

Judhistir Ganda Vs. the State

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Court : Orissa

Decided On : Jul-06-1956

Reported in : AIR1956Ori211; 22(1956)CLT458; 1956CriLJ1420

Judge : Narasimham, C.J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 4(1), 176 and 195(1)

Appeal No. : Criminal Ref. No. 50 of 1955

Appellant : Judhistir Ganda

Respondent : The State

Advocate for Def. : Govt. Adv.

Judgement :

ORDER

Narasimham, C.J.

1. This is a reference by the Sessions Judge, Bolangir-Kalahandi, for setting aside the conviction and sentence passed against the petitioner by a Second Class Magistrate of Bolangir, for an offence under Section 176, Penal Code.

2. The relevant facts are these. The petitioner Judhishtir Ganda was convicted in a previous trial for an offence under Section 411/75, Penal Code, and directed under Section 565, Criminal P. C. to report his movements to the Police for a period of

three years from the date of his release. In pursuance of that order Judhishtir after his release from Jail gave a declaration to the effect that he would reside in his village Bishnumunda, P.S. Bolangir, and that he would intimate his change of address and residence to the Officer-in-charge of Bolangir Police Station. Subsequently however, he became untraced. The Officer-in-charge of Bolangir Police-station made careful enquiries and eventually Judhishtir Ganda was arrested on 18-5-1955 by the A.S.I. of Dharamgarh P.S. In Kalahandi district. Then a complaint was filed by the Officer-in-charge of Bolangir P.S. for his prosecution under Section 176, I.P. C. for omission to give information about his change of residence. Judhishtir Ganda was then convicted in the Court of Second Class Magistrate, Bolangir, and that conviction was upheld by the Additional District Magistrate of Bolangir on appeal.

3. The learned Sessions Judge of Bolangir has requested this Court to set aside the conviction and sentence on the ground that the complaint filed by the Officer-in-charge of Bolangir Police-station would not be a 'complaint' as defined in Section 4(1)(h), Criminal P. C. inasmuch as he is a Police Officer. The learned Sessions Judge therefore observed that there was no valid complaint for the prosecution of Judhishtir Ganda for an offence under Section 176, Penal Code, as required by Section 195(1), Criminal P. C. and that consequently the entire trial was void ab initio.

4. The learned Sessions Judge has misconceived the legal position. It is true that the definition of 'complaint' as given in Section 4(1) (h), Criminal P. C. expressly excludes the report of a Police Officer, but that definition would apply only if no different intention appears from the subject or context, This is made clear in the opening words of Sub-section (1) of Section 4 itself.

Consequently, that definition cannot be mechanically applied in construing other provisions of the Criminal Procedure Code; and a Court must carefully examine the provisions of a particular section of the Code and decide whether a different intention appears from the subject or context. Section 195(1)(a) says that no Court shall take cognizance of any offence punishable under Ss. 172 to 178, Penal Code except on a complaint in writing of the public servant concerned. A Police officer is

undoubtedly a public servant.

The offences described in Sections 172 to 188, Penal Code may be committed in relation to orders of Police Officers as well as of other public servants. Thus, if during the investigation of a cognizable case the officer-in-charge of a Police Station issues notice on an individual to appear before him for the purpose of interrogation under Section 160, Criminal P. C. and that person refuses to attend, his refusal would amount to an offence under Section 174, Penal Code.

Similarly, as in the present case, if a person is legally bound to notify his movements to the officer-in-charge of a Police Station and he fails to so notify, he would be committing an offence under Section 176, Penal Code. Hence, such offences can in accordance with the terms of Section 195(1)(a), Criminal P. C. be taken cognizance of by a Court only on the report of a Police Officer who is the public servant concerned.

If such reports are not held to be 'complaints' within the meaning of Section 195(1)(a), Criminal P. C. the offences described in Sections 172 to 188, Penal Code, committed in relation to a Police Officer can never be brought to trial inasmuch as it is legally impossible to contemplate a complaint as defined in Section 4(1)(h), Criminal P. C. for the purpose of Section 195(1)(a) where the concerned public servant is a police officer. His superior authority will also be a Police Officer.

Hence the reasonable view would be to hold that an intention other than that given in Section 4(1) (h) of the Code appears from the context of Section 195 (1)(a) and that the expression 'complaint' in the latter section is used in the ordinary sense of a report in writing disclosing an offence and not in the technical sense of excluding the report of a Police Officer as defined in Section 4(1)(h) of the Code.

5. This view is supported by sufficient authority. As early as *Dilan Singh v. Emperor*, 40 Cal 360 (A) it was held that the recommendation made by a Police Officer for the prosecution of the informant for an offence under Section 211, Penal Code, would be a 'complaint' within the meaning of Section 195, Criminal P. C. To a similar effect is the Single Judge decision of the Allahabad High Court,

reported in Barkat v. Emperor AIR 1943 All 6 (B). There is also a recent decision of the Saurashtra High Court reported in State v. Nandlal Karunashankar 1952 Cri LJ 850 : (AIR 1951 sau 8) (C.) to the same effect.

6. I would, therefore, maintain the conviction and sentence passed by the trial Court and discharge the reference.

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