

**Bachai Singh Vs. State**

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**Court :** Allahabad

**Decided On :** Nov-21-1958

**Reported in :** AIR1959All693; 1959CriLJ1261

**Judge :** M.C. Desai, J.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 190(1), 195, 195(1), 480 and 482; Indian Penal Code (IPC) - Sections 228

**Appeal No. :** Criminal Ref. Nos. 216 and 217 to 221 of 1957

**Appellant :** Bachai Singh

**Respondent :** State

**Advocate for Def. :** Asstt. Govt. Adv.

**Advocate for Pet/Ap. :** Z.H. Kazmi, Adv.

**Judgement :**

ORDER

**M.C. Desai, J.**

1. This is a reference by the Sessions Judge of Ghazipur recommending that the conviction of the applicant for the offence under Section 228 I. P. C., be quashed. On 25-3-1957 the applicant, who is the Secretary of the Revolutionary Socialist

Party, Ghazipur, accompanied by about 500 persons staged a demonstration in the Collectorate of Ghazipur by continuously shouting slogans with loud voice in front of the court room of Sri U. N. Pande, Judicial Officer, when he was trying a case. The Judicial Officer was much disturbed by the shouts and instructed an official of the court to ask the mob to observe silence. In spite of the official's remonstrance the applicant and his companions continued shouting loudly and causing interference with the trial of the case by the Judicial Officer.

Thereupon a report was made to the police; the police arrived there and arrested the applicant. The police investigated the case and submitted a charge-sheet against the applicant, and five other persons who are applicants in the connected references on 11-4-1957, The charge-sheet was submitted in the court of the Judicial Officer himself but on his report the case was transferred to the court of another Magistrate. On 15-4-1957 the Judicial Officer himself made a complaint against the applicants of this reference and the connected references. Then the applicants were tried (separately) and all have been convicted under Section 228 I. P. C.

By loudly shouting slogans in front of the court room of the Judicial Officer they intentionally caused interruption to him while sitting in a judicial proceeding. The natural and probable consequence of the shouts was to cause interruption to him and they continued shouting in spite of a warning by an official of the court. It is wholly irrelevant what the object of the applicants was in staging the demonstration; the object should not be confused with the intention to cause interruption. It is also immaterial that they wanted to lodge a protest to the District Magistrate, whose office is close to the court room of the Judicial Officer; it was not illegal to lodge a protest before the District Magistrate but they could not do so in a manner calculated to cause interference to the Judicial Officer. The act done by the applicants was intentional and when it had the effect of causing interruption to the Judicial Officer as they knew, it amounted to their causing intentional interruption to him.

2. No court can take cognizance of an offence punishable under Section 228 I. P. C., alleged to have been committed in relation to any proceeding in any court

except on a complaint in writing of the court; vide Section 195(1)(b) Cr. P. C. Here there was such a complaint by the Judicial Officer and the court took cognizance of the offence on the complaint. It does not matter in the least that prior to the complaint there was a police report for prosecution of the applicants under Section 228 I. P. C. No cognizance could be taken on the police report. The applicants were tried after the complaint had been made against them by the Judicial Officer. All that was necessary for their conviction was that there should have been a complaint and when there was a complaint the convictions could not be set aside simply because the complaint was unnecessarily preceded by a police report.

3. Section 480 Cr. P. C., lays down that when an offence punishable under Section 228 I. P. C. is committed in the view or presence of any criminal court the court may cause the offender to remain in custody and at any time before the rising of the court on the same day may, if it thinks fit, take cognizance at the offence and sentence him to a fine not exceeding Rs. 200/-. If the court considers that the offender should be imprisoned or that a fine exceeding Rs. 200/- should be imposed upon him it can after recording the facts constituting the offence and the statement of the accused forward the case to a Magistrate having jurisdiction to try the same; vide Section 482 Cr. P. C. It was contended that the applicants could be proceeded against only in the manner laid down in Section 480 or 482 Cr. P. C. and not on a complaint by the Judicial Officer.

There is no force in this contention. The provisions in Sections 480 and 482 are not exhaustive and do not derogate from the power of a court to take cognizance of the offence under Section 190(1)(a) on a complaint under Section 195 Cr. P. C. The provisions of Sections 190(1)(a) and 195 are not at all affected by those of Sections 480 and 482. Cognizance of an offence punishable under Section 228 I. P. C. can be taken on a complaint of the court concerned or the offender may be dealt with by the court concerned as laid down in Section 480 or 482 Cr. P. C.; here the offenders have been dealt with as laid down in Sections 190(1)(a) and 195. The word used in Section 480 is 'may'; it means that Section 480 is only an enabling section and confers power upon the court concerned to punish the offender summarily instead of having him tried regularly on a complaint.

There is nothing to suggest that the power of the court aggrieved by the offence punishable under Section 228 I. P. C. is simply to punish the offender under Section 480 or to forward him to a Magistrate as laid down in Section 482. The power conferred under Section 482 is alternative to the power conferred under Section 480 of sentencing the offender summarily to a fine not exceeding Rs. 200/-. The power of Section 482 is to be exercised only when part of the power conferred by Section 480, namely, that of detaining the offender in custody has been exercised but, as I said earlier, the power of detaining the offender in custody is not the only power of the court aggrieved by the offence and its power of making a complaint of the offence as laid down in Section 195 remains intact.

4. No authority taking a contrary view was cited before me. No authority taking the same view as I have done also was cited before me, but there do exist such authorities. In *Emperor v. Ram Lal Anand*, 41 Cri L. J., 766: (AIR 1940 Lah 233), Blacker, J., held that 'In a case of contempt, even coram judice, the Judge need not proceed under Section 480, and would therefore be presumed to retain the power to proceed alternatively under Section 476 if he thought fit' (p. 767 of Cri LJ): (p. 234 of AIR)). He relied upon the words 'may, if he thinks fit' as 'showing unmistakably that it is at the option of the Magistrate to choose which procedure he follows'. As regards Section 482, he observed that 'the procedure therein described is only to be adopted in a case where the Court has already taken cognizance under Section 480, Cr. P. C.'

On page 768 (of Cri LJ): (p. 235 of AIR) he made it clear that the existence of Section 482 does not take away the option vesting in the court to proceed either under Section 480 or under Section 476. In *Kamalesh v. Emperor*, 48 Cri LJ 327: (AIR 1948 Pat 74), Agarwala, Ag, C.J. said at page 328 (of Cri LJ): (at p. 74 of AIR):

'Section 228 of the I. P. C., however, is one of the offences mentioned in Clause (b) of Sub-section (1) of Section 195 of the Code, and is, therefore, an offence to which Section 476 applies. Section 476 empowers the Court, in which or in relation to the proceedings of which an offence mentioned in Clauses (b) and (c) of Sub-section (1) of Section 195 has been committed, to make a preliminary inquiry

if it considers this to be desirable, and thereafter to make a complaint in writing'.

My brother Chowdhry, presiding over the Judicial Commissioner's court of Himachal Pradesh said in Chet Ram v. State that in the case of a contempt committed coram judice and punishable under Section 228, I. P. C., the court has the choice of taking cognizance of the offence and sentencing the offender under Section 480 or sending him to a Magistrate under Section 482 for heavier punishment, or of proceeding under Section 476, and making a complaint to a Magistrate having jurisdiction.

My researches have failed to bring out any authority taking a contrary view but in Probhatchandra v. Emperor. : AIR1930 Cal366 , Rankin C. J., said, Patterson J. concurring, at page 1011 (of ILR Cal): (at p 368 of AIR):

'To my mind, the intention of the legislature) is that a charge under Section 228 as distinct from a charge under Section 175, should be dealt with in a summary manner under Section 480 or else in a rather more elaborate manner provided by Section 482.'

The learned. Chief Justice did not consider the applicability of Section 476 and did not rule out the possibility, in the eye of law, of the courts making a complaint of the offence as required under Section 195 (i) (b), Cr. P. C.

5. It is also to be noted that Sections 480 and 482 deal with an offence committed in the view or presence of a court; here the offences committed by the applicants may not be said to have been committed in the view or presence of the Judicial Officer because he remained inside his court room while the applicants were outside and not within the view or presence of the Judicial Officer. If the offenders could not be punished at all under Section 480, Cr. P. C. the question whether the power conferred under that section is exhaustive or not will simply not arise.

6. The sentence is not severe. The reference is rejected.

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