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State Vs. Pema Dhanna

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Court : Madhya Pradesh

Decided On : Sep-27-1957

Reported in : AIR1958MP67; 1958CriLJ384

Judge : A.H. Khan and ;Samvatsar, JJ.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 196; Representation of the People Act, 1951 - Sections 138; Indian Penal Code (IPC), 1860 - Sections 171F

Appeal No. : Criminal Appeal No. 46 of 1954

Appellant : State

Respondent : Pema Dhanna

Advocate for Pet/Ap. : Mungre, Government Adv.

Disposition : Appeal allowed

Judgement :

A.H. Khan, J.

1. This is an appeal filed by the State of Madhya Bharat under Section 417 of the Criminal Procedure Code, against an order of acquittal passed by the Sessions Judge, Guna, in Criminal Appeal No. 81 of 1953.

2. The facts out of which this appeal arises lie within a short compass. The Additional District Magistrate, Guna, tried the respondent, Pema, son of Dhanna, under Section 171F. Indian Penal Code for having personated for one Chatru Banjara in the by-election of the Madhya Bharat Vidhan Sabha.

The accused admitted his personation and was in consequence convicted and sentenced to three months rigorous imprisonment by the learned Magistrate. On appeal against his conviction and sentence, the learned Session Judge, acquitted him on the ground that before the initiation of the proceedings against him, sanction as required by Section 196 Criminal Procedure Code was not obtained by the Prosecution. Now the Government has filed this appeal and the contention of the learned Government Advocate is that in view of the amendment of Section 196, no sanction was necessary.

3. Section 196 of the Criminal Procedure Code (hereinafter referred to as the 'Code') is an exception to the general rule that a prosecution can be initiated by anybody. Some offences, being in the main offences against the State are of an exceptional nature, and, with regard to these the policy of the law as embodied in Section 196 of the Code, is to prevent unauthorised persons from intruding in State affairs by instituting prosecutions on their own. This section provides that in regard to offences mentioned therein no proceedings could be launched without a complaint made by an order of Government or some officer empowered by Government in this behalf.

The offence under Section 171F Indian Penal Code (personation at an election) was one enumerated in Section 196 of the Code and it was necessary to obtain the sanction of the Government before proceedings could be instituted. But Section 138 of the Representation of People Act of 1951 (referred to hereinafter as the 'Act') changed the law on the point and Parliament enacted that 'In Section 196 (of the Code of Criminal Procedure) after the word and figures 'Section 127', the words, figures and letters 'and Section 171 P, so far as it relates to the offence of personation' shall be inserted,'

The effect of this amendment is that now a prosecution for personation at election under Section 171P, Indian Penal Code can be instituted without the sanction of

Government. This was quite obvious, but the learned Sessions Judge was influenced in his view by the opinion of some commentator, who said that along with the direction contained in Section 138 of the Act, it was also necessary to amend Section 196 of the Code, and that as no such amendment in the Code was made, Section 196 remained unchanged. In putting this view, it has been overlooked that Section 138 of the Act is not a mere direction.

It actually amends Section 196 of the Code in so far it says that the certain words shall be inserted in Section 196 of the Code. This has the effect of automatically inserting the words. No other step is required to complete the process of amendment. The Act and the Code both are Central Acts and Section 138 amends the Code straightaway.

4. In order to avoid confusion in the future, I would like to state that the law as it stands today is that after the amendment effected by Section 138 of the Representation of People Act (1951) in Section 196 Criminal Procedure Code, no order of the Government is now required for instituting prosecution under Section 171 P, Indian Penal Code, so far as it relates to false personation and the Government appeal must therefore be allowed.

5. Regarding the sentence I find that the accused has already undergone sentence for 12 days and apart from this he was also in police custody for sometime. Having regard to these facts and also bearing in mind that a period of about three years has elapsed since the appeal was filed, we think that the sentence already undergone by him would be enough to meet the ends of justice.

6. In result, the Government appeal is allowed. The accused is convicted under Section 171F Indian Penal Code and is sentenced to the term already undergone by him.

Samvatsar, J.

7. I agree.

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