

Brij Lal Vs. the State

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Court : Allahabad

Decided On : Nov-01-1971

Reported in : 1972CriLJ554

Judge : B.D. Gupta, J.

Appellant : Brij Lal

Respondent : The State

Judgement :

ORDER

B.D. Gupta, J.

1. This petition in revision arises out of an order dated 28th July, 1969 passed by the Munsif Budaun directing the filing of a complaint against the applicant under Sections 186 and 353 of the Indian Penal Code.

2. Having heard learned Counsel at some length. I am satisfied that no case for interference has been made out.

3. Chandrapal Gupta an Amin in the District Judge's Court. Budaun was directed by the Munsif Budaun to proceed to sell some crop, which had been attached in execution of a decree held by the applicant. Chandra Pal Gupta (hereinafter referred as the Amin) went to the village Kunwargao on 16th May, 1969 to carry

out the order of the Munsif's court but the order was not carried out. Instead, a report was filed by the Amin in the Munsif's Court complaining of obstruction, assault etc. by the applicant as the reason for his inability to carry out the order of the Court. A show cause notice was issued to the applicant. This was followed by an order of the Munsif directing the filing of a complaint in the Court of Additional District Magistrate (Judicial) at Budaun for offence punishable under Sections 186/353 of the Indian Penal Code. The learned Sessions Judge, Budaun having refused to interfere, the present revision was filed.

4. The principal contention raised on behalf of the applicant is that the Amin in question could not be held to be subordinate to the Munsif Budaun and therefore, the complaint was not maintainable. Reference may be made to the provisions contained in Section 185 (1) [195 (1)?] of the Code of Criminal Procedure, which prohibit any Court from taking cognizance of any offence punishable under Sections 172 to 188 of the Indian Penal Code except on the complaint in writing of the public servant concerned or of some other public servant to whom he is subordinate. It is not in controversy that the Munsif Budaun as well as the Amin are public servants. The learned Counsel, however, urged that the Amin could not be subordinate to the Munsif Budaun in as much as the District Judge, Budaun was the appointing authority and the District Judge alone could dispense with the services of an Amin. I find myself unable to accept this contention. The 'meaning to be assigned to the expression 'subordinate' in Section 195 of the Code cannot be restricted so as to refer only to administrative control. If a person is under obligation to carry out the directions of another a relationship of subordination arises and the person who is under obligation to carry out the directions must at least during the course of that assignment, be held to be subordinate to the person whose directions he is bound to carry out.

There is no controversy that, in the present case, the Amin was bound to carry out the directions given by the Munsif Budaun in his order dated 8th March, 1969. There is also no controversy that the report of the Amin alleging obstruction, assault etc. purported to be in regard to what had happened during the Course of the Amin's attempt to carry out the duty assigned to him by the Munsif. I have no doubt that in these circumstances, it must be held that Munsif Budaun was

competent to file a complaint under Section 195 (1) of the Code of Criminal Procedure. Reference may be made to the decision of a Division Bench of the Calcutta High Court in the case of *Rajshahi Banking and Trading Corporation, Ltd. v. Surendra Nath Mitra* : AIR1942 Cal434 . This was a case where a peon, who had been given a warrant i. e., the order from a Subordinate Judge to do certain things, complained of obstruction and assault and the question that arose was as to whether the peon could be held to be subordinate to the Subordinate Judge by reason of the circumstance merely that the peon had been ordered by the Subordinate Judge to do certain things. It was observed by Derbyshire C. J., who gave judgment for the Division Bench;-

Clearly, the peon was subordinate to the Subordinate Judge whilst he was carrying out the Judge's order.

5. Reference may also be made to a decision of a Division Bench of the Bombay High Court in the case of *Nana Khandera Ghadge v. Emperor* AIR 1927 Bom 647. In that case a Commissioner had been appointed by a Subordinate Judge to examine certain accounts. There can be no controversy that subordinate Judges do not exercise administrative control over Commissioners as contemplated by the provisions contained in , Order 26 of the Code of Civil Procedure. Nevertheless, it was held by the Division Bench that a complaint by the Subordinate Judge in regard to an alleged offence under Section 179 of the Indian Penal Code was maintainable under Section 195 (1) of the Code of Criminal Procedure. It was observed that inasmuch as the Subordinate Judge could have terminated the appointment of the Commissioner at any time, that the Commissioner was bound to carry out his duties in accordance with the instructions of the Subordinate Judge, and that the Subordinate Judge could have directed further enquiry if he was dissatisfied with the proceedings and report of the Commissioner, it was difficult to conceive of greater subordination of the Commissioner whose appointment, exercise of power and termination of appointment were all. in law subject to the orders and supervision of the Subordinate Judge.

6. In the present case, the Amin, qua Munsif Budaun, enjoyed no different status from that enjoyed by the peon in the Division Bench decision of the Calcutta High

Court in the case of Rajshahi Banking and Trading Corporation, Ltd. (supra), or that of the Commissioner in the Division Bench decision of the Bombay High Court in the case of Nana Khandera Ghadge (supra), I have no doubt that for the purposes of the case before me, the Amin was subordinate to Munsif Budaun and was, therefore, fully competent to file the complaint in question.

7. This revision is devoid of merit and is accordingly dismissed. The order of this Court dated 14th May, 1970, staying further proceedings, is vacated.

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