

Amrit Lal Vs. Rex

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Court : Allahabad

Decided On : Dec-13-1949

Reported in : AIR1952All366

Judge : V. Bhargava, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 235, 235(1), 235(2), 345, 345(6) and 403; Indian Penal Code (IPC) - Sections 323 and 374; Uttar Pradesh Removal of Social Disabilities Act, 1947 - Sections 3 and 6

Appeal No. : Criminal Ref. No. 1052 of 1948

Appellant : Amrit Lal

Respondent : Rex

Advocate for Def. : D.G.A.

Disposition : Application allowed

Judgement :

V. Bhargava, J.

1. This is a reference by the learned Sessions Judge of Shahjahanpur recommending that an order passed by a Magistrate amending a charge against Amrit Lal accused be set aside and the accused be acquitted.

2. The facts show that Amrit Lal was prosecuted in that Court on a complaint filed by one Tika Chamar. During the trial of this case, charges under Sections 374 and 323, Penal Code, were framed against Amrit Lal. After the charges had been framed, further cross-examination of the prosecution witnesses took place and then on 12-6-1918, the evidence of medical officer was recorded under Section 256, Criminal P. C. Thereafter Amrit Lal accused moved an application in Court saying that the case had been compromised and requesting that it may consequently be dismissed. Tika, the complainant, verified this application on that very day and the learned Magistrate then fixed 23-6-1948 for orders. On 2-6-1948, before orders could be passed on the compromise application, two applications were moved on behalf of the prosecution. In these two applications, the prayer was that the compromise may be rejected and the charge against Amrit Lal may be amended to one under Section 3, Sub-section (iv), U. P. Removal of Social Disabilities Act of 1947. These applications, were allowed by the learned Magistrate who amended the charge to one under Section 3 (iv) read with Section 6, U. P. Removal of Social Disabilities Act of 1947. The learned Sessions Judge has made this reference on the ground that the order of the Magistrate amending the charge was illegal because Amrit Lal was entitled to acquittal as soon as the petition for compromise was duly made and verified before the Court and consequently the subsequent order of the learned Magistrate amending the charge was without jurisdiction.

3. This reference by the learned Sessions Judge must be accepted. The acts alleged by the complainant constituted offences punishable under Sections 323 and 374, Penal Code. Both these offences were compoundable. They were actually compounded and the compromise was filed in Court. The complainant even verified the compromise. Under Sub-section (6) of Section 345, Criminal P. C., the composition of an offence has the effect of an acquittal of the accused with whom the offence has been compounded. The language of this subsection makes it clear that the composition itself as the effect of an acquittal and the failure to pass an order of acquittal following the composition of the offence does not affect the position. In the present case, therefore, Amrit Lal must be deemed to have been acquitted as soon as the compromise petition was filed in the Courts and verified. The fact that no order of acquittal was actually recorded by the Magistrate

would not mean that the proceedings were still continuing in his Court. Consequently, the Magistrate had no power to amend the charge subsequently.

4. It was contended by the learned counsel appearing for the Assistant Government Advocate that in this case the charge under Section 6 read with Section 3 (iv), U. P. Removal of Social Disabilities Act of 1947 was a distinct offence committed during the same transaction as the offences under Sections 323 and 374, Penal Code, and a re-trial in respect of the former would, therefore, not be barred by this order of acquittal. In this position, it was argued, the learned Magistrate was competent to amend the charge and proceed with the trial even if the composition of the offences under Sections 323 and 374, Penal Code, had the effect of acquittal. It, however, appears from the facts that the act constituting an offence punishable under Section 6 read with Section 3 (iv), U. P. Removal of Social Disabilities Act 1947, was identical with the act constituting an offence punishable under Section 374, Penal Code. It was not a case where there were distinct and separate acts committed during the same transaction which were punishable as separate offences. This was a case where one single act was an offence punishable under two different provisions of law. The case, therefore, fell within Sub-section (2) and not Sub-section (1) of Section 235, Criminal P. C. In such a case, the acquittal in respect of the offence punishable under one law bars the trial for the same offence punishable under a different law. Since Amrit Lal, as a result of the composition of the offence under Section 374, Penal Code, had been acquitted of that very act, he could not be charged again under the U. P. Removal of Social Disabilities Act, 1947, in respect of the same act. As I have said above, the acquittal took effect as soon as the composition of the offence was verified before the Court and not when the actual order of acquittal was recorded by the Magistrate. Consequently in this case the learned Magistrate was not competent to amend the charge.

5. The result is that I accept the reference, set aside the order of the learned Magistrate amending the charge and acquit Amrit Lal of the charges under Sections 323 and 374, Penal Code.