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Court : Allahabad

Decided On : Jun-18-1924

Reported in : (1924)ILR46All906

Judge : Walsh, Acting C.J. and ;Ryves, J.

Appellant : Emperor

Respondent : Kashi Ram and ors.

Judgement :

Walsh, Acting C.J. and Ryves, J.

1. This is (if it were not for the referring order of Mr. Justice Boys, in which he seems, rightly, in our opinion, to think that further consideration is required of one authority to which we will refer in a moment) a, matter of no importance to anybody except the parties, none of whom seem to be very attractive persons, or to be worth the time which has been already spent upon them by a large number of judicial authorities. Somehow or other Kashi Ram, the present applicant, got it into his head that he had been robbed by to prostitutes and their brother, or one or other of them. Ultimately criminal proceedings were taken against these' persons, or rather against the two women, their brother being omitted from the charge. The two women were acquitted, and now the brother, who was only verbally charged and never put 'upon his trial, wants to vindicate the law and clear himself by taking proceedings against Kashi Ram and his associates who made the charge. The

Magistrate, who was originally seised of the matter in Saharanpur, rightly, according to our view, held that the offence committed by Kashi Ram and his two associates was an offence under Section 211, and no preliminary sanction was necessary. In revision the matter came before the Sessions Judge who held the contrary and referred to the authority which we have already mentioned, namely, *Emperor v. Hardwar Pal* (1912) I.L.R. 34 All. 522. He then, in the ordinary course, referred the matter to the High Court, thinking the Magistrate was wrong, and also submitted the matter to the Magistrate again for his explanation. The Magistrate was converted by the authority which the Sessions Judge quoted, and being bound by a two Judge decision of this Court, naturally came to the conclusion that his previous opinion was wrong, saying that he was not aware of the authority when he decided the case. The matter thereupon came before Mr. Justice BOYS, on a reference from the Sessions Judge, and Mr. Justice Boys, not agreeing with the view laid down in the case of *Emperor v. Hardwar Pal* (1912) I.L.R. 34 All. 522, referred the matter to a Bench, and it now comes before us with a view to clearing the ground, if possible. In our view 'there is a fallacy underlying the decision in *Emperor v. Hardwar Pal* (1912) I.L.R. 34 All. 522 which Mr. Justice Boys has rightly pointed out. The mere fact that subsequent proceedings in court are taken either against the person originally charged, or against somebody else, cannot affect what was done when the original charge was made, if it was a charge. In *Emperor v. Hardwar Pal* (1912) I.L.R. 34 All. 522 a charge was made against several people including one S, but S was never charged in court. S was not put upon his trial and no proceedings, were taken against him. The other people were and the ratio decidendi in *Emperor v. Hardwar Pal* (1912) I.L.R. 34 All. 522 is that the charge against 8 amounted to a charge in court because court- proceedings, were taken against somebody else. In this respect we are unable to agree with *Emperor v. Hardwar Pal* (1912) I.L.R. 34 All. 522. It so happens, as regards the question what amounts to a charge under Section 211 and what is a mere report which comes within Section 182, that I myself, on a previous occasion sitting alone, happen to have been compelled to express my opinion. Possibly an English lawyer is tempted to take a broader, view inasmuch as in England the meaning of 'charge' is clearly defined, and the step involved in making a charge is identified, because every Station Officer has a charge-sheet, and if the complainant makes

a report desiring that criminal proceedings be brought, he is asked if he is prepared to sign the charge-sheet, and if he does so he identifies himself as the person making the charge. If he says no, it is left to the Station Officer to decide whether he, as Station Officer, will continue the matter by making the charge himself. But, in substance, there ought not to be any real difficulty in deciding the question where a report stops and a charge begins, and my brother and I, agreeing in substance with the view which I took in the case which I decided, *Mathura Prasad v. Emperor* (1917) 15 A.L.J. 767, have agreed upon the following formula which, in our view, in substance, not necessarily in every term or expression, correctly states the dividing line between the two classes of acts:

If the complainant confines himself to reporting what he knows of the facts, stating his suspicions, and leaving the matter to be further investigated by the police, or leaving the police to take such course as they think right in the performance of their duty, he may be making a report, but he is not making a charge. But if he takes the further step, without waiting for any official investigation, of definitely alleging his belief in the guilt of a specified person, and his desire that the specified person be proceeded against in court, that act of his, whether verbal or written, if made to an officer of the law authorized to initiate proceedings based upon the complainant's statement, whether amounting to an expression of the complainant's belief in the guilt of the specified person, or his desire that court proceedings be taken against him, amounts to making a charge.

2. Applying that to the facts of this case, what happened was, that these three people, having apparently reason to suspect the other three of theft, approached the police and desired that a search be made. Up to that time they had made no charge. Search was made in their presence, and an attractive article of clothing was identified by Kashi Ram as being unlawfully in the box of Miyan Jan, the present complainant. He identified it and indicated to the police officer that Miyan Jan was guilty, either of having stolen or wrongfully received it knowing it to have been stolen. That, in our view, amounted to a charge. The Magistrate was right, on the complaint of Miyan Jan, in formulating a charge against Kashi Ram of having made that charge, assuming it to have been false to Kashi Ram's knowledge. With regard to the other two persons, Shikri Prasad and Dip Chand, all that we know

about them is that they were present, and may fairly be presumed to have demonstrated a sympathetic approval of the conduct of Kashi Ram. Whether this amounts, as a matter of special pleading, to aiding and abetting Kashi Ram in making the charge, is a matter of no importance. We think that justice will be done by sending back the record with a direction to the Magistrate to proceed with the case against Kashi Ram. The charge against the other two persons is not pressed, and, therefore J the case against them must not be proceeded with. It should be added that the precise question of formal sanction is no longer relevant because of the amendment of the Code of Criminal Procedure, and that under Section 195(1)(b) of the Code a complaint by the court was not necessary because the charge was not in a court.

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