

Bhole Singh Vs. Emperor

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Court : Allahabad

Decided On : Aug-04-1915

Reported in : AIR1915All457; 31Ind.Cas.823

Judge : Tudball, J.

Appellant : Bhole Singh

Respondent : Emperor

Judgement :

Tudball, J.

1. The present application has arisen from the following facts: One Paras Ram, a village headman, on the 17th of February last filed before the District Magistrate a petition in which he stated that he wished to resign his post as village headman as he was too old and unable to do his work. The District Magistrate apparently doubted the correctness of the reason given and questioned the man. In reply to questions put to him, the man stated that the Police of a certain Police station were investigating a dacoity case and in the course of their investigation they were forcing a large number of people to pay money to them, that he was afraid of getting into trouble through this matter and he, therefore, wished to resign. The District Magistrate in his explanation states that he treated this as a complaint and he, thereupon put Paras Ram on oath and examined him again. What he stated was then reduced to writing. On completion of his statement, the Magistrate gave

a rubkarto a chaprasi of his Court, which contained the names of 12 persons, and in this he directed the aforesaid chaprasi to produce the persons named therein before him at once. Apparently the chaprasi obeyed orders and produced all these persons. These persons are those whose names were mentioned by Paras Ram in the course of his statement as being connected in some way or other with the alleged extortion. The District Magistrate then recorded the evidence of all these persons on oath. Having proceeded so far, he then sent the papers to the Superintendent of Police with directions to him to take action under paragraph 383 of the Police Regulations. This paragraph lays down that before a Superintendent punishes any Police officer departmentally or prosecutes him criminally, he must make an enquiry, reduce the substance of the accusation to the form of a charge and record the officer's explanation using a certain form. After completing these proceedings, if he considers that further steps should be taken, he should decide whether the officer ought to be criminally prosecuted or departmentally punished. If he decides to institute a prosecution, he must send the papers to the District Magistrate, and obtain his concurrence before taking further action, whatever the rank of the officer accused may be. The Superintendent of Police made an enquiry and submitted a report to the District Magistrate to the effect that the allegations of extortion were entirely false and suggested that the person who had made them and reported them, should be criminally prosecuted. Thereupon the District Magistrate passed an order purporting to be one under Section 476, directing the prosecution of the present applicants and certain others including Paras Ram, the latter to be prosecuted for an offence under Section 211, the others to be prosecuted for offences under Section 193 of the Indian Penal Code. It is against this action of the District Magistrate that the present revision has been presented. It is contended, and I must say with considerable force, that Paras Ram made no complaint; that he did not intend to make any complaint; that he called no witnesses and the proceeding before the District Magistrate was not a judicial proceeding in the course of which he was legally empowered to administer an oath. The explanation of the District Magistrate is that he treated what Paras Ram said, as a complaint and that the enquiry that he made, was under Section 202 of the Code of Criminal Procedure. The only unfortunate point in this explanation is that a complaint means an allegation made orally or in writing to a Magistrate with

a view to his taking action under the Code that some person has committed an offence. It is not open to the District Magistrate to treat this petition and statement of Paras Ram as a complaint whether Paras Ram liked or not. It may be of course that Paras Ram wished to make a complaint in such a form that if subsequently it was found to be false, he should be able to save himself from a criminal prosecution. If there was evidence in the case to indicate that Paras Ram intended the Magistrate to take action under the Code against the Police officers, I should not hesitate for an instant in holding that the Magistrate had power to treat the petition as a complaint and that he was justified in sending for the witnesses and examining them on oath. But an examination of the record shows that Paras Ram's petition was simply a petition tendering his resignation; that even in his statement taken on oath, which statement was made in reply to questions put by the District Magistrate, he made allegations of fact and at the end, stated that these were his reasons for resigning his post. He nowhere asked for the witnesses, to be summoned He nowhere asked for an enquiry to be made and I may add that if the Magistrate was knowingly acting under Section 202, it is curious that on completion of his enquiry, he should send the complaint to the Superintendent of Police with a view to the latter officer taking action under paragraph 383 of the Police Regulations. It is also curious that up to the present time the District Magistrate has passed no order dismissing the complaint. Looking at the circumstances of the case, I find it impossible to hold that Paras Ram made a complaint to the District Magistrate; that is to say, that the allegation was made with a view to the Magistrate taking action under the Criminal Procedure Code against the Police officers who were said to have committed the extortion. Paras Ram may perhaps have given false information to the District Magistrate in reply to his questions. The point which I have to decide is whether or not there was a complaint, within the true meaning of the word, before the District Magistrate. In my opinion there was no such complaint. The action of the Magistrate was not action taken under Section 202 of the Code. It was apparently executive action in the form of a departmental enquiry which was continued by the further enquiry made under paragraph 383 of the Police Regulations. There was no judicial proceedings before the District Magistrate and, therefore, he had no power to take action under Section 476, and the present applicant is one of those whose

prosecution for perjury has been directed, and it cannot be said that he committed perjury in the course of a departmental enquiry. No oath ought to have been administered to him at all. I would point out that throughout the enquiry made by the District Magistrate, he nowhere mentioned that he was taking action under any specific section. If, as the District Magistrate says, the unfortunate Police officers will not have an opportunity of clearing their character, they will have only the District Magistrate to blame for their unfortunate position, though perhaps it is still open to the District Magistrate to prosecute Paras Ram for giving false information. I allow the application, set aside the order of the District Magistrate and quash the proceedings.

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