

Mattan Vs. Emperor

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Court : Allahabad

Decided On : Aug-09-1910

Reported in : 7Ind.Cas.914

Judge : Griffin and ;Chamier, JJ.

Appellant : Mattan

Respondent : Emperor

Judgement :

Chamier, J.

1. This is an application for revision of an order passed by a Sub-Divisional Magistrate directing the prosecution of the applicant for an offence under Section 182, Indian Penal Code.

2. It appears that one Ram Deo lodged a complaint against the applicant of an offence under Section 323, Indian Penal Code, in the Court of the Sub-Divisional Magistrate and the case was made over to a Tahsildar Magistrate for trial. The case had not proceeded far when the applicant presented a petition to the Sub-Divisional Magistrate praying him to transfer the case from the Court of the Tahsildar Magistrate to some other Court. In the course of the petition, the applicant stated as one of the reasons for a transfer that the case had been instituted at the instance of the Tahsildar because the applicant had declined to

accede to the Tahsildar's request that the applicant should stand security for a man named Manglia. The allegation was entirely without foundation. The Sub-Divisional Magistrate examined the applicant on oath in support of the application for transfer and the applicant then repeated the accusation against the Tahsildar. It is in respect of the accusation that the applicant has been ordered to be prosecuted.

3. It has been held repeatedly by this Court that an accused person, who makes a false affidavit in support of an application for transfer, cannot be prosecuted in respect of the affidavit under Section 193, Indian Penal Code, and it has been held that an accused person applying for a transfer cannot be prosecuted under Section 228, Indian Penal Code, in respect of scandalous or insulting allegation made against a Magistrate in the application for a transfer. Such a person may be prosecuted under Section 500, Indian Penal Code, in respect of defamatory statements made in the application but in the only reported case that I am aware of, the prosecution failed on the ground that the case fell within the 9th exception stated in that section. It appears to me that the applicant cannot be prosecuted under Section 182, Indian Penal Code, in respect of statements made by him during his examination on oath by the Sub-Divisional Magistrate because the statements were made in answer to questions put by the Magistrate and the applicant cannot be said to have been giving information within the meaning of Section 182, Indian Penal Code, when he was under examination.

4. But the question whether he may be prosecuted under Section 182, Indian Penal Code, in respect of statements made in his application for transfer is one of some difficulty. There is a note in the Current Index of Cases for 1908 of a case of *Imperator v. Khan Muhammad* 1 S.L.R. 124 : 8 Cr. L.J. 378, in which an accused person, who made a false allegation in an affidavit in support of an application for a transfer, was prosecuted under Section 182, Indian Penal Code, but with that exception I have been unable to find any case in which such a prosecution was attempted or allowed. The report of the case referred to is not available.

5. It was held, in *Queen v. Daria Khan* 2 N.W.P.H.C. 128 that statement made by a prisoner for the purpose of his defence cannot be held to be information given to

a public servant within the meaning of Section 182, Indian Penal Code. It appears to me that the applicant was in the position of an accused person when he presented the application for a transfer. Had the case been pending in the Court of a Magistrate having power to make over cases to other Magistrates, e.g., a District Magistrate or Sub-Divisional Magistrate, and the allegation had been made concerning same Magistrate to whom it was proposed to transfer the case, there would, X suppose, be no doubt that the case was covered by the decision in Queen v. Darin Khan 2 N.W.P.H.C. 128, of which, if I may say so, I entirely approve. It seems to me that it can make no difference that the statement was made to a Magistrate other than that in whose Court the case was pending. I hold that the applicant was at the time in the position of an accused person and I think it would be straining the language of Section 182 to hold that a statement made in such circumstances was information given to a public Servant within the meaning of that section. I feel confident that the section was never intended to apply to such a case. The view which I take is supported by the decision of the Madras High Court in Queen-Empress v. Subbaya 12 M. 451. I would set aside the order for the prosecution of the applicant.

Griffin, J.

6. I concur.

7. The order of the Court is that the order of the Magistrate sanctioning prosecution under Section 182, Indian Penal Code is set aside.

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