

Batakrushna Das Vs. the State

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Court : Orissa

Decided On : Aug-28-1959

Reported in : AIR1961Ori14; 26(1960)CLT148; 1961CriLJ132

Judge : R.L. Narasimham, C.J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 195 and 195(1);
Indian Penal Code (IPC) - Sections 186, 353 and 504

Appeal No. : Criminal Revn. No. 407 of 1958

Appellant : Batakrushna Das

Respondent : The State

Advocate for Def. : Govt. Adv.

Advocate for Pet/Ap. : A.C. Mohanty and ;P. Pasayat, Adv.

Disposition : Revision partly allowed

Judgement :

ORDER

R.L. Narasimham, C.J.

1. The petitioner was tried for offences under Sections 186, 504 and 353 I. P. C. by a First Class Magistrate of Dhenkanal, on the allegation that on 2-12-54 when

the Subdivisional Magistrate, Sadar Dhenkanal the Gram Panchayat Organizer and other persons went to village Khadgaprasad to take photographs of the development work going on in that village, the petitioner abused them in insulting and filthy language saying that no real work was being done and the false propoganda was being made by taking photographs. It was alleged that the petitioner obstructed them when they were about to take photographs. On these allegations, a report (Ex. 1) was made by the Gram Panchayet Organizer, on the basis of which the petitioner was placed on trial.

2. The learned Magistrate acquitted him of the offence under Section 186 I. P. C. as the Sub-divisional Magistrate took cognizance of the offence prior to the filing of a complaint in writing by the public servant concerned as required by Section 195 of the Cr. P. C. But he convicted him of the offences under Sections 353 and 504 I. P. C. and sentenced him to pay a fine of Rs. 25/- under each count.

3. Mr. A. C. Mohanty, on behalf of the petitioner contended that the offence under Section 353 I. P. C. was very closely linked up with the main offence under Section 186 I. P. C. and once the trial court held that the taking of cognizance of the latter offence was invalid due to want of proper complaint the same invalidity would attach to the taking of cognizance of the offence, under Section 353 I. P. C. I am inclined to accept this argument.

4. As pointed out by their Lordships of the Supreme Court in Bashir-ul-Huq v. State of West Bengal, AIR 1953 SC 293 the provisions of Section 195(1), Cr. P. C. are mandatory and the court has to see what is the nature of the offence alleged against the accused. If the offence, in essence, is one which requires compliance with the provisions of Section 195 Cr. P. C. merely by 'changing the garb or label' of the offence, and by describing the offence as one punishable under some other section of the Indian Penal Code, the mandatory provisions of Section 195, Cr. P. C. cannot be evaded.

As the facts constituting the offence under Section 353 I. P. C. also constituted the offence under Section 186 I. P. C. in the present case, and as the latter offence required a complaint in writing from the competent authority before cognizance could be taken, I must hold that the taking of cognizance of the offence under

Section 353 I. P. C. was also invalid.

5. No such invalidity, however, attaches itself to the taking of cognizance of the offence under Section 504 I. P. C. The insult to the public servants was alleged to have taken place prior to the obstruction caused by the petitioner in the discharge of their duties. The offence under Section 504 I. P. C. is a distinct offence and that has been proved by the evidence of the public servant which has been accepted by the court of fact.

6. I would therefore set aside the conviction of the petitioner under Section 353 I, P. C. and acquit him of that offence. The sentence of fine of Rs. 25/- passed for that offence is set aside. I would affirm his conviction under Section 504 I. P. C. and maintain the sentence of fine of Rs. 25/- passed for that offence; in default of the payment of fine he shall undergo simple imprisonment for one month. The revision petition is thus allowed in part.

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