant : Sheo Prasad

Respondent : State

Advocate for Def. : M.H. Faruqi, Govt. Adv.

Advocate for Pet/Ap. : B.S. Darbari, Adv.

Judgement :

V.D. Bhargava, J.

1. This is an application in revision which has come to this Court on being referred to a Bench by a learned Single Judge as there was an important question of law involved in the case.

2. The applicant had applied for a licence for a gun to the District Magistrate of Agra. That application was sent to the Tahsildar for a report. He reported that the applicant was not a fit person for being granted the licence. The applicant again applied to the District Magistrate giving a list of the properties of his and saying that the report given by the Tahsildar was incorrect.

That was again sent to the Tahsildar for further report. The Tehsildar again reported that the list of the property given by the applicant was not correct and further that he was not a proper person whom a licence should be given. Thereupon the applicant sent a petition to the Chief Minister alleging therein that the Tahsildar and the Kanungo had demanded a sum of Rs. 200/- as bribe for reporting in his favour and since this money had not been paid the report that was given was adverse to him.

This petition which was sent to the Chief Minister was sent by the Government to the District Magistrate Agra who forwarded it to Mr. M.G. Yazdani, Sub-Divisional Magistrate, Kiraoli for enquiry. The applicant was called by Mr. Yazdani and he enquired about this application and came to the conclusion that the application made against the Tahsildar and the Kanungo was false and he made a report to the Government.

Thereafter the applicant was prosecuted under Section 182, I. P. C. by the Sub-Divisional Magistrate and was convicted and sentenced to three months' rigorous imprisonment and a fine of Rs. 100/-. In appeal the fine was set aside but the sentence of imprisonment was maintained. Against that order of conviction the applicant has come to this Court.

3. So far as the question of the report being false is concerned, it is a question of fact which is concluded by a finding of the Court below and this Court cannot interfere. Learned counsel for the applicant had argued that in this case the prosecution was not proper, because, as is provided under Section 195, Criminal P. C., no court can take cognizance of an offence punishable under Section 183 I. P. C. except on a complaint filed by the public servant concerned or some other public servant to whom he is subordinate.

4. It was contended that the public servant concerned to whom the complaint had been made was the Chief Minister and it was the Chief Minister who could file the complaint and not Mr. Yazdani, or it should have been any superior officer to the Chief Minister who could have filed the complaint. Learned counsel has relied on the decisions in Sudarsan Barhambhat v. Emperor AIR 1947 Pat 64; U Hlaing v. R.P. Abaigail, AIR 1937 Rang 232 and Sultan v. C. De M. Wellbourne, AIR 1925 Rang 364.

In those cases the statements had been made to police officers. Later on complaint was filed by the Sub-Divisional Magistrate before whom thestatements had been filed. Therefore the facts of this case are different from the facts of the reported cases, which have been cited by learned counsel. In this case the information had been given initially to the Chief Minister by the applicant. When enquiry was being made by Mr. Yazdani the information was again given to him with regard to the demanding of Rs. 200/- by the Tehsildar and the Kanungo and about his status. Therefore, ft cannot be said that in the present case the information had not been given to Mr. Yazdani on the basis of which he could file the complaint and he would, under Section 195, Criminal P. C. be the public servant concerned.

5. Reliance was also placed by learned counsel for the applicant on a Division Bench case of this Court in Matau v. King-Emperor, 7 All LJ 1143 where the accused had applied for transfer of his case from Tehsildar's Court and the applicant made certain unfounded allegations against the Tehsildar. He was examined by the Sub-Divisional Magistrate and he repeated the allegations made in his application. The Bench held that:

'the statement made under such circumstances was not information given to a public officer within the meaning of Section 182, I. P. C., and the petitioner could not be prosecuted for that statement inasmuch as he was in the position of an accused person and made the statement in answer to questions put by the Sub-Divisional Officer.'

6. The facts ,of that case and the present case are different. In the previous case the statement was made by the accused person in a transfer application before

the Sub-Divisional Magistrate. So Far as the making of the statement by the accused is concerned, he would be protected under Section 342, Cr. P. C. When the Sub-Divisional Magistrate had examined him in the reported case he was being examined as an accused person and therefore, whatever statement he made, whether true or false, he would not be made liable for that.

No proceedings could be taken against Mm on that ground. In the present case when the Sub-Divisional Magistrate had examined the applicant he was not in the capacity of an accused person and, therefore, the facts of the reported case being different, in our opinion, they do not apply to the facts of the present case.

7. It was further contended that when the statement was made before Mr. Yazdani, it was not made voluntarily by the accused. It was because he was asked questions which he was bound to answer. He was bound, if at all, to answer those questions truthfully and correctly; otherwise it was open to him not to answer the questions if he so liked. But if he falsely stated before him that the Tehsildar and the Kanungo had demanded a bribe of Rs. 200/- and also had given a false statement about his status, then certainly he was giving a false information to Mr. Yazdani and proceedings could be taken against the accused whether the statement had been made voluntarily or upon questions put to him.

This view is supported by a decision of the Patna High Court in Emperor v. Lachman Singh, ILR 7 Pat 715: (AIR 1929 Pat 4). The matter was referred to a third Judge on a difference of opinion between two Judges of that Court, namely, Adami J., and Wort, J. Allanson (the third Judge) held that the intention contemplated by Clause (a) of Section 182, I. P. C. does not depend upon what is done or omitted to be done by the public servant on a false information given to him, but upon what was the intention in the mind of the informant. The information referred to in Section 182, I. P. C. may beeither an information which is volunteered or information given in answer to a question. We respectfully agree with the observations of Allanson J. in the above case.

8. Apart from this fact, this objection had not been taken by the applicant in the court of the trial Magistrate. Under the amended Code of Criminal Procedure in view of the Explanation added to Section 537 of the Code, this Court has to take

into consideration whether any error, omission or irregularity in any proceeding under this Code has occasioned a failure of justice, the Court has also to have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings.

In case the objection could or should have been taken at an earlier stage and was not taken, this Court is reluctant to interfere in its revisional jurisdiction. This plea could have earlier been taken in the Magistrate's court. Then it may have been for the prosecution to produce any letter or correspondence which may have passed between the Chief Minister and the District Magistrate and it may be that this action was taken at the instance of the Chief Minister.

On the file there is a letter received from the Government by the District Magistrate to the effect that the allegations made by the petitioner against the Tehsildar were serious and the District Magistrate was directed to examine the desirability of taking action against the petitioner for making false complaint and giving wrong declaration about his status. The District Magistrate, Agra was further informed that the Government desired that such persons who try to seek their ends by such means should be dealt with severely.

Thereafter the District Magistrate sent the whole file to the Government for sanction and there might have been actually directions by the Chief Minister to file the complaint, but since the file is not complete we are not in a position to say whether actually permission had been obtained or not. In any event, as we are not satisfied on merits, we do not think that the conviction can be set aside.

9. Lastly it was urged on behalf of the applicant that after a lapse of about four years it will not be proper to send the applicant to jail for a short period and that instead of the sentence of imprisonment a sentence of fine may be imposed upon the applicant. We think this request is a reasonable one.

10. We accordingly while maintaining theconviction of the applicant set aside the sentenceof imprisonment and in lieu thereof we impose asentence of fine of Rs. 300/-. In default of payment of fine the applicant will undergo rigorousimprisonment for three months. With this modification the revision is

dismissed. The applicant ison bail. He need not surrender to his bail provided he pays the fine within a period of twomonths.