

Dujai Vs. the State and anr.

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Court : Allahabad

Decided On : Mar-01-1961

Reported in : 1962CriLJ627

Judge : A.N. Mulla, J.

Appellant : Dujai

Respondent : The State and anr.

Judgement :

ORDER

A.N. Mulla, J.

1. This is a revision filed against an order of Sri H.A. Safwi Temporary Additional Sessions Judge, Kheri dated the 15th of October, 1960 by which he directed that the District Magistrate of Lakhimpur should enquire into the complaint filed by one Banwari against the applicant under Section 211 I.P. Code or he should transfer it to some other competent Magistrate.

2. Before making any comments I propose to give the relevant facts. Dujai, the applicant, filed a report on the 11th of January, 1959 against one Daya Shanker and several others under Section 302/149 I.P.C. Code and some other penal provisions. When this report was investigated the police found that Daya Shanker was falsely implicated as he was in the police lock-up at the relevant time and

could not have participated in the crime. The police however, prosecuted the others named by Dujai. The case came for trial before Sri K. N. Prasad, Sessions Judge, Lakhimpur Kheri, and he acquitted all the accused persons by his order dated the 30th of November, 1959. The Sessions Judge 'Suo Motu' did not take any action against Dujai nor did he give any direction that the police should prosecute him under Section 182 I.P. Code. Then on the 17th of December, 1959 Banwari complainant who is a brother of Daya Shanker filed a complaint under Section 211 I.P. Code before the Judicial Officer Lakhimpur. A preliminary objection, was taken that the court could not take cognizance of this complaint as the mandatory provisions of Section 195 Cr.P. Code barred the entertainment of such complaints. This objection was rightly upheld by the Magistrate and he dismissed the complaint.

3. Banwari then went up in revision against the dismissal of his complaint and this revision came up before Sri H.A. Safwi, Temporary Additional Sessions Judge, Kheri, who set aside the order of the Magistrate and directed that he should proceed with the complaint filed by Banwari.

4. Sri H.A. Safwi observed, and I intend to reproduce the entire paragraph, for it contains his line of reasoning.

I have considered the whole matter with care that it deserved and I am clear in my mind that the view which the learned Magistrate was disposed to take is erroneous and this wrong notion of law led him astray in discharging accused and dismissing the complaint. Section 195 Sub-clause (b) says that no court shall take cognizance of any offence punishable inter alia under Section 211 I.P.C. when such offence is alleged to have been committed in, or in relation to, any proceeding in any court except on the complaint in writing of such court or of some other court to which such Court is subordinate, The language of the section itself shows that it bars complaints by private persons relating to an offence under Section 211 I.P.C, if it is committed in respect of any proceedings in any court and not if it is committed otherwise. Section 211 I.P.C. contemplates two kinds of offences, one in respect of proceedings committed in any court and other outside the court. It says whoever institutes or causes to be instituted any criminal proceeding; and further says that

whoever falsely charges any person with having committed an offence shall be punished. Here in the present case Dujai had accused Daya Shanker for having committed offence before police and he had made that charge of course falsely. There is a Single Judge case, Bakshi v. Crown AIR 1924 All 187 which says that where a false charge is made to the police and not to a court no sanction for the prosecution of the informer is necessary. In that case the Informer in addition to making report to the police had filed a complaint also in court and even in those circumstances it was held that informer having made subsequently a complaint in court was not protected in his trial under Section 182 I.P.C. without sanction. And there is another Bench case of Kashi Ram v. Emperor AIR 1024 All 779 which is also an authority for the proposition that in such cases no sanction of court is necessary for dismissing complaint for want of necessary sanction..

At another place the learned Additional Sessions Judge observed:

The learned Counsel appearing for the opposite party perhaps finding no way out submitted that the complaint was at any rate barred by Sub-clause (1) of Section 195 Cr.P.C. which says that no court shall take cognizance of any offence punishable under Sections 172 to 188 I.P.C. except on the complaint in writing of the public servant concerned or of some other public servant to whom he is subordinate. The argument is that Dujai opposite party had accused the brother of complainant falsely and thus he had committed an offence under Section 182 I.P.C only and as such the complaint by the police for his prosecution was necessary. This is quite a new point which was not pressed in the lower court. Any how I have considered this argument and find no strength whatsoever in it. A prosecution for a false charge may lie under Section 188 or Section 211 but if the false charge is serious one the graver Section 211 should be applied. And an offence under Section 211 I.P.C. includes an offence under Section 182.

5. I have copiously cited from the decision of the learned Additional Sessions Judge because in my opinion there is a basic fallacy in his approach. He has not only misunderstood the decision which he has cited, but he has also not understood the words of Section 211 I.P. Code. The words of Section 211 I.P. Code are:

Whoever, with intent to cause injury to any person institutes or causes to be instituted any criminal proceeding against that person..

The words plainly mean that either the accused should himself institute a complaint or cause that complaint to be instituted. In other words if no complaint has been instituted in spite of the attempt made by the accused, it will not fulfil the requirements of Section 211 I.P. Code. Section 211 contemplates that a complaint should be instituted before a court either by the accused himself or at his instigation. Where no complaint is filed before a court against a person, even if the allegation made in a report earlier is completely false, Section 211 I.P. Code will not be applicable. To me the words of the section are so clear that really it does not need any authorities to decide this question. Where false allegations are made before a public servant, then it is Clause (a) of Section 195 (1) Cr.P. Code which is operative. If as a result of this false information a case is instituted in court or the accused himself takes the case to court on the basis of that false accusation, it comes within the orbit of Clause (b) to Section, 195(1) Cr.P. Code. In the first case it is the public servant concerned or some other officer to whom he is subordinate who can initiate proceedings and in the other case it is the court concerned or the court to which that court is subordinate who can take action. The Legislature made this provision so that private individuate need not maliciously abuse these provisions and either a court or a public servant should be here to see that the accusation is a responsible accusation.

It is, therefore, really not necessary for me to discuss the case law on the subject. The Additional Sessions Judge relied on AIR 1924 All 187 and he was completely misled by one sentence in this decision. Daniels J. who decided this case observed at one place, 'Where a false charge is made to the Police and not to a Court a perusal of Section 195, Cri. P. Code makes it clear that no sanction is required.' The trial court ignored the fact that earlier the learned Judge had clearly stated that the applicant in that case had made a report to the police which was alleged to be false and sanction for his prosecution under Section 182 I.P. Code was duly granted. The observation of the learned Judge only meant that where a proper sanction is given by a competent public servant then a sanction by the court is not necessary, I am, therefore, of the opinion that the learned Additional

Sessions Judge erred when he came to the conclusion that there can be an offence which falls both under Section 182 and Section 211 I.P. Code. An accused can commit, both offences under Section 182 and Section 211 in the pursuit of the same purpose one after the other but their circles are clearly separated and they do not overlap each other. In my opinion on a correct interpretation of the words of Section 211 I.P. Code as well as Section 195 Cr. P. Code, there is no such case where both these penal provisions are applicable on the same conduct, I have already given above the orbits of Section 182 and Section 211, I.P. Code, and they do not overlap each other.

6. The only decision in which some observations supporting the view of the learned Additional Sessions Judge are to be found are contained in a Bench decision in AIR 1924 All 779. With due respect to the learned Judges, I find myself unable to agree with the view expressed by them. If this Bench decision had been the-only decision on the point, I would have referred this revision to a bigger Bench, but there is another Bench decision of our High Court which has taken a contrary view with which I agree and so it is not necessary to make a reference to a bigger Bench. These decisions are also supported by many decisions given by the learned Judges of the other High Courts:

1. Prag Datt Tiwari v. Emperor : AIR1928 All765 .

2. Emperor v. Hardwar Pal ILR 34 All 522 It was this decision which was dissented from by the Bench in AIR 1924 All 779.

Then there is a Full Bench decision of the Lahore High Court in Emperor v. Hayat Fateh Din AIR 1948 Lah 184, which supports my view. Again, there is a Bench decision of the Bombay High Court in Bajaji Appaji Kote v. Emperor AIR 1946 Bom 7 and there is a Single Judge decision of the Patna High Court also in Sudarsan Barhambhat v. Emperor AIR 1947 Pat 64.

7. In all these cases a compliance was made with the provisions of Section 195 Cr. P. Code before the complaint was entertained. I am, therefore, satisfied that the learned Additional Sessions Judge when he directed the District Magistrate to enquire into this complaint ignored the provisions of Section 195 Cr. P. Code,

which are mandatory and his order is illegal. It has to be well aside. Only after complying with the provisions of Clause (b) to Section 195(1) Cr.P. Code proceedings can be started against an accused under Section 211 I.P. Code. Similarly only after complying with the provisions of Clause (a) to Section 195(1) Cr.P. Code, proceedings can be started against an accused under Section 182 I, P. Code. As there was no compliance with the provisions of any of these two clauses, the complaint was non-entertainable and the Magistrate was right in coming to the conclusion that he could not take cognizance of it.

8. I therefore, set aside the order passed by Sri Safwi and uphold the order passed by the Magistrate. This application of revision is allowed.

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