

V.P. Tyagi Vs. Ram Singh

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Court : Allahabad

Decided On : Sep-03-1974

Reported in : 1975CriLJ897

Judge : Hari Swarup, J.

Appellant : V.P. Tyagi

Respondent : Ram Singh

Judgement :

ORDER

Hari Swarup, J.

1. This is an application under Section 561-A, Criminal Procedure Code for quashing the proceedings pending before the District Magistrate, Pithoragarh. A complaint had been filed by the respondent against the petitioner on '23-8-1969 alleging that the petitioner had committed offences under Sections 323 and 448, Indian Penal Code on August 20, 1969. The case is still pending and the trial has not concluded.

2. Learned Counsel has urged that the proceedings be quashed because cognizance taken by the Magistrate was not in accordance with law and the trial is proceeding in a court which has no jurisdiction. The other contention is that the protracted nature of the trial is itself sufficient for quashing the proceedings. In

support of the first contention he has relied on Section 35 of the Police Act and Regulation 488 of the Police Regulations. Section 35 of the Police Act reads as under:

Jurisdiction - Any charge against a police Officer above the rank of a constable under this Act shall be enquired into and determined only by an officer exercising the powers of a Magistrate.

Section 35, as it expressly states applies only to charges under the Police Act. The charge for which the petitioner is being tried is for an offence under the Indian Penal Code.

3. Regulation 477 runs as under:

The rules in this chapter have been made under Section 7 of the Police Act (V of 1861) and apply only to officers appointed under Section 2, Police Act....

Section 7 of the Police Act says:

Appointment, dismissal, etc., of interior officers - Subject to provisions of Article 311 of the Constitution and to such rules as the State Government from time to time make under this Act, the Inspector-General, Dy. Inspector-General, Asst. Inspectors-General and District Superintendents of Police may at any time dismiss, suspend or reduce any police officer of the subordinate ranks whom they shall think, remiss or negligent in the discharge of his duty....

Regulation 488 appears in the same chapter as regulation 477, and therefore regulation 488 applies only to matters in respect of, which Section 7 of the Police Act makes provision. Learned Counsel relied on the decision in 'State of U.P. v. Babu Ram : 1961 CriLJ773 for the proposition that the police regulations are mandatory. The decision in that case was not in respect of an offence under the Penal Code or trial under the Code of Criminal Procedure. It was a case of departmental proceedings. The case of Babu Ram (supra) cannot therefore apply to the facts of the present case; it does not lay down that Regulation 483 has a universal application.

Regulation 488 runs as under:

A criminal charge against a police officer, superior in rank to a head constable should in a separation district be tried by the Additional District Magistrate, Judicial. Elsewhere, such a case will be tried by a Judicial Officer having at least four years' experience of judicial work, In case a Judicial Officer with the requisite experience is not available, the District Magistrate will keep the case on his own file or transfer it to the Additional District Magistrate, Executive.

It appears that Pithoragarh is not a separation district, and as such the provision will not be attracted. Moreover, Police Regulation cannot amend or modify the provisions of the Code of Criminal Procedure which prescribe the jurisdiction of Magistrates to take cognizance and try the offences under the Indian Penal Code. The trial before the Magistrate cannot, (therefore, be deemed to suffer from any error or jurisdiction.

4. There is, however, force in the contention that the trial has been protracted for an unduly long time. - The petitioner is a police officer and it is not in the interest either of the State or the People that he should be dragged to Pithoragarh. again and again for the trial of such a petty offence. The Magistrate is accordingly directed to fix a date on which the accused may appear and the case may be taken up, Evidence of the prosecution should be recorded without a break and the case should be decided as quickly as possible, With this direction, the application is dismissed.

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