

Ganesh Ram Vs. Ghudia

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Court : Madhya Pradesh

Decided On : Nov-23-1953

Reported in : 1954CriLJ623

Judge : Sathaye, J.C.

Appellant : Ganesh Ram

Respondent : Ghudia

Judgement :

ORDER

Sathaye, J.C.

1. One Ganeshram was being tried for an offence under Section 403, Indian Penal Code on a complaint by one Battu applicant in the Court of the Munsiff-Magistrate Second Class, Nasrullahganj. On 29-10-52 Battu complainant was absent and one Ghudia alias Ghudmal son of Chudaman filed an application and affidavit that Battu was ill. Ganeshram accused filed an application on the same day that the affidavit was false and that Battu was not ill on that date and action be taken against Ghudia, The Magistrate rejected the application merely on the ground that the application did not state the provision of law under which the application was filed. Ganeshram then filed a revision petition to the Sessions Court, to set aside the order and the learned Additional Sessions Judge has referred the case, under Section 438, Criminal P. C., recommending that the order be set aside and the

Magistrate be asked to give the findings on the points framed by him according to the provisions of law.

2. On notice being issued, the non-applicant Ghudia was absent. Government Advocate on behalf of the State conceded that the order of the Magistrate was not proper as he had failed to exercise his jurisdiction, but pointed out that the remedy was an appeal under Section 476-B, Criminal P. C. and not a revision. The learned Additional Sessions Judge purports to observe that mere being no prayer for taking action against Ghudia, the application should have been rejected without registration, but as it was registered and an inquiry was made, the Magistrate should have examined the law and given his finding on the essentials or the relevant provision. Though I do not agree with the earlier part of the observation, I agree with the latter part. It is not necessary for a party to point out the law. It is the duty of a Court to examine the allegations of a party, and to see if any action on them can be taken, and the provision of law under which it can be so done. It cannot refuse to take action simply because such provision of law, under which action is sought, is not stated by the party. The order of the Magistrate, therefore, was no doubt clearly wrong, incorrect and improper.

3. The next question is whether the revision or an appeal lay to the Sessions Judge.

4. Under Section 476-B, Criminal P. C., ordinarily an appeal and not a revision lay to the said Court, but in the instant case the application was not considered by the Magistrate on merits and was rejected merely on empty or fanciful grounds.

In - 'Niranjan Lal y. Emperor' AIR 1944 All 40 (A), the procedure in this connection is laid down:

If the original Court records a finding and makes a complaint or refuses to make a complaint under Section 476, Criminal P. C. an appeal lies under Section 476B; a dismissal in default does not amount to a refusal. If there is such a dismissal, the Court concerned under Section 476A on application or on its own motion may make a complaint or refuse to make it. In which case an appeal lies to the High Court if the order is made by a Sessions Court. A dismissal in default under

Section 476-A does not amount to a refusal and in the event of such dismissal by a Sessions Court, an application in revision lies to the High Court. An appeal under Section 476B can only be filed, therefore, from an order containing a complaint or from an order refusing to make a complaint giving reasons i.e., from an order equivalent to a judgment.

It is, therefore, clear that it is only when the order is passed on merits stating the reasons in support of it that - an appeal would lie under Section 476-B, Criminal P. C. otherwise the matter can be brought to the notice of the superior Court by an application in revisional jurisdiction.

5. In - Abdul Husen v. Emperor AIR 1914 Nag 1 (B) it has been held that:

The High Court has power, in revision, to set aside an order for prosecution passed under 476, Criminal P. C. But the High Court will not do so unless it is made to appear that the opinion of the lower Court, of the existence of grounds for an inquiry, is merely fanciful and obviously wrong and not based on any evidence.

It is, therefore, clear that the High Court has power to revise the order of the Court concerned, as in the case on hand the rejection of the petition is merely on empty and fanciful grounds. The objection of the Government Advocate is, therefore, overruled.

6. On perusal of the order of the Magistrate it does not appear that he has fixed correct points for determination for an action under Section 476, Criminal P. C. The Magistrate has to find if it is expedient in the interests of Justice that an inquiry should be made into any offence referred to and whether any offence referred to in Section 195, Sub-section (1), Clause (b) or (c) appears to have been committed in or in relation to a proceeding in that Court.

7. The Reference is, therefore, accepted. The order of the Magistrate is set aside and the case is sent back to the said Court for an inquiry into the application on the points noted above on the essentials of an inquiry under Section 476, Criminal P. C. The parties are directed to appear before the Magistrate Second Class, Nasrullahganj on 14-12-1953.

