

Pitambar Das and ors. Vs. State

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Court : Madhya Pradesh

Decided On : Mar-03-1952

Reported in : 1953CriLJ109

Judge : Dixit, J.

Appellant : Pitambar Das and ors.

Respondent : State

Judgement :

ORDER

Dixit, J.

1. This is a petition to revise an order passed by the Sessions Judge, Gwalior, in an appeal under Section 476(B) of the Cr. P. Code, directing that a complaint for the prosecution of the applicants for giving false evidence be filed before the City Magistrate, Lashkar. It appears from the record that the proceedings under Section 476 of the Code arose out of a Civil suit disposed of by the City Civil Judge, Lashkar. After the disposal of the suit, one Rampyaribai who was a party to the suit applied to the City Civil Judge that the applicants who had appeared in that Civil suit as witnesses be prosecuted for giving false evidence. The learned Civil Judge refused to make a complaint against the applicants. Thereupon, Rampyaribai appealed to the Sessions Judge, Gwalior. A notice of the appeal was given to the applicants and on 26.2.51, the learned Sessions Judge after hearing

the parties passed an order expressing the opinion that a prima facie case had been made out for the prosecution of the applicants and directing a further notice to be issued to them to show cause why proceedings in respect of an offence under Section 193 I.P.C. should not be instituted against them.

In response to this notice, the applicants stated on 22.3.51, that there was no material, whatsoever, for commencing against them proceedings under Section 193 I.P.C. On 7.5.51, the learned Counsel appearing for Rampyaribai and the applicant Pitambardas and others requested the Court to pass whatever order it thought fit on the material before it. Thereafter on 20.8.51, learned Sessions Judge in what was styled by him as a 'report', but which was in fact an order, after referring to the various statements made by the applicants in the Civil suit, recorded a finding that it was expedient in the interest of justice that an inquiry should be made against the applicants in respect of an offence under Section 193 I.P.C. On the same date, the learned Sessions Judge passed a separate order stating that the report was ready and that it be sent to the City Magistrate for disposal according to law. It is from this latter order that this revision petition has been filed.

2. Learned Counsel for the applicants contends that the order passed by the learned Sessions Judge directing that a complaint for the prosecution of the applicants be filed, is illegal and without jurisdiction inasmuch as the learned Sessions Judge held no inquiry under Section 476 of the Code and did not record a finding, after such an inquiry, to the effect that it was expedient in the interest of justice to prosecute the applicants. There is no substance in this contention which seems to me to have been raised on account of an error in the procedure followed by the Sessions Judge in disposing of the appeal before us under Section 476(B) of the Code and on account of the wrong use of the word 'report.' Section 476(B) of the Code does not contemplate that the appellate Court should after hearing the parties first pass a preliminary order stating that prima facie there was sufficient material for issuing notice to the parties concerned to show cause why they should not be prosecuted and then the Court should after again issuing a notice to the parties and hearing them, pass a final order disposing of the appeal. The appellate Court can after giving a notice of the appeal to the parties concerned proceed to

hear the appeal and pass an appropriate order disposing of the appeal. It was, therefore, unnecessary in this case, for the learned Sessions Judge to record an order of preliminary nature and to issue notices a second time to the applicants to show cause why they should not be prosecuted.

The argument of the learned Counsel for the applicants that the Sessions Judge was bound to hold an inquiry under Section 476, is not supported by the wording of the section itself. The power to make a preliminary inquiry is in the discretion of the Court and whether an inquiry is necessary or not depends on the facts and circumstances of each case. The object of the inquiry is only to give an opportunity to the person or persons likely to be prosecuted to explain their position in connection with the charge alleged against them and to enable them to place before the Court the necessary evidence in support of their explanation. In the present case, it is clear from the order passed on 7.5.51 that the applicants did not desire to produce any evidence in support of their earlier statements that there was no material for instituting any complaint against them. The learned Sessions Judge was, therefore, quite justified in forming his own opinion on the material on the record and in coming to the conclusion that it was expedient in the interest of justice that the applicants should be prosecuted for the offence under Section 193 I.P.C. The learned Sessions Judge recorded this finding on 20.8.51 in what he described as a 'report' but which is really an order of the court discussing the material on record, recording a finding that it was expedient in the interest of justice that an inquiry should be made in respect of the offence under Section 193 I.P.C. and directing that a complaint for the prosecution of the applicants under Section 193 I.P.C. be filed before the City Magistrate, Lashkar. The use of the word 'the report' by the Sessions Judge was, no doubt, inappropriate. That, while using the word 'report', the learned Sessions Judge really meant 'an order of the Court disposing of the appeal' is clear from the substance of the so-called report and also from the order dated 30.5.51 of the Sessions Judge wherein he mentioned that 'that order was not yet ready.' The order passed by the learned Sessions Judge is, therefore, in conformity with the provisions of Sections 476 and 470(B) of the Code.

3. Before I conclude, I must observe that when this petition was put up for hearing before another Judge of this Court, the learned Deputy Government Advocate took an objection as to the competency of this revision petition, under Section 439 Cr.P.C. It seems to have been then argued that the proceedings out of which this revision petition arose were civil proceedings. In view of the fact, that the learned Counsel for the applicant proposed to attack the order of the lower Court as one being without jurisdiction, the question whether this revision petition should be entertained on civil or criminal side was merely of academic interest. Learned Counsel for the parties did not, therefore, press before me the point.

4. The result is that this revision petition is dismissed.

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