

Emperor Vs. Narain Das

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Court : Allahabad

Decided On : Oct-11-1935

Reported in : AIR1936All105

Appellant : Emperor

Respondent : Narain Das

Judgement :

Niamatullah, J.

1. This is an appeal. on behalf of the Local Government from an order passed by the learned Sessions. Judge, Aligarh, in appeal from an order passed by a Magistrate of that District, convicting the respondent Narain Das of an offence under Section 182, Penal Code. One Bed Ram made a report at the Police Station, Hathras, on 16th June 1934, charging Narain Das with the offence of cheating. Sub-Inspector Hukum Singh was deputed to investigate the case and . went to search the house of Narain Das in that connexion. Subsequently Narain Das who was dissatisfied, in some respects, with the action of Hukum Singh, sent a. petition by post to the Deputy Inspector-General of Police who has his headquarters at Agra, complaining that the Sub-Inspector had in the course of the search, taken possession of eight sovereigns and had given a receipt therefor. It was alleged that subsequently the Sub-Inspector misappropriated the sovereigns.

2. The Deputy Inspector-General made an investigation and found that the complaint was false. He decided to prosecute Narain Das for an offence under Section 182 and filed a complaint in the Court of the Sub-Divisional Magistrate, Hathras where Narain Das' house was situate and where the offence of cheating was alleged by Bed Ram to have taken place. The Magistrate who tried the case convicted Narain Das of an offence under Section 182, Penal Code, and sentenced him to pay a fine of Rs. 1,000. Narain Das appealed from his conviction to the learned Sessions Judge, Aligarh. His counsel took a preliminary point and argued that the Sub-Divisional Magistrate, Hathras, had no jurisdiction to try Narain Das for an offence under Section 182, Penal Code, in view of the circumstances of the case. It was pointed out that the petition sent by Narain Das was posted at Hathras but was received by the Deputy Inspector-General at Agra. Accordingly it was contended that the offence under Section 182, Penal Code was committed at Agra and not at Aligarh. This contention found favour with the learned Sessions Judge who set aside the conviction directing that the complaint of the Deputy Inspector-General of Police be returned to him for presentation to the proper Court.

3. The present appeal is by the Local Government challenging the correctness of the order of the learned Sessions Judge. Mr. K.D. Malaviya, who appears for the opposite party Narain Das, has taken a preliminary objection to the effect that no appeal is maintainable from the order passed by the learned Sessions Judge which is not one of acquittal. It is not necessary for us to express any decisive opinion on the merits of this preliminary objection, as even if we held that no appeal lies, we think that, in the circumstances of the case, the memorandum of appeal should be treated as an application for revision under Section 435, Criminal P.C. Whether the case be treated as one of appeal or of revision, the questions raised by the Local Government can be considered by this Court and suitable orders passed according, to the correct view of the questions decided by the learned Sessions Judge.

4. The learned Sessions Judge has based his decision on *In re Rathinam Pillai* 1932 33 Cr LJ 452, in which a learned Judge of the Madras High Court held that the gist of the offence under Section 182, I.P.C., is the giving of the information so

as to cause a public servant to act on it and that the offence is completed when the information reaches the public servant. In that view the learned Judge held that the offence must be deemed to have been committed at the . place where the letter addressed by post is received. It Seems to have been contended before the learned Judge that Section 179, Criminal P.C., was applicable and that, therefore, the offence was triable either at the place where the letter was posted or at the place where it was received. No reference appears to have been made to Section 182, Criminal P.C. If Section 179, Criminal P.C., were the only section applicable to the circumstances like these, something might be said in support of the view taken by the learned Judge. I am, however, of opinion that Section 182, Criminal P.C., is fully applicable to the present case. That section provides:

Where it is uncertain in which of several local areas an offence was committed, or where an offence is committed partly in one local area and partly in another, or where an offence is continuing one, and 'continues to be committed in more local areas than one, or where it consists of several acts done in different local areas; it may be enquired into or tried by a Court having jurisdiction over any of such local areas.

5. A reference to Section 182, I.P.C., will show that an offence punishable under that section is made up of several ingredients, one of which is the giving of information to the public servant. Another is the intention or knowledge that the accused will by the information cause the public servant (a) to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, or (b) to use the lawful authority of such public servant to the injury or annoyance of any person. It seems to me that the act of giving information consists of something done by the giver and of the knowledge acquired by the person to whom the information is given. It is true that if the letter is not received by the public servant to whom it is addressed, the information cannot be said to have been given but if the giving of information is at all complete, part of the action, at any rate, is done by the person giving the information. The writing and the posting of the letter at one place and the receipt of it at another taken together constitute the giving of information. It follows that the act of giving information partly takes place where the letter is

written and posted. Apart from this, the intention which is an essential ingredient of an offence under Section 182, I.P.C., is entertained by the person giving the information at the place where the letter is written and posted. I am clearly of opinion that in a case like this where the information given to a public servant is contained in a letter 'posted at one place and delivered at another, the offence is committed partly in one local area and partly in another. The learned Government Advocate has relied upon several cases in which the publication of defamatory matter occurred at one place and the letter in which it was contained was posted at another. It was held that Section 182, Criminal P.C., was applicable as part of the offence, namely publication of the matter contained in the letter, took place where the letter was received, though the defamatory words were written at another place where the letter containing it was posted. In these cases, reference was made to Section 179, Criminal P.C., also, though Section 182, Criminal P.C., was mainly relied on: vide Krishnamurthi Iyer v. Parasurama Iyer 1923 Mad 666, Burke v. Skipp 1924 Mad 340, and Gafrir Karim Bux v. Emperor 1930 Bom 358. These cases are applicable to the present case so far as they are based on Section 182, Criminal P.C. I need not consider whether Section 179, Criminal P.C., applies. For the reasons already stated I am of opinion that the Magistrate at Aligarh who tried and convicted the opposite party Narain Das had jurisdiction to take cognizance of the case and that the learned Sessions Judge was not right in setting aside the order of conviction passed by the Magistrate. Even if I had held otherwise, it seems to me, that Section 531, Criminal P.C., amply covers the case. That section lays down that:

No finding, sentence or order of any Criminal Court shall be set aside merely on the ground that the enquiry, trial or other proceeding in the course of which it was arrived at or passed, took place in a wrong Sessions, Division, District, Sub-Division or other local area, unless it appears that such error has in fact occasioned a failure of justice.

6. It is noteworthy that no objection on the score of jurisdiction was taken before the Magistrate trying the case, nor was it taken in the memorandum of appeal filed in the Court of Session. It was taken for the first time in the course of arguments before the learned Sessions Judge. It has not been complained that the trial in the

Court of the Magistrate has occasioned a failure of justice which would have been avoided if the trial had taken place at Agra. The result is that I set aside the order of the Sessions Judge directing that the complaint be returned to the Deputy, Inspector-General of Police for presentation to a competent Magistrate at Agra and direct him to hear and dispose of the appeal before him on the merits.

Allsop, J.

7. I entirely agree. It seems to me that the provisions of Section 182, Criminal P.C., must apply to this case. It may be said in my opinion that the offence was one committed partly in one local area and partly in another, or that it consisted of several acts done in different local areas, namely the acts of writing the letter and posting it at Hathras and the act of having it delivered through the post at Agra. That being so, the Sub-Divisional Magistrate of Hathras at Aligarh certainly had jurisdiction to try the case. In any event it is obvious that the provisions of Section 531, Criminal P.C., apply.

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