The State Vs. Awoo Bewa

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Court : Orissa

Decided On : Jul-28-1961

Reported in : 1961CriLJ878

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

Appellant : The State

Respondent : Awoo Bewa

Judgement :
ORDER

R.L. Narasimham, C.J.

1. This is an application under Section 561-A of the Criminal Procedure Code for expunging some observations contained in the judgment of the Assistant Session's Judge, Keonjhar, dated 2nd December, I960, in Sessions Trial' No. 27/12K of 1960.

2. The opposite party Awoo Bewa lodged an Information on the 16th January 1960 at Keoujhar Sadar Police Station, alleging that two person's named Nakul Nayak and Bipin Nayak had murdered her husband. The Police, after due investigation submitted a final report on the 8th March, 1960 to the Sub-divisional Magistrate with the following remarks:

The case is intentionally false under Section 302 I.P.C.P. R. follows.

The learned Sub-divisional Magistrate, Keonjhar Sadar, on 18th March, 1960, made the following endorsement on the above Police Report:

Case under Section 302 I.P.C. intentionally false.

Sd. Illegible.

18-3-60.

Then, the officer-in-charge, Keonjhar Sadar P. S. filed a regular complaint on the 25th April, 1960, against Awoo Bewa for an offenceunder section, 211 I.P.C. alleging that she deliberately brought a false case against Nakul Nayak and Bipin Nayak. Cognizance was, in due course, taken on that complaint petition and after commitment, the case was tried in the Court of the Assistant Sessions Judge.

3. The learned Assistant Sessions Judge after a review of the entire evidence adduced before him held that there were reasonable grounds for Awoo Bewa to lodge an information before the Police charging the aforesaid two persons with the murder of her husband and that her prosecution For an offence under Section 211 I.P.C. was not at all justified. Having thus disposed of the case on merits the learned Judge further observed that the entire proceeding under Section 211 I.P.C. was void ab initio, in the absence of a complaint by the Sub-divisional Magistrate as required by Section 195(1)(b), Criminal Procedure Code. He pointed out that the Magistrate's endorsement dated 18th March, 1960 (quoted above) declaring the case to be intentionally false was a judicial order and consequently, from that date, the proceeding became a proceeding 'in relation to a Court' within the meaning of Section 195(1)(b) and ceased to be a mere Police proceeding. Hence, according to the learned Judge, the Sub-divisional Magistrate and not the Police Officer was the proper person to file a complaint for the prosecution of the opposite party under Section 211 I.P.C.

4. Learned Standing Counsel submitted that this view of the Assistant Sessions Judge was wrong but that the State had no intention whatsoever of challenging the order of acquittal on merits. Nevertheless he requested the Court to give an authoritative opinion on the point of law raised by the learned Assistant Sessions

Judge, as to whether on the facts of this case a complaint by the Sub-divisional Magistrate was necessary, or whether the complaint by the investigating Police Officer before whom the original information was given by Awoo Bewa was sufficient for her prosecution under Section 211 I.P.C.

5. The question has doubtless becomes somewhat academic as the order of acquittal is not under challenge on merits. Nevertheless as it has considerable public importance, especially in many proceedings that may be pending before Magistrates and Sessions Judges, I have thought it advisable to give my pronouncement on it.

6. Where a cognizable case is investigated by the Police a report is submitted by the Investigating Police Officer to the Sub-divisional Magistrate under Section 173 Cr. P.C. If, in the report, the Police recommends the placing of the accused on trial it is usually called 'charge-sheet1' and the Sub-divisional Magistrate usually takes cognizance on that report under Section 190(1)(b) Cr. P.C. There is no doubt that such taking of cognizance is a judicial act. But where the Police do not recommend the prosecution of the alleged offender that report is generally known as 'final report', and on receipt of the same it is open to the Sub-divisional Magistrate either to accept the same and drop the matter, or disagree with the Police and call for charge-sheet. In many instances, either before the submission of final report by the Police, or soon afterwards the original informant files a protest report against the police investigation. It is also well settled that such protest petitions are in the- nature of regular complaints and it is open to the Magistrate, on receipt of such petitions, either to proceed in accordance with Chapter XVI of the Cr. Procedure Code or to call for charge-sheet. I have discussed these matters in full in my judgment in Mahabir Prasad v.State 23 Cut LT 395 : AIR 1958 Orissa 11. There is however some conflict of judicial opinion as to whether the mere acceptance of the final report of the Police by the Sub-divisional Magistrate is a judicial act or administrative act. In Bajaji Appaji v. Emperor AIR 1946 7 any order passed by the Magistrate in the final report of the Police was held to be a judicial act but in later Full Bench decision of the Lahore High Court reported in Emperor v. Fateh Din. 49 Cr. LJ 531 : AIR 1948 Lah 184 such an order, was held to be an administrative order, I left this question open in my aforesaid decision and, for the

purpose of disposal of this petition, it is unnecessary to pronounce tiny definite opinion on this point.

7. The limited' question for consideration now is whether the mere acceptance of the final report of the Police by the Sub-divisional Magistrate would bring into operation the provisions of Section 195(1)(b) Cr. P.C. so as to require the Sub-divisional Magistrate to file a complaint under Section 211 I.P.C. and not the Investigating Police Officer. Though there is some conflict of judicial decisions on this point this Court has all along followed the Patna view which has been summarised in Subhag Ahir v. Emperor AIR 1932 Pat 152 and reiterated in Daroga Mahton v. Emperor AIR 1934 Pat 573.

It has been held in these decisions that the crucial date for deciding as to. who is the competent authority to file a complaint under Section 211 I.P.C. is the date on which cognizance is taken. If the Magistrate takes cognizance of the offence under Section 211 I.P.C. on the report of the Police Officer, prior to the filing of protest petition by the original informant then any subsequent action taken by the informant would not take away his jurisdiction to proceed with the trial. If, however, prior to taking cognizance on the Police report the original informant has traversed the police report repeated his charge, and asked for a judicial investigation then Section 195(1)(b) Cri. P.C. comes into operation inasmuch as a protest petition is a complaint. So far as I know, no subsequent view, differing from this view has been expressed either by the Patna High Court, or this Court, and hence there seems no justification for taking a contrary view or for referring this question to a larger Bench.

8. Admittedly, in the present case no pretest petition was filed by the opposite party at any time. No attempt was made by her to traverse the police, report and ask for a judicial enquiry by a Magistrate. The sub-divisional Magistrate after accepting the final report of the Police took cognizance on the complaint filed by the Police Officer. Under these circumstances I am unable to accept the view taken by the learned Assistant Sessions Judge that a complaint from the Sub-divisional Magistrate was necessary.

9. In the Bombay case cited above AIR 1946 Bom 7 a regular complaint in the form of a protest petition had been filed by the original informant, prior to the filing of the prosecution report by the police for action against him under Section 211 I.P.C. Hence a complaint by a Magistrate was, in any case, necessary even on the basis of the Patna decision mentioned above. Therefore the aforesaid Bombay decision cannot be taken as an authority for the extreme proposition that even where no protest petition is filed by the original informant, the mere acceptance of the final report of the Police by the Magistrate would attract the provisions of Section 195(l)(b) Cri. P.C.

10. For these reasons I hold that a complaint by the Sub-divisional Magistrate was no6 necessary and that the view taken by the Assistant Sessions Judge on this point is wrong. The learned Judge has further observed that the Sub-divisional Magistrate should have held an enquiry under Section 476, Cri. P.C. The holding of an enquiry under Section 476 Cri. P.C. is discretionary with the Magistrate and no hard and fast rule can be laid down.

If the Magistrate considered that the Police investigation was not adequate and that the complainant should get a further opportunity to prove his case prior to his being placed On trial, for :

offence under Section 211 I.P.C. he may direct an enquiry under Section 476 Cr. P.C. But in view of my holding that Section 195(1)(b) Cr. P.C. does not apply, this point is also somewhat, academic.

11. The petition is disposed of accordingly, with these observations.