Emperor Vs. Johri

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Court : Allahabad

Decided On : Sep-09-1930

Reported in : AIR1931All269; 136Ind.Cas.277

Appellant : Emperor

Respondent : Johri

Judgement :

Bennet, J.

1. This is a reference by the learned Sessions Judge of Agra recommending that the' commitment of Johri to the Court of Session for trial under part 2, Section 211, I. P.C., should be quashed. Johri made a report under Section 304, I. P C., against certain persons, and the case for the prosecution is that that report was false. If the case comes under part 2 of Section 211, I. P.C., the ease would be triable only by the Court of Session. The police made an investigation into the report and found it to be false, and the persons named in it were not prosecuted. Hence the Sessions Judge considers that no criminal proceedings were instituted and therefore the charge of making the false report comes under the first part of Section 211, I. P.C., and is punishable with two years' imprisonment of either description or with fine or with both and as the committing Magistrate can pass such sentence he should dispose of the case himself.

2. The view of the Sessions Judge is in accordance with the rulings of this Court. But as three other High Courts have taken a different view, the learned single Judge of this Court before whom the case came referred it to a Bench of two Judges.

3. Section 211 states as follows:

Whoever, with intent to cause injury to any person, institutes or causes to be instituted any criminal proceeding against that person, or falsely charges any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge against that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both and, if such criminal proceeding be instituted on a false charge or an offence punishable with death, transportation for life, or imprisonment for seven years or upwards, shall be punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

4. The words in this section which have given rise to difference of opinion are the words ' if such criminal proceeding be instituted.' The Allahabad view of these words has been that they mean that a criminal prosecution should have taken place. The High Courts of Calcutta, Madras and Patna hold that these words cover a report in the police station even though the police do not prosecute on it.

5. The Allahabad cases are in historical order as follows : Empress of India v. Pitam Rai [1882] 5 All. 215. Pitam made a false report to a police officer but the police did not prosecute the person he accused. A single Judge, Mahmood, J., held that there was no institution of , criminal proceedings and therefore no offence under part 2 of Section 211, I. P.C. In the next year, 1883, this ruling was followed by another, single Judge in Empress v. Parahu [1883] 5 All. 598. In 1893 the matter came before a Bench of two Judges of this Court, in Queen-Empress v. Bisheshar [1894] 16 All. 124 on a reference by a Sessions Judge who considered that the Full Bench ruling of the Calcutta High Court in Karim Buksh v. Queen-Empress [1890] 17 Cal. 574 (F.B.). should be followed. Unfortunately the Acting Public Prosecutor did not place this view before the Court and in a ruling of eight

lines the Bench stated that they preferred the previous Allahabad rulings. There is no discussion of the merits of either view in this ruling; so it can hardly be taken as an authoritative decision between the two conflicting views.

6. This was followed in 1909 by Emperor v. Jagmohan [1908] 6 A.L.J. 989 and in 1912 by Barkatullah v. Sadho Kalwar [1912] 13 Cr. L.J. 855. These were single Judge rulings.

7. In none of these rulings is there any discussion of these difficulties; there is merely the assumption that the phrase 'institution of criminal proceedings ' can only refer to the institution of a criminal case in Court.

8. The Calcutta High Court followed the Allahabad view in a Bench ruling, Queen Empress v. Karim Buksh [1887] 14 Cal. 633, but the matter was fully considered by a Bench of five Judges in 1888 in Karim Buksh v. Queen-Empress [1890] 17 Cal. 574 (F.B.) where it was laid down that

a man who sets the criminal law in motion by making a false charge to the police of cognizable offence institutes criminal proceedings within the meaning of Section 211, I.P.C., and if the offence falls within the description in the latter part of the section, he is liable to the punishment there provided.

9. The reasoning on which this conclusion is reached is as follows:

There are two modes in which a person aggrieved may seek to put the criminal law in motion. He may make a charge ....to the police. If the information discloses a cognisable offence, the proper officer of police may proceed to make an investigation; and if the result of that investigation is adverse to the accused, he is, in due course, brought by the police before a Magistrate. If the information does not disclose a cognizable offence, the police cannot take any step of their own authority. Secondly a person aggrieved may lay a charge, or, as the Code calls it, a complaint {S. 191) before a Magistrate whichever of these methods is adopted, the thing done by the accused is the same, that which is called in the one case giving information, in the other making a complaint. In each case the steps that follow are governed by the Criminal Procedure Code. In each the first step taken

by the accuser is ordinarily also the last, for from that time the control of the investigation or the enquiry passes out of his hinds into those of the constituted authorities.

10. The ruling then points out that the expressions instituting proceedings and 'making a charge ' are not mutually exclusive, because there is no mode by which a private accuser can institute criminal proceedings except by making a charge, and because part 2 of the section speaks of proceedings instituted on a false charge. But the expressions are not co extensive, because a charge to the police of a noncognizable offence or a charge to a civil Court of a public officer asking for sanction to prosecute, cannot be considered the institution of criminal proceedings.

11. A Bench of the Madras High Court in Queen-Empress v. Nanjunda Rau [1897] 20 Mad. 79 followed the ruling of the Calcutta Full Bench in Karim Buksh v. Queen Empress and dissented from the Allahabad rulings reported in Empress v. Pitam Rai and Queen-Empress v. Bisheshar. One passage in this ruling may be quoted:

It is argued that, when a charge is preferred to the police, it merely sets them on enquiry, and they may find the charge to be false and refuse to proceed with the charge without the accused being even aware that any complaint has been made against him; but precisely the same may be said when a complaint is made to a Magistrate. He is not bound to take any action against the person accused . . . . . yet it could hardly be contended that the complaint to the Magistrate did not amount to ' the institution of criminal proceedings ' within the meaning of the section.

12. Reference was made to the Calcutta Pull Bench ruling, Karim Buksh v. Queen-Empress, in a later case in the Madras High Court, The Sessions Judge of Tinnevelly Division v. Sivan Chetti [1909] 32 Mad. 258, Full Bench, where the principle of that ruling was followed and where the majority of the Full Bench extended the principle by holding that a false complaint to a Village Magistrate of an offence which he was bound to report to the police under Section 45, Criminal P.C., was an institution of criminal proceedings within the meaning of Section 211, I. P.C. In 1925 the matter came before a Bench of the Patna High Court in

Parameshwar Lal v. Emperor A.I.R. 1925 Pat. 678, and the Bench dissented from the Allahabad ruling Queen Empress v. Bisheshar and followed the Calcutta Full Bench ruling Karim Buksh v Queen-Empress (4) The Allahabad ruling Queen-Empress v. Bisheshar has therefore been considered and dissented from by three other High Courts, and in one case dissented from by a Bench of five Judges. The weight of authority is therefore heavily against the ruling Queen-Empress v. Bisheshar. The reasoning contained in the rulings of the other High Courts is clear and cogent. I therefore consider that we should follow the rule of the other High Courts and hold that making of a false charge to the police of a cognizable offence is the institution of criminal proceedings within the meaning of Section 211, I. P.C. There is another reason which inclines me to this view, which reason has not been mentioned in any of the rulings. This is the definition of 'investigation' and 'judicial proceeding' in Section 4 (1) (1) and (m), Criminal P. C:

'Investigation' includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf.

13. This clearly shows that 'criminal proceedings' include the investigation by a police officer. On the other hand proceedings in Court are distinguished, as Sub-section (m) says:

'Judicial proceeding' includes any proceeding in the course of which evidence is or may be legally taken on oath.

14. These definitions show that if part 2, Section 211, I. P. C, were intended to apply only where proceedings had taken place in Court the language used would not have been 'if such criminal proceeding be instituted' but 'if criminal proceedings be instituted in Court' or 'if judicial proceedings be instituted.' As the section simply refers to criminal proceedings I consider that it refers to a police investigation as well as to a prosecution.

15. Another reason for accepting the Calcutta view is that it would be unlikely that the Penal Code would make such a distinction in the two parts of the section as regards the amount of punishment, and make the difference depend on

consequences over which the accused had no control.

16. I consider that the commitment of Johri to the sessions was correct and that the reference should be refused, and that the Sessions Judge should be directed to proceed with the trial of Johri according to law.

King, J.

17. I agree. The accused is alleged to have made a report to the police falsely charging certain persons with having committed an offence under Section 304, I. P.C. The police investigated and found the charge to be totally false. The persons charged were not prosecuted. The question is whether the accused, by causing the police to make an investigation, should be held to have caused the institution of a criminal proceeding on a false charge, within the meaning of para. 2, Section 211, I. P.C.

18. I think an investigation of an alleged cognizable offence must be regarded as a 'criminal proceeding.' This is in accordance with the ordinary meaning of these words, as I understand them. Moreover, under Section 4 (1) (1) an 'investigation' is expressly defined as including all the proceedings under the Code for the collection of evidence conducted by a police officer. So if the police make an investigation in consequence of a false charge of a cognizable offence, I think it must be held that 'criminal proceedings' have been instituted on a false charge, within the meaning of para. 2, Section 211, I. P.C.

19. It may be objected that if a false charge resulting in an investigation amounts to instituting a criminal proceeding, then how are we to give effect to the distinction, made in para. 1, Section 211, between: (1) instituting a criminal proceeding; and (2) charge a person with the commission ...of an offence? One answer is that the institution of criminal proceedings does not necessarily involve an accusation of any offence. For instance a man may make an application to a Magistrate that security for good behaviour should be taken from a certain person on the ground that he is by habit a robber. No charge is made of any offence, nevertheless the application must, I think, amount to 'institution of criminal proceedings' if the Magistrate holds any inquiry. The same-argument would apply

to all proceedings requiring security' for keeping the peace or for good behaviour. The fact that they are 'criminal proceedings' cannot be doubted, but they do not proceed upon the allegation that any offence has been committed. There is therefore at least one clear distinction between the institution of criminal proceedings and the accusation of having committed an offence. There may be other distinctions, but it is unnecessary for our purpose to pursue the subject further.

20. The Allahabad decisions, starting with Empress v. Pitam Rai, merely assume that the institution of criminal proceedings means the institution in a criminal Court, or the institution of judicial proceedings. They do not even discuss the question whether 'criminal proceedings' cannot be given a wider meaning so as . to include a police investigation. The only Allahabad case decided by a Bench of two Judges is Queen-Empress v. Bisheshar, but with all due respect to the learned Judges I do not think the judgment can be considered satisfactory. The point at issue was not argued and no reasons are given for dissenting from the Full Bench decision in Karim Buksh v. Queen Empress. My learned brother has discussed the case law and shown that the Madras and Patna High Courts have expressly dissented from the Allahabad view and have preferred to follow the Calcutta Full Bench decision. I also think that the latter decision is correct and should be followed.

21. I concur in the order proposed.