SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Mulai Rai Vs. Emperor

Mulai Rai Vs. Emperor

SooperKanoon Citation : sooperkanoon.com/475856

Court : Allahabad

Decided On : Dec-07-1925

Reported in : AIR1926All277; 92Ind.Cas.863

Judge : Sulaiman, J.

Appellant : Mulai Rai

Respondent : Emperor

Judgement :

Sulaiman, J.

1. This is a criminal revision from an order convicting the accused tinder Section 190 of the Indian Penal Code and sentencing him to a fine of Rs. 55.

2. The applicant is the mukhtar-am of Mt. Daulata Kunwar who had constructed a temple inside her house, installed idols therein and performed puja by sounding conches in the evening. The Muhammadans of the mohalla objected to this and approached the District Magistrate who deputed a joint Magistrate to inspect the locality. The learned Magistrate being satisfied that there was an apprehension of some dispute passed an order under Section 144 of the Criminal P.C. on the 4th of February 1925 directing Mt. Daulata Kunwar to keep all the doors of the room in which the idols were kept closed and bolted, and to abstain from making any musical or other noise during a short period. After this the District Magistrate must

have been trying to get the matter settled amicably if possible. On the 25th of February 1925 a large number of notices, including one to Hafizullah were sent out by the applicant under the name of Mt. Daulata Kunwar, As the notice to Hafizullah is the real basis of this prosecution it is necessary to set forth its terms in some detail. Its purport was as follows: 'You, along with others, drew the attention of the District Magistrate and got him to depute the joint Magistrate to inspect the locality and convinced him that there was a fear of religious dispute which induced him to pass an order under Section 144 of the Criminal P.C. You are therefore given this notice that within one week of this date you should in writing express your dissociation from the said acts and give it in writing that you have no connexion or concern with those acts and that you do not desire to interfere with the worship which I perform in accordance with Hindu dharamsastras. If you fail to do so then you also will he impleaded in the array of the defendants in the civil suit which I am about to bring.' The Courts below have held that the threat contained in the notice amounted to a threat of injury to a person for the purpose of inducing that person to refrain or desist from making a legal application for protection against any injury to any public servant legally empowered as such to give such protection. The view taken by the Courts below is that the real intention of the accused was to make the complainant desist from approaching the District Magistrate any further. Perhaps it would be best to quote the words of the appellate Court itself. "The notice in question goes beyond the legitimate requirements of the case and reading the entire notice and considering other circumstances attending the matter in dispute the impression which one gets in that the notice was by way of a threat of a civil suit against the parson to whom the notice was addressed by which it was intended that he should refrain from approaching the District Magistrate about the matter and to seek his protection.'

3. When the alleged threat of injury is contained in a written notice it is very doubtful how far the Courts are entitled to go outside the language of that notice in order to infer an intention which does not appear from that writing. This notice does not ask the addressee to refrain from approaching the District Magistrate any longer. Nor does it refer to any pending dispute. The Courts below, however, have taken the true intention to have been to make the complainant refrain from approaching the magisterial authorities. Assuming for the sake of argument that it

was open to the Courts below to infer this intention, the question still remains whether the threat of the institution of a civil suit is an injury within the meaning of Section 190 of the Indian Penal Code.

4. It is noteworthy that the addressee was called upon to make three statements in writing: (1) dissociating himself from the previous act; (2) stating that he had no concern or connexion with them; and (3) expressing his desire not to interfere with the worship. Unless the addressee had on the previous occasion made no objection to the worship or taken any part in approaching the authorities, or unless he was denying her right to perform the worship, Mt. Daulata Kunwar would have no cause of action for maintaining a civil suit against him. Before, therefore, the addressee was to be impleaded in a civil suit recklessly it was essential to know for certain whether there was any cause of action against him. The notice mentions in express terms that if he does not comply with the request of Mt. Daulata Kunwar he would be impleaded in the civil suit.

5. The non-compliance with the request contained in the notice would have involved Hafizullah being impleaded in the suit. Does the institution of a civil suit against a person amount to an injury within the meaning of Section 190? The word 'injury' has been defined in Section 44 of the Indian Penal Coda as denoting any harm whatever illegally caused to any person in body, mind, reputation or property. Mt. Daulata Kunwar had a right to bring a civil suit for a declaration of her right to maintain the temple and perform the worship. Whether she would ultimately succeed or not is quite a different matter but she had a right to maintain a suit against any person who was objecting to her right. Can the institution of a civil suit against a person who was so objecting be called a harm illegally caused? The recourse to a civil Court cannot amount to causing an illegal harm. Under certain circumstances a false complaint against a person may be an illegally caused harm. It may also be possible to conceive of cases where a totally false suit, vexatious and frivolous in its nature, intended to harass a person may amount to a harm illegally caused. But in this particular case the institution of a civil suit for a mere declaration of right against any person who was objecting to that right cannot be said to be a harm illegally caused in body, mind, reputation or property. The complainant Hafizullah was examined in this case and from his evidence it

appears that he himself had done nothing in particular before the order under Section 144 was passed. He stated that he became surprised as to how notice was served on him. He had no acquaintance with Mt. Daulata Kunwar. He had never complained about the, temple and never wanted before, nor did want then, to do anything against the Mussammat's temple. He had not asked anyone to do anything is respect of the notice he had received and ha said that he did not reply to the notice as he thought that the notice had been sent to him by mistake. These statements make it quite clear that there was nothing personal in sanding the notice to Hafizullah. The accused's version that the object was to ascertain whether Hafizullah was objecting to her right in order to make up one's mind whether or not he should be impleaded in the civil suit, appears to be not unfounded. I accordingly allow this revision and, setting aside the conviction and the sentence, acquit the accused of the charge and direct that the fine, if paid, be refunded.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com