

Abdul Rahman Vs. Emperor

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Court : Allahabad

Decided On : Sep-03-1931

Reported in : AIR1932All190; 140Ind.Cas.184

Appellant : Abdul Rahman

Respondent : Emperor

Judgement :

Niamatullah, J.

1. This is a reference by the learned Sessions Judge of Jalaun recommending that the conviction of one Abdul Rahman of an offence under Section 182, I.P.C., be set aside. The learned Judge is of opinion that there was no complaint such as is required by Section 195(a), Criminal P.C. for the prosecution of the accused.

2. The accused lodged an information at the police station to the effect that the motor lorry belonging to a certain person had been overloaded. On investigation the police found that the information was false. Accordingly the investigating officer moved the Superintendent of Police that the accused be prosecuted for an offence under Section 182, I.P.C. The Superintendent of Police endorsed the following note addressed to the District Magistrate; 'District Magistrate. The accused is the reader of the Tahsildar of Konch. Have you any objection to his prosecution?'

3. The District Magistrate, instead of signifying his wishes in the matter to the Superintendent of Police recorded an order to the following effect:

I sanction the prosecution of Abdul Rahman Judicial Moharrir, Konch. Case to Section D.M. for disposal. The Moharrir will be suspended till the disposal of the case.

4. The learned Sessions Judge making the Inference is of opinion that there was no complaint either by the Superintendent of Police or by the District Magistrate for the prosecution of the applicant and that for want of a proper complaint the conviction is unsustainable.

5. We think the learned Sessions Judge has taken a right view of the case. The Superintendent of Police did not in fact make a complaint to the District Magistrate for the prosecution of the applicant. He merely tried to ascertain the wishes of the District Magistrate as the person to be proceeded against was a revenue official, being the reader of the Tahsildar. If the Deputy Commissioner had intimated to that officer that he had no objection to the revenue official being prosecuted, the Superintendent of Police would probably have filed a regular complaint under Section 195-A, Criminal P.C. The District Magistrate however thought that he had been asked to grant sanction under Section 195, Criminal P.C. Apparently he overlooked the change introduced by the Act of 1923 which has done away with sanctions and prosecutions for offences mentioned in Section 195 can be started by complaints only. We do not think that the District Magistrate intended to act as the head of the police, nor did he intend to make his order a complaint as defined in the Criminal Procedure Code. We do not intend to lay down that if what substantially amounts to a complaint is defective in form it cannot be the basis of prosecution. If there is an allegation that an offence has been committed by a person known or unknown, made orally or in writing and addressed to a Magistrate with a view to his taking action under the Code of Criminal Procedure, it will amount to a complaint. In the case before us, it does not appear that the District Magistrate intended it to be the complaint or that he himself intended to allege that the applicant had committed an offence. He merely granted a 'sanction' believing that the Superintendent, of Police would thereby be enabled to prosecute the

applicant. The case of Baldeo Singh v. Emperor, reported in : AIR1926 All566 seems to be in point.

For the reasons mentioned above, we accept the reference, set aside the conviction of the applicant and direct that that fine if paid be refunded.

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