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**Karim Bux Vs. Rex**

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**SooperKanoon Citation** : sooperkanoon.com/465942

**Court** : Allahabad

**Decided On :** Feb-27-1950

**Reported in** : AIR1950All494

**Judge** : Agarwala, J.

**Acts** : Prevention of Corruption Act, 1947 - Sections 6; Code of Criminal Procedure (CrPC) , 1898 - Sections 197; Evidence Act, 1872 - Sections 3; Code of Civil Procedure (CPC)

**Appeal No.** : Criminal Revn. No. 906 of 1949

**Appellant** : Karim Bux

**Respondent** : Rex

**Advocate for Def.** : A.G.A.

**Advocate for Pet/Ap.** : M.B. Usmani, Adv.

**Disposition** : Application allowed

**Judgement** :
ORDER

**Agarwala, J.**

1. This is an application in revision by Karim Bux, a police constable of Fatehpur, who has been convicted Under Section 164, Penal Code, and sentenced to one year's rigorous imprisonment and Rs. 100/- as fine by the Sessions Judge of Fatehpur hearing an appeal against the applicant's conviction by a Magistrate not only Under Section 161 but also Under Section 384, Penal Code. The conviction Under Section 384, Penal Code, was set aside.

2. The only point for consideration before me is whether there was a sanction to prosecute the applicant or not. The sanction to prosecute is required by Section 6 of Act II [2] of 1947 which runs as follows:

Section 6. -- 'No Court shall take cognizance of an offence punishable Under Section 161 or Section 165, Penal Code, or under Sub-section (2) of Section 5 of this Act, alleged to have been committed by a public servant, except with the previous sanction,

(a) .....

(b) in the case of a person who is employed in connection with the affairs of a Province and is not removable from his office save by or with the sanction of the Provincial Government or some higher authority, Provincial Government;

(c) in the case of any other person, of the authority competent to remove him from his office.'

The applicant being a police constable, it is common ground that the authority whose sanction was necessary is the Superintendent of Police of Fatehpur. The essential facts which are not disputed before me are as follows:

3. There was a general complaint that constables on the road sides were extorting money and taking bribes from owners and drivers of trucks exporting grain from one place to another. This fact was brought to the notice of the District Magistrate of Allahabad by an Inspector of the Anti-Corruption Department, U. P., Allahabad. The District Magistrate accordingly deputed one Magistrate of the first class to accompany the Inspector and to arrest such offenders. On the night between and and 3rd March 1947 at about 9 P. M. Th. Raghupal Singh Inspector accompanied

by Shri Shiam Saran Das, Magistrate, first class, arrived at Rasulabad in the district of Fatehpur. Bhola Nath, proprietor of a firm of Allahabad, and Rameshwar, Manager of a truck, along with its driver Jaigopal, met them at that place, as previously arranged. The Magistrate signed Government promissory notes of the value of Rs. 30/- and handed them over to the proprietor of the truck which was loaded with mustard seeds. The Magistrate and the Inspector took their seats in the truck and proceeded to Khaga where they arrived at about midnight. The truck was stopped by the applicant Karim Bus constable who was on duty at that time. He demanded his haq and after some talk Rs. 12/- were paid to the applicant as illegal gratification for allowing the truck to proceed further. This amount of Rs. 12/- was paid in one ten rupee note and two notes of Re. 1 each already signed by the Magistrate. As the truck was about to proceed after the payment of the bribe, it was stopped and the Magistrate and the Inspector alighted from the truck and forthwith arrested the applicant. Then a report of this incident was made by the Inspector to the District Magistrate of Allahabad, who forwarded the same to the Superintendent of Police of Allahabad, who in his turn forwarded it to the Superintendent of Police, Fatehpur, for necessary action. Then the Superintendent of Police, Fatehpur, made a report to the District Magistrate, Fatehpur, for orders to investigate the case Under Section 155 (2), Criminal P. C. The District Magistrate of Fatehpur ordered the investigation to be made. After the investigation, the applicant was prosecuted and convicted as aforesaid.

4. What happened between the completion of the investigation and the submission of the case to the Court is not fully known from the documents placed on the record. The only document on the record is a charge-sheet dated 19th June 1947 prepared by Zahid Husain, investigating officer. He appears to have submitted it to the Superintendent of Police who ordered that 'it may be sent to the proper Court through the Court Inspector.' This order is the usual order which the Superintendent of Police has to record on every charge-sheet submitted to him for further action. Then one Shri K. K. Bhatnagar, who seems to be the Court Inspector concerned, submitted it to the Court on 7th July 1917. Beyond this order of the Superintendent of Police, Fatehpur, there is no other sanction of a date prior to 7th July 1947 when the chargesheet was submitted to the Court and the Court took cognizance of the case. While the case was pending in the Court, the Court

Inspector seems to have realised the importance of obtaining the sanction of the Superintendent of Police. He, therefore, wrote a letter on 3rd December 1947 to the Superintendent of Police, Fatehpur, requiring him to accord his sanction to the prosecution of the applicant, In this letter he, no doubt, mentioned that

'there is previous sanction of the Superintendent of Police, dated 30th June 1947 to 'prosecute' on the brief of the case, but as it has to remain in the file, separate sanction is applied for.'

The Superintendent of Police sanctioned the prosecution by writing the words 'prosecution sanctioned.' This sanction is dated 3rd December 1947. It is obvious that this sanction cannot be of any help to the prosecution as Section 6 of Act II [2] of 1947 requires a 'previous' sanction.

5. The objection that there was no sanction to prosecute was raised before both the Courts below, but it was not upheld. In this Court it has been urged on behalf of the State that the offence having been committed on 2nd or 3rd March 1947, and Act II [2] of 1947 requiring a previous sanction for the prosecution having come into force on llth March 1947, that is after the offence had been committed, no sanction was necessary, as the procedure applicable to the investigation of the offence would be the procedure that prevailed on the date of its commission. This argument is without force. Rules of procedure are, in the absence of anything to the contrary, retrospective in their operation. The rule requiring sanction before a Court can take cognizance of an offence is a rule of procedure which applies retrospectively to all complaints, whatever be the date of the commission of the offence to which they relate. The procedure to be followed is the procedure that prevails on the date of the complaint. If at the date of the complaint the law makes it incumbent upon a Court to take cognizance only of such offences for which there is a previous sanction, then unless the sanction to prosecute is produced, no Court will take cognizance of the offence, even though the offence may have been committed before the Act requiring sanction came into force.

6. It has next been contended that the section does not lay down any special form of sanction, that a sanction may be accorded in any form, that it is abundantly clear in the present case that the Superintendent of Police knew all about the

case, that it was at his instance that the investigation was made and later on the charge-sheet was sent to the Court, and that, therefore, he should be deemed to have sanctioned the prosecution. It is true that the Act does not prescribe any particular form of sanction; but sanction to prosecute a particular person for an offence implies, first, a full knowledge of the facts upon which it is sought to prosecute him and secondly, a deliberate decision of the sanctioning authority that he may be prosecuted. These two things are necessary to be proved before it can be said that a particular order amounts to a sanction for prosecution. Furthermore, it is necessary that the sanction should be given after all the facts have been collected against an accused so that the sanctioning authority has before it the materials upon which the prosecution is to be launched.

7. In the present case, no doubt, the Superintendent of Police applied for leave to investigate the case. That request cannot, by any stretch of imagination, be said to be a sanction to prosecute. The case was yet in the stage of investigation. There could be no order for prosecution at all at that time. It is further true that the Superintendent of Police later on, in the usual course of business, ordered that the charge-sheet be submitted to the Court. This order, however, was a mere routine order and does not, in my opinion, amount to a 'previous sanction,' as contemplated by Section 6 of Act II [2] of 1947. Such sanction must be something more deliberate and formal than a mere routine order of passing on a charge-sheet to the Court.

8. It has been urged that the letter dated 3rd December 1947 of the Prosecuting Inspector Shows that the Superintendent of Police had in fact accorded a separate sanction for the prosecution of the applicant on 30th June 1947. This sanction, however, has not been produced in the case. If it really existed, it was a grave dereliction of duty on the part of the Prosecuting Inspector not to have brought it on the record on the frivolous ground that it should remain on his brief. I have, however, grave doubts whether this sanction really existed at all. However that may be, the Court takes cognizance only of those facts which appear on the record. As has been observed :

'Of things that do not appear and things that do not exist, the reckoning in a Court of law is the same.' (quoted by Sir Lawrence Jenkins in Radha Kishun v. Khurshed Hossein, A. I. R. (7) 1920 P. C. 81 at p. 83 : (47 Cal. 662).

No such sanction having been proved, I cannot take any notice of it.

9. The result, therefore, is that, in my opinion, there was no previous sanction to prosecute the applicant. The entire proceedings, therefore, were without jurisdiction.

10. Accordingly I allow this application and set aside the conviction and the sentence imposed upon the applicant. He is on bail, he need not surrender to his bail. If he has already paid up the fine, it shall be refunded to him.

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