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Court : Allahabad

Decided On : Apr-03-1945

Reported in : AIR1945All397

Appellant : Taskhir Ahmad

Respondent : Emperor

Judgement :

Braund, J.

1. This is an appeal by an appellant, Taskhir Ahmad, who in 1943 was., the head moharrir of the police station at a place called Nahtaur. This man has been convicted of the offence of giving false evidence in a judicial proceeding and has been sentenced to a nominal term of imprisonment and to suffer a fine as well. In my opinion, without reference to the merits of the case, the appellant succeeds on a technical point. The facts for this purpose can be briefly stated. The appellant was the head moharrir of the police station, and to him came a certain person to lodge a complaint against some seventeen persons who were alleged to have committed serious offences, one of which was murder. The appellant took down the first information report and he also made the routine entries in what is known as the general diary. Among the seventeen persons who were implicated by this first information report was a certain Raj Kumar. What the appellant is said to have done is both in the first information report and the general diary, to have added the

name of Raj Bahadur-the brother of Raj Kumar-as a person informed against, and moreover to have done this after, and by way of addition to, the original first information report and the original diary entries, after they had been completed in the first instance. He was, moreover, charged with having done this intentionally for the purpose of involving an innocent man, Raj Bahadur, in a capital offence. In due course, the case which followed this first information report was tried by the learned Sessions Judge of Bijnor in sessions trial No. 21 of 1913, and in the course of this trial the first information report and the general diary relevant to the case had to be referred to. The entries in these documents relating to Raj Bahadur were no doubt challenged in defence on his behalf and, during the course of the trial, the present appellant was cross-examined as to how the name of Raj Bahadur found its way into the first information report and the general diary. In cross-examination the appellant is said to have given answers to the effect that Raj Bahadur's name was interpolated in the first information report before it was signed and that accordingly, as between the appellant and the informant, there was no question of its having been dishonestly added.

2. After the conclusion of the sessions trial, the learned Sessions Judge considered under Section 476, Criminal P.C. whether any steps ought to be taken against the appellant as a result of what he was alleged to have done in respect of the first information report and the general diary and in respect of what he had said in Court in cross-examination. In the result the learned Sessions Judge made a complaint, dated 30th November 1943 in accordance with Section 476, Criminal P.C. The complaint itself is a long document which consists of a recital of the events and of the suspicions in the mind of the learned Sessions Judge, first that the appellant had deliberately tampered with, and altered, the first information report by including Raj Bahadur's name in it subsequently to its having been lodged in the police station; secondly that the appellant had tampered with the general diary by adding the name of Raj Bahadur to it so as to correspond with his manipulation Of the first information report; and thirdly that he had deposed falsely in his answers given in cross-examination. Having come to this concision, the learned Sessions Judge proceeded to say that:

In the interest of justice it is expedient that the accused should be tried for the aforesaid offences complaint under Sections 218 and 194, Penal Code, is hereby moved against him. The Government pleader may be deputed to conduct the case....

3. As a result of this complaint, the appellant was tried in May 1944 by the learned Sessions Judge of Moradabad. In that trial the learned Judge acquitted the appellant both of the charge under Section 194 and of the charge under Section 218, Penal Code, but he convicted him of an offence under Section 193, Penal Code, which is the offence of giving false evidence. In other words, the appellant was acquitted of fabricating false evidence with intent to procure a conviction in a capital case and of the offence of fabricating records; but he was convicted of the offence of giving false evidence in the ordinary sense. The technical point with which I have to deal is whether as a matter of law it was open to the learned Sessions Judge, having discharged the appellant in respect of the two offences specifically referred to in the complaint of 30th November 1943, to convict him of an offence which was not specifically referred to in that complaint at all. This is technical, but in my opinion where we are dealing with a case of a criminal charge to which Sections 476 and 195, Criminal P.C. apply, the appellant is entitled to the benefit of a strict construction of, and compliance with, the relevant provisions of the statutes. Section 476, Criminal P.C. is in these words:

When any Civil, Revenue or Criminal Court is, whether on application made to it in this behalf or otherwise, of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in Section 195, Sub-section (1), Clause (b) or Clause (c), which appears to have been committed in or in relation to a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary, record a finding to that effect and make a complaint thereof in writing....

Section 195, Criminal P.C. provides that:

No Court shall take cognizance....(b) of any offence punishable under any of the following sections of the same Code, namely, Section 193...except on the complaint in writing of such Court or of some other Court to which such Court is

subordinate....

To my mind, these provisions of the Criminal Procedure Code are deliberately and carefully framed. Under Section 476 the Court making the original complaint has to be satisfied first that it 'appears' that an offence under Sub-section (1), Clause (b) or Clause (c) of Section 195 has been committed, and, secondly, that it is expedient in the interest of justice that an inquiry should be made into such offence. 'When it has come to that conclusion it is the duty of the Court to record a finding to that effect. And it. finally has to make a Complaint 'thereof.' Now I think that the answer to this question primarily dependson what the meaning is of that word 'thereof.' Does it mean that the complaint may be a complaint at large of some undefined offence within the range of those numerous offences which are described in Section 195, Sub-section (1) Clause (b) or Clause (c), or must the complaint be a complaint of some specific offence within that clause, an inquiry into which, the Court has come to the conclusion, is in the interest of justice? In my view, the word 'thereof' relates back to the words 'into any offence' and therefore what the complaint has to consist of is 'any offence referred to in Section 195, Sub-section (1) Clause (b) or Clause (c)' which both appears to have been committed and is of such a character as to be expedient in the interest of justice to be inquired into. I think that the Court has to apply its mind to whether the particular offence which appears to have been committed is one which it is expedient in the interest of justice to be inquired into and it is only of that particular offence that a complaint can be made. It seems to me that it is not possible on this language for the Court to say to itself that some unspecified offence seems to have been committed and, without applying its mind to any particular offence, to say generally that it is expedient in the interest of justice that the offence, whatever it may be, should be inquired into. If that is the right view, then it would follow that under Section 195, Criminal P.C. no Court is in a position to take cognizance of an offence-that is of a particular offence-which has not been specifically pronounced by the Court under Section 476 to be one which it is expedient in the interest of justice to have an inquiry into. And I think that the reason for this is plain. The statute sets out to protect people from improper and unnecessary prosecutions in respect of a certain class of offences. In order to do that it places the responsibility on the shoulders of the Court, not only of saying whether an offence seems to

have been committed, but also of pronouncing whether it is in the interest of justice that that particular offence, should be inquired into. There are many occasions every day in the Courts in which it would appear reasonable to suppose or to suspect that an offence of one of the kinds specified in the two relevant sub clauses of Section 195 may have been committed. Yet, on one ground or another of public inconvenience or public expense or delay, it is not expedient in the interest of justice that everyone of these should be inquired into. It is, therefore, left to the Court itself to say what particular offences shall be inquired into; and as I see it, this involves the Court applying its mind, not to the class of offences generally which is specified in Section 195, but to the particular offences which it suspects to have been committed. And having done that, then it would appear to follow that the complaint must be a complaint 'thereof', that is to say, of those particular offences which the Court has concluded to require to be followed up in the interest of justice.

4. Reverting now to the complaint in the present case, it is quite true that the recitals of it contain materials on which it is quite possible that a complaint in respect of an offence under Section 193, Penal Code, might have been framed. But, when we come to see what the learned Judge actually did in the operative part of the document, which is the part I have set out above, we find that he deliberately expresses the opinion that it is expedient, in the interest of justice that a complaint under Sections 218 and 194, Penal Code, should be made. He noticeably omits from what he concludes it to be in the interest of justice to inquire into any offence under Section 193, and, in my judgment, it is an almost necessary conclusion that the learned Judge intended to limit the complaint to offences under Sections 218 and 194. Again, he may very well have had in his mind in the exercise of his discretion and in the legitimate exercise of his discretion-that, whereas the offences under Sections 218 and 194, Penal Code, were extremely serious offences, the offence under Section 193 was more commonplace, and that it was not expedient in the interest of justice to occupy public time and public money in pursuing that particular matter further. In other words, it would appear to be a legitimate inference from what the learned Judge has said that, had the question of an offence under Section 193 stood alone, there would have been no complaint.

5. That being so, I have come to the conclusion that there has been no complaint in this case within the meaning of Section 476, Criminal P.C. of any offence under Section 193, Penal Code, and that, therefore, the condition of Section 195 (1) (b), Criminal P.C. has not been complied with. It has been pointed out to me that under Section 476 (2), Criminal P.C. the Magistrate to whom a complaint under that section is addressed has to 'proceed according to law as if upon complaint made under Section 200.' It is argued from that that a complaint made in consequence of Section 476 of the Code is in no different position from any other complaint, and that if on an ordinary complaint it is open to the Magistrate to look at the substance of what is complained about and to frame the appropriate charge, it is equally open to a Magistrate who receives a complaint under, Section 47C to do the same. I do not take that view. The complaint under Section 476 of the Code is a special complaint, which has to comply with a number of strict conditions before it becomes a complaint under that section at all for the purpose of Section 195 (1) (b) What I think Sub-section (2) of Section 476 of the Code means is that, where a Magistrate receives a complaint which qualifies under Section 476, Sub-section (1) he should then proceed from that point onwards as if it was a complaint under Section 200. But that does not alter the fact, if my previous reasoning is right, that the only thing that the- Magistrate, or any other subsequent Court, can inquire into, is the specific offence which the original complaining Court has said that in its opinion, it is expedient in the interest of justice to inquire into. This is technical, but, as I have said before, I think that the appellant is entitled to have these sections strictly construed. For these reasons my opinion is that this appeal must be allowed and the whole proceeding quashed. The fine, if paid, will be refunded. I have been asked to express some view on the merits of this case, as the appellant, since his trial, has been under suspension. It would not be right for me, I think, having, in effect, quashed the proceedings, to express any view on the merits. The point will remain that the appellant will have been acquitted both of the offences for which he was charged under Section 476 and of the offence of which he was not so charged, but of which he was convicted. In refraining from saying anything more, I must not be taken to imply a view unfavourable, or favourable, to the appellant.

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