The State Vs. Giani Ram Singh

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Court : Punjab and Haryana

Decided On : May-04-1953

Reported in : AIR1955P& H90; 1955CriLJ714

Judge : Kapur and; Dulat, JJ.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 196; Indian Penal Code (IPC), 1860 - Sections 153A and 295A

Appeal No. : Criminal Appeal No. 145 of 1952

Appellant : The State

Respondent : Giani Ram Singh

Advocate for Def. : Daljit Singh, Adv.

Advocate for Pet/Ap. : Har Parshad, Asst. Adv.-General

Disposition : Appeal dismissed

Judgement :

Kapur, J.

1. This is an appeal brought by the State against an order of acquittal made by Sessions Judge Tek Chand Sethi dated 10-11-1951.

2. The respondent Giani Ram Singh printed and published a book called 'Nehkalank Chandar Ude Bhag Tija' in 1949, and in the complaintwhich was filed by the District Magistrate of Amritsar on 5-6-1950, it is stated that 1000 copies of this book were published and that there were words and passages which fall within the mischief of Ss. 153A and 295A, Penal Code. In para. G of this petition it is stated: '6 That the petitioner has been ordered by the Punjab Government vide Letter No. 4085-PE-50/111-1356 dated 5-5-1950 (Copy attached) to initiate proceedings against the said accused.' In support of the prosecution nine witnesses were produced by the prosecution and the accused was convicted under Section 295A, Penal Code by Mr. Gurbaksh Singh Chatrath, Magistrate 1st Class with Section 30 powers, and was given one year's rigorous imprisonment. An appeal was taken to the Sessions Judge, who allowed additional evidence to be taken on the question of sanction of the Government, but relying on Full Bench judgment of the Madras High Court in -- 'F. Varadarajulu Naidu v. Emperor', AIR 1920 Mad 928 (A) he held that the sanction was bad and also went into the merits of the case and held that as there was no evidence to show that any of the passages were offensive, allowed the appeal and set aside the order of conviction, and the State has come up in appeal to this Court.

3. In the complaint no doubt the particulars of the letter which was received by the District, Magistrate are given, but only a copy of this letter was placed on the record which is marked Ex. P. A. and is in the following terms: 'I am directed to draw your attention to the enclosed translation of objectionable passages from the booklet and to say that it contains words which promote or attempt to promote feelings of enmity of hatred between, and in suit or attempt to insult the religion or religious beliefs of. different classes of Indian citizens. I am therefore to request that proceedings may be initiated against

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under Ss. 153A and 295A of the Indian Penal Code (Act 45 of 1860) and the result thereofmay be reported to Government in due course.' Copy of this letter with enclosures in original were sent to the Senior Superintendent of Police, Amritsar, by the District Magistrate and the Senior Superintendent of Police sent it on for

compliance to the Inspector City. This letter does not show that the complaint was to be made by the order of or under the authority of the provincial Government or some officer empowered by the Provincial Government in that behalf. All that it shows in that the Chief Secretary of the Punjab Government drew the attention of the District Magistrate to the objectionable passages and requested him that proceedings may be taken against the respondent. There is no indication in this letter that the matter was considered by the Government or that the Government at any stage authorised the institution of the proceedings and what was placed before the Court was a copy of this letter.

4. Section 190 Criminal P. C. provides:

'No Court shall take cognizance of any offencepunishable * * * *153A * * * '

or Section 295A * * * *unless upon complaint made by order of orunder authority from the Provincial Government or some officer empowered by the Provincial Government in this behalf.'

In my opinion, there is no indication in this letter that the Government had ordered any complaint to be filed or that there was any authority from the Provincial Government for the filing of the complaint. Nor docs it show that the Chief Secretary was empowered by the Provincial Government to take action in this behalf,

(5) The Assistant Advocate-General appearing for the State submitted that it was not necessary that the letter should show on the face of it that the complaint had been filed under the orders of or under authority from the State Government, but this letter sufficiently indicates both. He has drawn our attention to a judgment of their Lordships of the Supreme Court in --'Dattatraya Moreshwar v. The State of Bombay', AIR 1952 SC 181 (B), where it was held:

'When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty and at the same time would not promote the main

object of the Legislature, it has been the practice of the Courts to hold such provisions to be directory only, the neglect of them not affecting the validity of the acts done.'

and on the authority of this submits that it was not necessary that the orders should have been in the name of the Governor as required by Article 166 of the Constitution of India. But, in my opinion, the rule laid down in 'Dattatraya Moreshwar's case (B)', has no application to the facts of this case, because the letter, a copy of which was placed before the Magistrate, did not purport to give the requisite authority as required by Section 196, Criminal P. C., and if the authority was not there, then the initiation of prosecution should be regarded as completely null and void as was held in -- 'Basdeo Agarwalla v. Emperor', AIR 1945 FC 16 at pp. 17 and 18 (C).

6. It was then submitted that the additional evidence which was taken in the Sessions Court supplied the lacuna in regard to the validity of the authority to prosecute. In the first place, the provisions of the Code are not meant for giving an opportunity to the prosecution to fill up the gaps against an accused person, and, secondly, in this particular case the evidence does not, in my opinion, seem to be sufficient to give validity to a document which otherwise was not sufficient for proper compliance with Section 196, Criminal P. C.

7. I do not think it necessary to go into the merits of the case and would therefore dismiss this appeal.

Dulat, J.

8. I agree.