

State of U.P. Vs. Nanhey

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Court : Allahabad

Decided On : Nov-09-1967

Reported in : AIR1968All394; 1968CriLJ1463

Judge : S.D. Singh, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 190(1) and 345(2);
Indian Penal Code (IPC) - Sections 379

Appeal No. : Govt. Appeal No. 937 of 1965

Appellant : State of U.P.

Respondent : Nanhey

Advocate for Def. : Sri Satyendra Nath Sinha, Adv.

Advocate for Pet/Ap. : Govt. Adv.

Disposition : Appeal allowed

Judgement :

S.D. Singh, J.

1. The Government has come up in appeal against the order passed by Sri J. P. Singhal, Judicial Magistrate, Jaunpur, under Section 345 of the Code of Criminal Procedure, permitting an offence under Section 379 of the Indian Penal Code

being compounded.

2. At 11.30 a.m. on 19th January, 1965, the pocket of Ram Lakhan Singh son of Ram Bahal Singh was alleged to have been picked by the respondent Nanhey and ten ten-rupee notes taken out of the same. Nanhey was alleged to have been apprehended on the spot, but by the time that could be done he had passed on the money to some accomplice. Nanhey was thereupon taken to police station Shahganj where a report was lodged against him at 12.30 p.m. the same day. While investigation of the case was going on some applications were moved for Nanhey being released on bail but they were rejected. On 19th January, 1965 Chhotey Lal, who claimed to be a brother of Nanhey, filed an application before Sri. J. P. Singhal making certain allegations against the police on which the Station Officer, Shahganj was directed to report within three days. The police submitted its report on 21st January, 1965 in which reference was made to the case pending against Nanhey and the circumstances under which even Chhotey Lal was suspected of being his accomplice. The Station Officer made a request towards the close of the report that the application may be returned to him after his report has been perused for purposes of investigation in the case and the Magistrate passed an order on this application:

'Seen. Send a copy of the application to the SO as requested.'

3. On 3rd February, 1965, an application was moved before the same Magistrate, Sri I. P. Singhal. by Ram Lakhan Singh who had lodged the first information report asking for permission to compound the offence and the Magistrate passed the following order thereon:-

'Heard the parties, A.P.P. is not in a position to contradict that accused and aggrieved are of neighbouring village. Permission, therefore, granted.'

Thereafter an application was moved by Ram Lakhan Singh and Nanhey both to the effect that the case against Nanhey may be struck off and on this application the Magistrate passed the order appealed against.

4. The main contention on behalf of the State in this appeal was that no case was pending before the Magistrate on the date the application for the offence being compounded was moved before him and that, therefore, he had no jurisdiction to exercise his powers under Section 345 of the Code of Criminal Procedure. This contention on behalf of the State was not questioned on behalf of the respondent. In fact Sub-section (2) of section 345 of the Code which provides for the compounding of an offence under section 379 of the Indian Penal Code, specifically says that the permission shall be of the court before which any prosecution for such offence is pending.' Only that Magistrate could therefore, grant the permission for the compounding of the offence before whom the prosecution for the offence under Section 379 of the Indian Penal Code was pending. No other Magistrate could have jurisdiction in the matter.

5. What was urged on behalf of the respondent, however, was that a case before a Magistrate may be pending not only when a report is submitted against him by the police but even otherwise; and that even when an investigation is pending before the police the Magistrate may take cognizance of an offence otherwise than on a police report. To that extent the contention put forward on behalf of the respondent is sound, and no exception can be taken to it. Cognizance of an offence is taken by a Magistrate under section 190 of the Code of Criminal Procedure, which provides for three modes for the cognizance being taken. The Magistrate takes cognizance on the basis of a police report under Clause (b) of Sub-section (1) of that section, upon a complaint under Clause (a) and upon information received from any person other than a police officer or on the basis of his own knowledge or suspicion under Clause (c). That no report was made by the police upto the time the offence was permitted to be compounded was not questioned. The offence was still under investigation and no report in writing of the facts leading to the prosecution of the respondent was till then made under Clause (b) of Sub-section (1) of Section 190. No complaint had even been made before the Magistrate by Ram Lakhan Singh or any other person on his behalf till then. There was no occasion for the Magistrate, therefore, to take cognizance either under Clause (a) or Clause (b) of Section 190 (1).

6. What was contended on behalf of the respondent, however, was that it was under clause (c) that the Magistrate had taken cognizance and for that purpose reliance was placed upon certain documents which are on record. As has been mentioned earlier, an application was made by Chhotey Lal, brother or Nanhey, before the Magistrate on 19th January, 1965 on which a report was called for from the police. The report dated 21st January, 1985, was submitted by the police in compliance with the directions of the Magistrate. Reliance was placed upon these papers and it was urged that these documents could provide material on which the Magistrate could take cognizance of the offence. The application or complaint which was made by Chootey Lal was not, however, in respect of the offence of theft which Nanhey was alleged to have committed by Ram Lakhan Singh. It was in fact a complaint against some highhandedness on the part of the police and this application of Chhotey Lal could not, therefore, be either a complaint of the offence under Section 379 of the Indian Penal Code under Clause (a) of Sub-section (1) of Section 190 or even information within the meaning of Clause (c) of the same sub-section and there is nothing on record to indicate that the Magistrate was taking cognizance, if any cognizance was taken by him at all, based on his own personal knowledge or suspicion.

7. Then it was urged that the report which was submitted by the police on 21st January, 1965, in reply to the allegations made by Chhotey Lal on 19th January, 1965, could be treated as information received by the Magistrate, but this would again not be correct inasmuch as it was not an information which is 'received from any person other than a police officer.' The Magistrate could not have, therefore, taken cognizance under any of the clauses (a) to (c) of Sub-section (1) of Section 190 and in fact no cognizance was taken by him at all otherwise there would have been some indication to that effect somewhere in the record. He could have passed an order in the order sheet or on any other paper on the record that he was taking cognizance of the offence against Nanhey under such and such provision or on the basis of such and such complaint against Nanhey. In the absence of such an order, the only possible inference can be that no cognizance was taken by him.

8. The Magistrate appears to have proceeded in some sort of a hurry in passing the order on the application for permission to compound the offence. As soon as the application was moved before him on 3rd February 1965, he proceeded to take it into consideration. The order which he actually passed has been mentioned earlier in this judgment. The main ground on which the application appears to have been pressed was that the parties were neighbours and in respect of this question of fact, the Magistrate takes shelter behind the position that the A.P.P. was not in a position to contradict that the accused and the aggrieved person were of neighbouring villages. I wonder how the Magistrate could believe that the A.P.P. who was appearing in his court, was a person who had knowledge of all the residents of the district and knew who among them were neighbours and who were not. If a certain allegation is made in an application which is moved before a Magistrate and on which he wants to hear the State Counsel, the normal course for the Magistrate would be to fix a date for the hearing of the application and require the A.P.P. to admit or deny the facts by a certain date. The A.P.P. is only then in a position to ascertain the facts from proper quarters and to make a submission before the Magistrate. When the A.P.P. stated that he was not in a position to say anything on the question of fact, it was all the more necessary for the Magistrate to have passed such an order. The Magistrate did not do that, and proceeded to grant the permission even though the A.P.P. was not prepared, to confirm that the accused and the aggrieved person were neighbours. That shows that the Magistrate was bent upon passing the order. The order passed by the Magistrate, to say the least, lacked judicial propriety.

9. The order granting permission for the offence being compounded was passed by the Magistrate in a case which was not pending before him and was consequently without jurisdiction, and not quite appropriate even on facts.

10. The appeal is allowed. The two orders dated 3rd February, 1965, granting permission for the offence being compounded and the accused being acquitted under Section 345 (6) of the Code of Criminal Procedure are set aside. The case against Nanhey respondent will start from the stage at which it was before the orders were passed by the Magistrate on the application for permission to compound on 3rd February, 1965.

