Biroo and anr. Vs. State

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Court : Allahabad

Decided On : May-21-1959

Reported in : AIR1960All509; 1960CriLJ1059

Judge : B. Mukerji, J.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 155(2) and 190

Appeal No. : Criminal Ref. No. 17 of 1958

Appellant : Biroo and anr.

Respondent : State

Advocate for Def. : Asstt. Govt. Adv.

Advocate for Pet/Ap. : S.K. Agrawal, Adv.

Disposition : Reference rejected

Judgement :
ORDER

B. Mukerji, J.

1. This is a reference by the learned Second Additional Judge of Varanasi recommending that the conviction of Biroo and Munnoo under Section 323/34 I. P. C. and their sentences of on a month's rigorous imprisonment and a fine of Rs.

50/- each be set aside.

2. The facts giving rise to this reference may briefly be stated thus. On 29-1-1956 the two accused Biroo and Munnoo were alleged to have given a beating to one Bitan Banerji, Banerji thereafter made a report to the police. The officer-in-charge of the police station thought it desirable to seek permission of a Magistrate to investigate under the provisions of Section 155 Cr. P. C. He therefore put up a report before the Sub-Divisional Magistrate of Rasra. One Dr. P. Anandaraja was the Sub-Divisional Magistrate of Rasra at the time and all he did in the matter was to write on the police report a single word 'Permitted'. The police investigated the matter. Thereafter a charge-sheet was put in by the police against the two applicants on 12-2-1956.

3. The applicants were convicted and sentenced as indicated above. An appeal was filed, by the applicants against their conviction but the appeal failed. They went up in revision to the Judge at Varanasi and the learned Judge has now made a recommendation to this Court to set aside the convictions mainly on the ground that the sanction which had been accorded by the Sub-Divisional Magistrate Rasra. Dr. Anandaraja, was an invalid sanction,

4. There can be no gainsaying the fact that! there was nothing in the words of the sanction to indicate that Dr. Anandraja, when he wrote the word 'Permitted' On the police report which was made requesting for sanction to investigate had given the matter any consideration. The report which the police had put up did not indicate that there was any particular reason why the police should have taken over the investigation into the case which otherwise was not to be investigated by the police agency; the report undoubtedly made a reference to the fact that there was a likelihood of further breach of peace.

But that did not mean that investigation into the marpit that had already taken place, and in respect of which Banerji had already made a police report, needed investigation by the police and a prosecution thereafter by them. As has been pointed out by a Full Bench of this Court in Shyamlal Sharma v. Emperor : AIR1949 All483 , one of the important considerations which have to be taken into account by a Magistrate before ordering investigation by the police in a non-

cognizable offence is to see whether or not there were reasonable grounds for believing that an offence had been committed.

It was pointed out in that case that unless the Magistrate was satisfied that reasonable grounds existed for believing that an offence had been committed he would be acting arbitrarily if he ordered an investigation to be made by the police. The police report that was put up before the Magistrate in the instant case did not indicate whether or not there were reasonable grounds for believing that an offence had been committed. Permitting the police to investigate into a non-cognizable offence and thereafter to prosecute the accused on a charge-sheet by the police is a serious matter not only for the accused but also for the State, for employing police agencies to do the work tor private individuals who under the law are required to seek their own remedy from a Court of law is to unnecessarily waste public funds and the time of public officers which apparently the law tried to safeguard.

5. Dr. Anandaraja has submitted an explanation in this case and his explanation shows that he has merely attempted to justify, if I may say so, his slipshod work, for in his explanation Dr. Anandraja states as follows:

'Moreover, if I remember the facts of two years back correctly, I had made oral enquiries on the presentation of the report, and satisfied myself before giving permission Under Section 155 (2) Cr. P. C.'

6. This statement by the Magistrate in his explanation, if it is true, indicates that he was conscious of the fact that he had to apply his mind to the question as to whether or not the circumstances of the case before him were such as to require investigation by the police. I have wondered as to what oral enquiries Dr. Anandraja made and from whom he made such enquiries for he is discreetly silent in his explanation about it. I compliment him on his memory in being able to remember things that he did in the course of routine magisterial business, two years back; but I cannot compliment him on the order that he produced, namely, just one word 'Permitted'. If the learned Magistrate was conscious of the desirability of making an enquiry and if he had spent time and energy in making that enquiry I for one do not see why he ultimately became so parsimonious about

time and energy when ho came to according or granting sanction -- why could he not then say in the order of sanction more than that single word by which he accorded the sanction?

From what has been said above it is clear that objection could be taken to the sanction which had been accorded by the learned Magistrate to the police to investigate into the non-cognizable offence but that does not necessarily make the conviction which followed the investigation unsustainable. In my opinion it cannot be contended that a sanction to investigate given by a Magistrate to the police under the provisions of Sec. 155(2) Cr. P. C. stands on the same footing as a sanction which is required before a prosecution for certain offences could be initiated.

There are quite a number of offences in respect of which a prosecution can only be launched while in respect of some no Court can take cognizance of such offences, unless there was a sanction by some authority. In respect of such offences it, undoubtedly, is the law that it' there is no such sanction or if the sanction produced is an invalid sanction or if the sanction has been given by the authority without applying its mind to the question, then the whole prosecution fails. There is no such law in regard to a sanction to investigate, given by a Magistrate to the police under the provisions of Section 1.55 (2) Cr. P. C. In my judgment the two sanctions represent two different types and they stand on two different footings. One goes to the very root of the matter while tbe other namely the sanction under Section 155 (2) Cr. P. C., merely is a procedural matter not affecting the substance of the matter at all. As I have already indicated the reason why there was this provision was that the Legislature wanted to save public time and money being wasted on the investigation of petty offences by the police.

7. The Jurisdiction of a Court to try a case does not depend on the investigation of that case or ;0n the agency employed in the investigation of the case. I can lay my hands on no provision in the Cr. P. C. which lays down that a charge-sheet submitted by the police in respect of a non-cognizable offence could not be tried by a Magistrate. Nor can I find any prohibition in the Code against the police putting in a charge-sheet in a non-cognizable offence. That being the position, I

cannot hold that the trial which started in this case on a police charge-sheet was in any way vitiated. The learned Judge of the Court below- thought it was, and I think he fell into that error because he thought that the sanction to investigate by the police stood at the same footing as sanction to prosecute where such a sanction was a pre-requisite of the prosecution.

8. Section 173 Cr. P. C. shows that every investigation under Ch. XIV has to be completed without unnecessary delay and as soon as it is completed the officer-in-charge of the police station shall forward to the Magistrate empowered to take cognizance of the offence on a police report in the prescribed form a report and further communicate in such manner as may be prescribed the action taken by him to the person by whom the information relating to the commission of the offence was first given by the complainant.

9. Under Section 190 a Magistrate can take cognizance of an offence under any of the following circumstances: (1) Upon receiving a complaint, (2) upon a report in writing; (3) upon information received from any person other than a police officer, or (4) upon his own knowledge or suspicion that such an offence has been committed.

The fact that a Magistrate can take cognizance upon a report in writing of facts made by any police officer under Section 190 indicates that even if an offence was a non-cognizable offence and even if the police had without authority from a Magistrate investigated into that offence even then the Magisterial cognizance could not be vitiated.

10. In my opinion therefore there was nothingwrong in the trial and the trial was not vitiated byany procedural error nor did that error in any wayaffect the merits of the matter. Nor did it prejudicially affect the accused. The evidence which wasproduced in the case was believed by the Courtsbelow. The Judge who made the reference doesnot say that the evidence was unreliable. I havetherefore seen no reason to accept this referencewhich I accordingly reject.