

Emperor Vs. Bakhshi

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Court : Allahabad

Decided On : Jul-13-1923

Reported in : (1924)ILR46All43

Judge : Daniels, J.

Appellant : Emperor

Respondent : Bakhshi

Judgement :

Daniels, J.

1. This is an application for revision of an order of the District Magistrate directing the trial court to proceed with the trial of the accused under Section 182, Indian Penal Code. It appears that the applicant made a report to the Police which was alleged to be false, and sanction for his prosecution under Section 182 of the Indian Penal Code was duly granted. The applicant was put on his trial before a Magistrate of the second class. This Magistrate being of opinion that the evidence disclosed an offence under Section 211 of the Indian Penal Code, which he was incompetent to try, Sub-mitted the proceedings to the Sub-Divisional Officer under Section 349 of the Code of Criminal Procedure. This officer framed a charge under Section 211, Indian Penal Code, but, after the hearing of the case was complete, came to the conclusion that he could not try the accused on this charge for want of previous sanction by the court. He, therefore, sent a report to the Magistrate

suggesting that the case should be referred to the High Court under Section 435 of the Code of Criminal Procedure, with a view that the whole proceedings be quashed. The District Magistrate declined to make a reference, holding that, whether sanction to the charge under Section 211 of the Indian Penal Code was required or not, the accused could certainly be tried for an offence under Section 182 of the Indian Penal Code, for which he was originally placed on trial, and directed the trying Magistrate to proceed with the case. Against this order the applicant has come in revision to this Court.

2. Where a false charge is made to the Police and not to a court, a perusal of Section 195 of the Code of Criminal Procedure makes it clear that no sanction is required. The Calcutta High Court has, however, held in a series of cases,, of which it is sufficient to mention the case of *Tayebulla v. Emperor* (1916) I.L.R. 43 Calc. 1152 and *Brown v. Ananda Lal Mullick* (1916) I.L.R. 44 Calc, 650, that where an accused person has gone on to prefer a complaint in court, his accusation to the Police must be held to have been made in relation to the proceedings in court subsequently instituted and that sanction is, therefore, necessary, A Bench of this Court in *Emperor v. Hardwar Pal* (1912) I.L.R. 34 All. 522 was inclined to the same view. Now in this case the accused did subsequently make a complaint in court, which was dismissed, though the present prosecution has not been based on that complaint, but, as a perusal of the charge-sheet shows, on the original report made at the police station on the 1st of September last. The present case is, however, almost exactly covered by the decision in *Mula v. Emperor* (1918) 17 A.L.J. 32. There also the accused was charged in the first instance under Section 182 of the Indian Penal Code before a Magistrate of the second class. That Magistrate returned the record to the District Magistrate on the ground that the accused had committed an offence under Section 211 of the Indian Penal Code, which he was not authorized to try. The District Magistrate, as in this case, directed the trial to proceed. This Court in revision upheld the order on the ground that the accused's having subsequently made a complaint in court was no bar to the court's proceeding with the trial of the offence under Section 182 of the Indian Penal Code. It is interesting to note that the Judge who decided this case was one of the Judges who had previously decided the case of *Emperor v. Hardwar Pal*. In this case the facts alleged by the prosecution, whether they amount to an offence

under Section 211 of the Indian Penal Code or not, undoubtedly constitute an offence under Section 182 of the Indian Penal Code. It was in respect of this offence that the present trial was commenced. In my opinion no useful purpose would be served by quashing the present proceedings and requiring the accused to be put on his trial afresh, after all the evidence has been recorded.

3. There is one further objection which it is necessary to notice. The complaint which the accused filed in court was rejected on a police report, without his being given an opportunity to produce his witnesses. This is contrary to the rulings of this Court, but any objection on this score should have been taken at an earlier stage and not when the trial of the accused is practically concluded.

4. For the above reasons I dismiss the present application.

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