

Thakur Das and ors. Vs. Emperor

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Court : Allahabad

Decided On : Oct-01-1917

Reported in : 42Ind.Cas.924

Judge : P. C. Banerji, J.

Appellant : Thakur Das and ors.

Respondent : Emperor

Judgement :

1. The three applicants have been convicted under Section 120B (1) read with Section 211 of the Indian Penal Code. Their convictions have been upheld by the learned Sessions Judge. The facts of the case are if ally set forth in the judgment of the learned Sessions Judge. They are briefly these. On the 2nd of November 1916 the applicant Daryao Singh presented a petition in the Court of Mr. Dampier, who was both Magistrate and Collector of Muttra, in which he made various allegations against the Tahsildar of Muttra. These allegations, if true, would constitute offences under various sections of the Indian Penal Code, the principal offence being one under Section 161. Mr. Dampier treated the application as a complaint under the Code of Criminal Procedure and recorded the statement of Daryao Singh on oath, in which he made specific allegations of bribery and extortion against the Tahsildar. The learned District Magistrate directed an enquiry under Section 202 of the Code of Criminal Procedure, and in the end dismissed the case under Section 203 of the Code. He then caused further enquiry to be held

and finally sanctioned the prosecution of the three applicants under the sections mentioned above. They have been tried and convicted.

2. The first contention raised on their behalf is that the sanction granted by Mr. Dampier as District Magistrate as illegal. I do not agree with the contention. Section 196A of the Code of Criminal Procedure provides 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-cognisable offence, or a cognisable offence not punishable with death, transportation or rigorous imprisonment for a term of two years or upwards, unless the Local Government, or a Chief Presidency Magistrate or District Magistrate empowered in this behalf by the Local Government has, by order in writing, consented to the initiation of the proceedings.' In these provinces the Local Government has made an order empowering District Magistrates to sanction prosecutions under this section. The contention on behalf of the applicants is that the words 'not punishable with death, transportation or rigorous imprisonment for a term of two years or up-wards' govern not only a cognisable offence but a non-cognisable offence also. Having regard to the context of the section, I do not think that it is open to that construction. As pointed out by the learned Sessions Judge the use of the word ' any ' before non-cognisable offence shows that the Legislature did not intend that both in the case of a non-cognisable offence and a cognisable offence the proviso about their not being punishable with death, transportation, or rigorous imprisonment for a term of two years or upwards would apply. If that had been the intention of the Legislature, it was, wholly unnecessary to make any mention of cognisable or non-cognisable offences. What the Legislature intended apparently was that in the case of a non-cognisable offence the District Magistrate empowered under the section would have the authority to sanction prosecution, but in the case of cognisable offences he would have such' power in respect of such offences only as are not punishable with death, transportation or rigorous imprisonment for a term of two years or upwards. It is clear that the intention of the Legislature was to give authority to the Local Government or a Chief Presidency Magistrate or a District Magistrate who may be empowered in this behalf to sanction prosecutions in the case of minor offences only, but it may be that in making this provision the Legislature overlooked the fact

that there are non-cognisable offences which are punishable with imprisonment for a term of two years or upwards. However, as the section stands I do not think it is open to any other construction than that placed on it by the learned Sessions Judge.

3. The next contention is that the petition presented by Daryao Singh to Mr. Dampier was not presented to him as District Magistrate with the intention that he should take criminal action against the Tahsildar, but in his capacity as Collector and for the purposes of departmental enquiry. It is true that the petition was not headed as a petition presented to the District Magistrate, but the allegations made in it were to the effect that the Tahsildar had committed specific offences and in the statement which was made by Daryao Singh before Mr. Dampier he give specific instances of them. His object clearly was that action should be taken under the Code of Criminal Procedure against the Tahsildar. The application was, therefore, a complaint. The Magistrate treated it as such. He ordered an enquiry under Section 202 and finally made an order under Section 203. That Daryao Singh's object was that the petition was to be treated as a complaint further appears from the petition sent by him to the Commissioner on the 23rd of December 1916, as set forth in the judgment of the Court below. Although it does not appear from the petition originally filed before Mr. Dampier whether it was filed before him in his capacity of Magistrate or in his capacity of Collector, the subsequent proceedings which took place and the conduct of Daryao Singh himself show that he intended it to be a complaint and that it was in fact a complaint against the Tahsildar.

4. As regards the merits of the case they have been dealt with by the learned Sessions Judge, and I see no reason to differ from his conclusion. As regards Daryao Singh, he is, as both the Courts below have held, only a tool in the hands of the other accused. He was, therefore, not liable to the same amount of punishment as that inflicted on the others. In his case I reduce the sentence to one of three months' rigorous imprisonment. The applications of the other two applicants are dismissed. The applicants must surrender to their bail to serve out the remainder of their sentence.

