

State Vs. Reva Chand

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Court : Allahabad

Decided On : Aug-04-1960

Reported in : AIR1961All352

Judge : V.D. Bhargava and ;J.N. Takru, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 195, 195(1), 247 and 423; [Indian Penal Code \(IPC\), 1860](#) - Sections 182; Police Regulation - Rule 6

Appeal No. : Govt. Criminal Appeal No. 808 of 1959

Appellant : State

Respondent : Reva Chand

Advocate for Def. : G.P. Bhargava, Adv.

Advocate for Pet/Ap. : Govt. Adv.

Disposition : Appeal dismissed

Judgement :

V.D. Bhargava, J.

1. This is an appeal by the State against the acquittal of one Rewa Chand,

2. A complaint against the respondent was filed under Section 182, I. P. C. A letter is alleged to have been sent by the respondent to the District Magistrate and a copy of which was also sent to the Superintendent of Police and the Inspector General of Police. It related to the conduct of some Constables and the station officer of the Kotwali of Agra. The complaint was that those constables and the station officer wanted some money for some function. And since he had not paid, he was being harassed.

On enquiry by some police officers the complaint was found to be false and, therefore, a complaint was filed by the District Magistrate at Agra in the Court of Sri N. L. Kackar. Later on it was transferred to the Court of Sri N. C. Jain. While the case was pending in the Court of Sri Kackar an application for transfer had been moved, inter alia, on the ground that there had been numerous dates fixed in the case when the prosecution witnesses should have been present, but they were not present. The application was dismissed and one of the grounds was that since Mr. N. L. Kackar had been transferred the application had become infructuous.

3. The accused had taken certain legal pleas and among the others there were two: (1) that the complaint had been filed by the District Magistrate, while actually it should have been filed by the Inspector General of Police or the Senior Superintendent of Police, because the complaint was against the station officer of Kotwali and certain constables, who were not subordinate to the District Magistrate; and (2) that in this case the District Magistrate was the complainant and he did not actually appear on the date of hearing, it being incumbent upon the Complainant to attend the court, the accused was entitled to an acquittal.

4. Both these contentions found favour with the learned Magistrate and he acquitted the accused. This case came up before one of us and since there was on the second point a difference of opinion between this Court and the other Courts and since the referring Judge did not agree with the decision of this Court a reference to two Judges had been made. Therefore this case has come up before us for hearing.

5. On behalf of the State it has been contended that the decision of the Magistrate on both the points is incorrect and, therefore, this Court should send the case back

for trial. Evidence has not yet been led and the respondent has been acquitted on these technical grounds. On behalf of the respondent, on the other hand, it is urged that the decision of the learned Magistrate on both the points is correct. In our opinion the decision on the first point does not appear to be correct. But the decision on the other point is correct, and, under the circumstances, the appeal has to be dismissed.

6. The learned Magistrate has held that the District Magistrate could not file the complaint either in his executive capacity or in his judicial capacity. He has held that if it was in his judicial capacity then he should have recorded his statement under Section 200, Cr. P. C. If he was acting in his executive capacity, he has held, that, the authority who could have moved was the authority to whom the public servant was subordinate, viz., the Superintendent of Police or any authority higher than that authority, viz., the Inspector General of Police, to both of whom the application had been addressed: but not the District Magistrate. In our opinion that argument of the learned Magistrate is incorrect.

6a. Section 195, Cr. P. C. says :-

'(1) No Court shall take cognizance -

(a) of any offence punishable under Sections 172 to 188, I. P. C., except on the complaint in writing of the public servant concerned, or of some other public servant to whom he is subordinate.'

In order to understand the meaning of 'public servant' when a complaint is being filed under Section 182, we have to refer to Section 182, I. P. C. which reads as follows :-

'Whoever, gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant--

(a) to do or omit anything which such public servant, ought not to do or omit if the true state of facts respecting which such information is given were known by him, or

(b) to use the lawful power of such public servant to the injury or annoyance of any person shall be punished

The public servant referred to in Section 182 is the public servant to whom information is given and whose authority or lawful power is sought to be used for the purpose of injuring or annoying the other person. In the present case when the complaint was made to the District Magistrate, the complainant wanted the District Magistrate to take action against the constables and the sub-inspector and it was his executive authority which he wanted to be exercised and that exercise would have resulted in injury or annoyance of the constables and the sub-inspector against whom the complaint had been made.

Therefore, the public servant, to whom, any information is given, is the public servant, who can take action under Section 195 and no one else. It is not the public servant against whom the complaint is made, who can take action. As in the present case the complaint had been made also to the Superintendent and Inspector General of Police, they would also be persons who could file the complaint. In our opinion it cannot be said that the District Magistrate could not file the complaint.

7. The argument on behalf of the respondent was that since the Complaint related to the station officer 'Kotwali, it should have been filed either by the Station Officer himself or by an officer to whom such station officer was subordinate, i.e., the Superintendent of Police or the Inspector General of Police. In our opinion that contention is not correct. The station officer himself had no jurisdiction to file the complaint. According to Section 182 it is only the person to whom the complaint has been sent that can file the complaint. Therefore, in the present case the District Magistrate certainly can file the complaint or any officer to whom the District Magistrate was subordinate could have filed the complaint.

8. Under Rule 6 of the Police Regulation the District Magistrate is supposed to be the head of the criminal administration of the district and in that capacity he will direct action of the police, and as such, even if complaints are to be filed by the station officer, the District Magistrate would be the officer under whom the Superintendent of Police as well as the station officer would be subordinate. This

is clear from the Illustration (a) to Section 182, I, P. C. which is as follows:-

'A informs a Magistrate that Z, a police officer. subordinate to such Magistrate, has been guilty of neglect of duty or misconduct, knowing such information to be false, and knowing it to be likely that the information will cause the Magistrate to dismiss Z, A has committed the offence defined in this section.'

9. On, the second question, in our opinion, the Magistrate has been right and, in any event, even if the Magistrate was not right, we are not inclined to interfere in appeal against acquittal in such a petty matter, because the conduct of the prosecution had been nothing but harassing.

10. Section 247, Cr. P. C. reads as follows :-

'Non-appearance of complainant -

If the summons has been issued on complaint, and upon the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall, notwithstanding anything hereinbefore contained, acquit the accused, unless for some reason he thinks proper to adjourn the hearing of the case to some other day:

Provided that, where the Magistrate is of opinion that the personal attendance of the complainant is not necessary the Magistrate may dispense with his attendance, and proceed with the case.'

11. From a reading of the above, it is quite clear, that if, on the day of the hearing, the accused is present, while the complainant is not present the Court is bound to acquit the accused, unless it thinks proper to adjourn, or the personal attendance is dispensed with. Whenever there is adjournment, there should be some reason for the adjournment. In the present Case it is surprising that there have been numerous adjournments and on no occasion the complainant had been present, nor his presence dispensed with and the Magistrate had been adjourning every time.

The first date fixed for the statement of the accused was 6-6-58. The next date was 11-6-58. No witnesses were present and the State counsel wanted adjournment. June, 19, 1958 was again fixed. Again the State Counsel wanted adjournment. On the next date, i.e., 2nd July, 1958, a date for evidence was fixed and it was 30-7-58. No evidence on that day also was given. On 13-8-58 and 27-8-58 the case could not be taken up and had to be adjourned again because the witnesses for the prosecution had not come.

Some legal arguments seem to have been heard and then the case was listed before the Magistrate to consider whether the case should proceed or not. On 10-10-58 it was ordered that the witnesses be called and 17-10-58 was fixed, but the case Could not proceed again as the station officer was sick. Again on 27-10-58 and 29-10-58 the witnesses were not present, and the case had to be adjourned as on previous occasions. On 30-10-58 it was ordered that all the witnesses should be called for the next date.

12. Since there had been numerous adjournments mainly on (he ground that witnesses far theprosecution were not coming, an application was made for transfer of the Case. Other grounds were also taken. But that transfer application was dismissed, inter alia on the ground that the Magistrate before whom the case had been pending, had been transferred and a new Magistrate had come, therefore, the application had become infructuous. The application for transfer was dismissed somewhere in the end of October 1958. On 6-12-58 the case was to be listed for mfpr dk;Zokgh gsrq (for necessary action).

On 6-12-58 the accused took some legal pleas and it appears that since counsel for the State was not prepared to argue, the case was postponed to 18-12-58. It may be mentioned that on none of these dates the complainant, i.e., the District Magistrate was present. On 18-12-58 counsel for the respondent argued, but the State counsel again wanted time. On 21-1-59 onCe again the State counsel wanted time and got the case adjourned. He argued the legal point on 24-1-59, and on 27-1-59 the order appealed against was passed.

13. On 6-12-58 an objection was taken by the accused that since the complainant was not present the accused should be acquitted under Section 247, Cri. P; C,

The state counsel took time several times, and after hearing both the parties, the Magistrate came to the conclusion that he was entitled to acquittal.

14. We have already quoted above Section 947 which, to our mind is mandatory unless the Magistrate adjourns the case. The proviso to Section 247 was added in 1955. The proviso, before its amendment in 1955, read as follows :-

'Provided that, where the complainant is a public servant and his personal attendance is not required, the Magistrate may dispense with his attendance, and proceed with the case.'

That proviso clearly shows that even if the complainant was a public servant his presence was necessary unless the Magistrate dispensed with his attendance. It was not that simply because he was a public servant, he need not come to Court. The present amendment which had been made to the proviso was with the object of extending the right of the Magistrate to dispense with the attendance of the complainant not only in the case of a public servant but also in the case of any other complainant.

Otherwise it did not affect or in any way entitle a public servant to be absent on the date of hearing, in a case in which he was the complainant. It was open to the Magistrate to dispense with his attendance. Or it may, in some cases, be, that the Magistrate may suo motu dispense with his attendance. But unless this is done, we do not think that merely because the public servant is a District Magistrate and is a busy man, he should not come to Court.

15. In all cases which are filed by the district Magistrate or any other public officer, if such public officer wants that his attendance be dispensed with, an application on his behalf should be made. If the State Government thinks that there is no necessity of such public officer to be present, then it is open either to the State Legislature or Parliament to amend Section 247 in such a manner that the attendance of a public servant may not be necessary.

Learned counsel for the respondent relied on the case reported in *Arjandas Tulsidas v. G. K. Bhagat*, 1954 Cri LJ 559 : (AIR 1954 Ajmer 31 (2)), which was a

case of Ajmer Court decided by Mr. Nigam, who was the Judicial Commissioner and who is now a Judge of this Court. There it was held, that where the attendance of the complainant public servant is not actually dispensed with, the Magistrate can either adjourn the case, if he thinks proper, or acquit the accused. In that case the attendance of the public servant was not dispensed with. The public servant was present in the Court compound, but not In the Court.

The complainant in that case was the City Magistrate, who was present doing his own court work in his Court and, therefore, it was urged that he should be deemed to be present. The Magistrate accepted his attendance as good and, therefore, proceeded with the case. There was a revision before the Judicial Commissioner and it was held that as the presence of the Magistrate had not been dispensed with, the only alternative left to the Magistrate was to acquit the accused or to adjourn the case for adequate reasons. The revision was accepted and (he accused acquitted. We respectfully agree with the decision in that case.

16. The other cases on which reliance was placed were those reported in Public Prosecutor v. Shaik Dawood. AIR 1957 Andh Pra 977 and Public Prosecutor v. A. V. Ramiah, AIR 1958 Andh Pra 392. In the former case the complaint was filed by the Prohibition Officer under the Madras Prohibition Act. The Prohibition Officer was not present and, therefore, the accused was acquitted. Thereafter an appeal was filed in the High Court.

It was held that since the attendance of the Prohibition Officer had not been dispensed with and it was not obligatory on the Magistrate to dispense with his attendance suo motu and proceed with the case, the order of acquittal was correct and the appeal of the State was dismissed. In the other case the complaint was filed by the sub-inspector of police under the Madras Gaming Act and the accused was acquitted on the ground that the sub-inspector of police was not present. It was held that the order was perfectly legal and proper.

17. On the other hand counsel for the State relied on a Single Judge decision of this Court, viz., Dhanpat Rai v. State, AIR 1959 All 425, And it was on account of this difference of opinion that this case was referred to a Bench. There the learned Judge has answered the question whether an order of acquittal must be

automatically passed under Section 247, Cr. P. C. since the Complainant was not present on any of the hearings. The learned Judge observed that the Legislature had modified the operation of the rules in two ways.

First, that it has given a right to the Court to adjourn the hearing of the case for some proper reason and that should be recorded in the order sheet. The other provision made is that when the complainant is a public servant, his personal attendance may be dispensed with by the Magistrate and he may proceed with the case. Probably this Case proceeded on the proviso as it stood before the amendment of the proviso. In the present proviso there is no distinction between a public servant complainant and an ordinary complainant. The learned Judge in that case had observed that:-

'It cannot be denied that the District Magistrate, Lucknow, is not only a public servant but a very busy public servant. The Legislature never contemplated that the District Magistrate should dance attendance upon Courts of Magistrate, who are his subordinates, when prosecutions are launched under those offences which he alone is entitled to prosecute. It would lead to absurd and ridiculous results if the absence of the District Magistrate is to be treated as the absence of the complainant within the meaning of Section 247, Cr. P. C.'

With great respect to the learned Single Judge, we are unable to agree that in cases where the District Magistrate was the complainant he could absent himself without the order of the Court dispensing with his attendance. It may be that in such cases the Magistrate will ordinarily dispense with his attendance, but an application should be made on his behalf by the Public Prosecutor and upon the application being presented and then and only then he can remain absent.

When the District Magistrate goes as a complainant, he does not go as a superior of the Magistrate and, therefore we do not think that his presence in Court can be termed as 'dancing attendance upon the Courts of Magistrate'. It is either for the Legislature to amend the rule, so that in cases where the complainant is a public officer he should not be present, or, in our view, he should have applied to the Court. We are unable to see how, when Section 247 is read, it can be said that the Legislature never intended the attendance of the District Magistrate Complainant

or any other public servant complainant.

18. Under these circumstances we think that, as in the present case, the attendance of the District Magistrate was not dispensed with the Magistrate had only two alternatives left: either to acquit the accused, or to adjourn for sufficient reason. It appears that there had been no less than 10 adjournments of the case on account of the default of the prosecution in producing the witnesses, and the Magistrate was not inclined to adjourn any further and, therefore, he acquitted the accused.

19. It was further contended on behalf of the, State that the Public Prosecutor was present and, therefore, his presence should be deemed to be the presence of the complainant. We are unable to agree. There is no distinction between a public servant complainant and a private complainant. If we were to accept that his representation by a counsel should be deemed to be the presence of the complainant himself then, in that event, we do not see why, a private complainant could not be represented by counsel.

Merely because they are public servants they cannot claim any distinction. All that they may claim from the Court is that on account of the fact of their being public servants and as they are formally interested in the complaints their attendance may be dispensed with. If that distinction is sought for, ordinarily the Magistrate would allow the prayer and dispense with their attendance.

20. In any event, in the present case we find that from 6-6-58, when the case started, till 27-1-59, about eight months, there have been no less than 13 adjournments which had been sought on behalf of the complainant. Even if we had not agreed with the proposition of law that the accused should have been acquitted in the present case on account of the absence of the complainant on the date of the hearing, we would not have interfered with the acquittal. Not calling the witnesses on so many dates, was a gross negligence on the part of the prosecution. Prolonging the case for such a long time in such a petty matter is nothing but harassing the accused and, therefore we think the order of acquittal was perfectly justified. We see no force in this appeal.

21. The appeal is accordingly dismissed.

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