

Ameraj Singh Vs. Emperor

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Court : Allahabad

Decided On : Dec-02-1924

Reported in : AIR1925All306

Appellant : Ameraj Singh

Respondent : Emperor

Judgement :

Mukerji, J.

1. This is an application in revision against the conviction of one Ameraj under Section 193 of the Indian Penal Code. He has been ordered to undergo 18 months' rigorous imprisonment and to pay a fine of Rs. 300,
2. Several points have been urged in revision, but none of them except one appears to carry any weight. The single point that does carry weight is this.
3. The applicant, on the 9th of November, 1922, made a statement on oath that a certain person bearing the name of Radhe Mohan was his father's brother. This statement is supposed to be false, nay, it has been established clearly that this statement was false. Sanction to prosecute the applicant for having made this false statement was obtained on the 1st of June, 1923. The proceedings, however, were not started against the applicant till the 31st of October, 1923. In the meantime, Act XVIII of 1923 had come into force on the 1st of September, 1923.

The change that was effected in Section 195 of the Criminal Procedure Code was this. The procedure of grant of sanction to private parties to prosecute was abrogated. Instead, it was enacted that no Court should take cognizance of a certain class of offences except on the complaint in writing of a public servant. It is contended, therefore, that a prosecution which was launched on the 31st of October, 1923 was launched in the teeth of the provision of Section 195, as it came into force on the 1st of September, 1923 and that, therefore, the learned Magistrate had no jurisdiction to entertain the prosecution.

4. It appears to me that this contention is perfectly correct and legitimate. The previous law was that the Courts were debarred from taking cognizance of a certain class of offences except when a public servant or a Court concerned themselves moved in the matter or permitted certain private parties to move the Court to take up the matter. The old law further provided that a private person to whom sanction to prosecute was granted could file a complaint within six months of the grant of the sanction. The new law not only did away with the rule of granting permission to private parties to prosecute but also did not allow the old procedure to survive in those cases in which sanction had already been granted before coming into force of the amended Code. The result was that the law as it was enacted by Section 47 of Act XVIII of 1923, applied with full force. By that law, as I have already stated, no Court is allowed to take cognizance of any offence except on the complaint of a public servant or a Court. No such complaint in writing was produced before the learned Magistrate to enable him to take cognizance of the case. The result is that the Court took cognizance of the case without any jurisdiction and the conviction cannot stand.

5. It is worth mentioning that under the unamended Section 537, want of a sanction or any irregularity in the matter of a sanction or in a proceeding under Section 476 of the Criminal Procedure Code did not stand in the way of a conviction if it was otherwise sound. This provision was contained in Clause (b) of Section 537 before it was amended. This Clause (b) does not any longer find its place in the new section. The inference is that want of a regular complaint by a public servant or a Court must be fatal to a prosecution.

6. I accept the application in revision, although with regret, and set aside the conviction of the applicant under Section 193 of the Indian Penal Code. The sentence is also set aside. The fine, if paid, will be refunded. The applicant will be released forthwith.

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