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Thakur Das Vs. Emperor

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Court : Allahabad

Decided On : Apr-19-1917

Reported in : AIR1918All345; 39Ind.Cas.1002

Judge : Tudball, J.

Appellant : Thakur Das

Respondent : Emperor

Judgement :

Tudball, J.

1. This application in revision has arisen out of the following circumstances. On the 1st of November 1916 one Daryao Singh presented a petition to Mr. Dampier, who is the District Magistrate and Collector of the Muttra District, making certain general allegations against the Tahsildar of Mat. Mr. Dampier questioned the petitioner and in the course of the latter's statement he alleged that he had heard that bribes had been taken by the Tahsildar from four persons. The District Magistrate sent the petition to a Junior Magistrate, Mr. Mehta, for local enquiry. This Magistrate went to Mat and questioned Daryao Singh, who stated that he really had no complaint to make but that he had been instigated by certain other persons to make a false complaint. It may be noted that subsequently he withdrew from this position and submitted several petitions to various officers of Various degrees insisting upon full and proper enquiry but with these I am not concerned.

Mr. Dampier apparently came to the conclusion that there was reason to suspect that Daryao Singh was merely a cat's paw of certain other persons and he sent the papers after dismissing the complaint under Section 203 to another Magistrate, Babu Sardar Singh, with orders to make an enquiry as to the origin of this complaint. The Magistrate reported that the present applicant and certain other persons had conspired to defame the Tahsildar. Thereupon the District Magistrate by his order of the 2nd of January 1917 directed the prosecution of these persons Daryao Singh, Thakar Das, Chet Ram, Genda Narain and Harihar Bose for an offence under Section 120 (b) of the Indian Penal Code and sent the case for trial to the Court of Mr. Baynes, the Joint Magistrate.

2. The plea taken before me is that there is no proper sanction within the meaning of Section 196A, Clause 2. I see that the Magistrate's order runs as follows: 'From the report received from Thakur Sardar Singh it appears that there is good prima facie evidence to show that Daryao Singh, Thakur Das, Harihar Bose, Chet Ram and Genda Narain agreed to do or caused to be done an illegal act, to wit, the filing of a false complaint in my Court charging the Tahsildar of Mat with acts that amounted to offences under Sections 161, 164, 193/109, 211/109 and 384 of the Indian Penal Code. I, therefore, direct that they be prosecuted under Sections 120A and 120B of the Criminal Procedure Code (this is apparently a mistake for Indian Penal Code). The case will be made over for trial to Mr. Baynes, Joint Magistrate.' Section 196A, Clause 2, distinctly lays down that no Court shall take cognizance of the offence of criminal conspiracy punishable under Section 120B of the Indian Penal Code in a case where the object of the conspiracy is to commit any non cognizable offence or cognizable offence not punishable with death, transportation or rigorous imprisonment for a term of two years or upwards, unless the Local Government or the Chief Presidency Magistrate or the District Magistrate empowered in this behalf by the Local Government has, by order in writing, consented to the initiation of the proceedings. Under Notification No. 1803-VI 638 of 1913 published in Part I of the United Provinces Gazette, dated the 17th of May 1913, at page 447, the Local Government of the United Provinces empowered all District Magistrates in the said Provinces to consent, by order in writing, to the initiation of proceedings in respect of any criminal conspiracy, not being one to which the provisions of Sub-section 3 of Section 195 of the said Code apply,

punishable under Section 120B, of the Indian Penal Code, where the object of the conspiracy is to commit any non cognizable offence or a cognizable offence not punishable with death, transportation or rigorous imprisonment for a term of two years or upwards. In the present case it is quite clear that the District Magistrate has consented in writing to the initiation of the proceedings, for he has by his order in writing detailed above directed the initiation of these proceedings himself. It seems to me quite clear that under the notification mentioned above the District Magistrate has such powers and that the sanction which is mentioned in Section 196A of the Criminal Procedure Code exists and that it is a valid sanction. It is urged before me that I should now consider whether the petition of Daryao Singh comes within the meaning of a complaint. It is a point which, in my opinion, is unnecessary to decide at the present moment. It is matter which may be raised and argued at the trial itself. At the stage to which the proceedings have so far arrived it seems to me that I cannot interfere at all. There being a valid sanction, the trial must take its course and it is open to the applicant to raise every possible plea in his defence. If the points raised are improperly decided, it would be open for him to raise them again in his appeal. The application, therefore, is rejected. The stay order is discharged.

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