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State Vs. Gulabram

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Court : Madhya Pradesh

Decided On : Feb-05-1957

Reported in : AIR1957MP224; 1957CriLJ1410

Judge : Nevaskar, J.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 403; Criminal Law Amendment Act, 1952 - Sections 6 and 7(3); Indian Penal Code (IPC) - Sections 161 and 420

Appeal No. : Criminal Ref. No. 41 of 1956

Appellant : State

Respondent : Gulabram

Advocate for Def. : C.R. Khanvilkar, Adv.

Advocate for Pet/Ap. : J.D. Patel, Government Adv.

Disposition : Reference accepted

Judgement :
ORDER

Nevaskar, J.

1. The accused in this case is a cyclist peon in the engineering section of the Indore Municipality.

2. The case put up against him by the Anti-Corruption Department was that he, on 28th August 1952 obtained Rs. 100/- by false representation from one Ganpat Mali, representing himself to be a Municipal Inspector. He was, therefore, put up for trial before the Special Judge, Indore under Sections 161 and 420, I. P. C. The learned Special Judge decided after full trial that the accused did not fall within the category of a public servant within the meaning of the term as used in Indian Penal Code and the Indore Municipal Act.

3. He, therefore, held that the accused could not be tried and convicted for an offence under Section 161, I. P. C. He further held that inasmuch as no offence under Section 161, I. P. C. could be made out against the accused, he could not try the accused under Section 420, I. P. C., simpliciter. He, therefore, directed the complaint to be filed before a competent Magistrate. The police accordingly put up the. accused for trial before the Additional District Magistrate, Indore. It was contended on behalf of the accused there that in view of the order passed by the learned Special Judge, his trial for an offence under Section 420, I. P. C., is barred by reason of the provisions of Section 403, Cr. P. C. An objection to that effect was not submitted on behalf of the accused on 1st February 1955. The learned Magistrate accepted the contention of the accused and dismissed the complaint.

4. This was construed to be an order of discharge and a petition for revision was filed in the Court of Session. The learned Sessions Judge did not agree with the conclusion arrived at by the learned Additional District Magistrate. According to the learned Sessions Judge, Section 403, Cr. P. C. could not be applicable in the circumstances of the present case. He held that the order passed by the Special Judge holding, that no offence under Section 161 could be made out against the accused he not being a public servant and no trial under Section 420, I. P. C. simpliciter could be held by him, did not amount to an order of acquittal of the accused. He has, therefore, made this reference. Mr. Khanvilkar, who appears for the accused was asked as to whether he would be in a position to contend that the order of the learned Special Judge relating to an offence under Section 420, I. P.

C., amounted to an order of acquittal.

5. The learned counsel frankly conceded that in the circumstances of the present case it is difficult to say that there was an order of the acquittal of the accused in respect of the offence for which he was to be tried by the learned District Magistrate. The learned counsel no doubt suggested that the case had been fully tried before the learned Special Judge and the entire evidence was recorded, a charge had also been framed. However, merely by the circumstance of framing a charge and by recording the evidence, the jurisdiction cannot be created where it is inherently lacking. The Special Judge's Court is a Court of special jurisdiction and the important factor on which the jurisdiction rests is that the accused should be a public servant.

6. The moment, the learned Special Judge finds that the accused is not a public servant, his jurisdiction to try the accused for the offence mentioned in Section 6, Criminal Law Amendment Act ceases. Consequently his further jurisdiction under Section 7(3) of the Act to try any other offence, with which the accused could be jointly tried along with the offencementioned in Section 6 of the Criminal Law AmendmentAct, would also cease. That being the position itis difficult to construe the order of the learned Special Judge as an order of acquittal in respect of an offence under Section 420, I. P. C. The reference is, therefore, accepted and is sent back to the trial Court fordisposal, according to law.

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