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Court : Punjab and Haryana

Decided On : Mar-19-1964

Reported in : 1966CriLJ366

Judge : J.S. Bedi and; Shamsher Bahadur, JJ.

Appellant : The State

Respondent : Om Parkash Salig Ram

Judgement :

Shamsher Bahadur, J.

1. In this appeal preferred by the State Government from the order of acquittal passed by the learned Sessions Judge, Gurdaspur setting aside the conviction and sentence-awarded by the Magistrate a question of law has been raised on which there is some divergence of opinion. Before setting out the point of law it would be useful to recapitulate the undisputed facts relating to the case.

2. A complaint was filed by Parkasho on 27th July, 1961, underSub-section 494 and 109, Indian Penal Code, against Om Parkash,his father Salig Ram Mohan Devi wife of Salig Rami Mela Ram and Kasturi Lal. The allegation of the complainant was that she married Om Parkash about 12 or 13 years ago. Two issues were born out of this union both of whom-are now dead. According to the complainant she was turned out of the house by her husband after she had been given a beating. It is further stated in this complaint that Om Parkash remarried one Pushpa Rani daughter of Mela Ram the fourth accused, with the connivance and consent of Salig Ram and Mohan Devi parents of her husband. These assertions were repeated in the statement which Parkasho made to the Court of Shri V. V. Kohli, Magistrate First Class, Gurdaspur, on 2nd August, 1961.

3. Om Parkash happened to have made a statement in Court in proceedings against him for maintenance brought by Paikasho under Section 488, Criminal Procedure Code, that he contracted second marriage at Jammu with the consent of his wife Parkasho. Her how ever in his later statement which he made in defiance on 23rd May, 1962, under the charge of bigamy repudiated the earlier confession made by him about his second marriage though he admitted having signed the statement made by him on 30tb December, 1981. On a consideration of the evidence the Magistrate convicted Om Parkash alone for bigamy and sentenced him to undergo rigorous imprisonment for six months and to pay a fine of Rs, 100/-. This order of the Magistrate passed on 11th September, 1962 was set aside in appeal by the learned Sessions Judge Gurdaspur, on 23rd November, 1962, it having been held that the second marriage having been solemnized in Jammu, the Court of Gurdaspur had no jurisdiction to try the complaint. It may be added that the accused other than the respondent Om Parkash have been discharged and have no longer any subsisting interest in the appeal.

4. The matter which falls for determination in this appeal is whether the Court at Gurdaspur had jurisdiction to try the complaint of Parkasho for bigamy against the respondent Om Parkash? Before setting out the

respective contentions of the parties counsel, it would be well to set out the relevant provisions of law.

5. Sub-section (2) of Section 1, Criminal P.C. extends it 'to the whole of India except the State of Jammu and Kashmir;....' Clause (j) of sub s. (1) of Section 4 of this Code says:' 'India' means the territories to which this Code extends. The Indian Penal Code likewise defines 'India' in Section 18 as the 'territory of India excluding the State of Jammu and Kashmir.' Extra-territorial jurisdiction is vested in Indian Courts both by the provisions of the Indian Penal Code and the Code of Criminal Procedure. under Section 4, Penal Code:

The provisions of this Code apply also to any offence committed by-

(1) any citizen of India in any place without and beyond India;

(2) any person on any ship or aircraft registered in India wherever it may be. Explanation.--In this section the word 'offence' includes every act committed outside India which, if 'committed in India, would be punishable under this Code.

Section 188 deals with a similar situation in the Code of Criminal Procedure and is to this effect:

When an offence is committed by--

(a) any citizen of India in any place without and beyond India; or

(b) any person on any ship or aircraft registered India, wherever it may be ; may be dealt with in respect of such offence as if it had been committed at any place within India at which he may be found.

So far the provisions of Section 4, Penal Code and Section 188, Criminal P, C. are in substance alike. The proviso to Section 188, Criminal P.C. has an important bearing and is to this effect:

Provided that notwithstanding anything in any of the preceding sections of this Chapter no charge as to any such offence shall be inquired into in India unless the Political Agent, if there is one, for the territory in which the offence is alleged to have been committed, certifies that, in his opinion, the charge ought to be Inquired into in India; and where there is no Political Agent the sanction of the State Government shall be required.

There is another proviso to Section 188 but it need not be reproduced for it has no relevancy to the question which is before us.

6. Two other sections need be adverted to as these have been relied upon by the Learned Counsel for the State, Section 531, Criminal P.C. says:

No finding, sentence or order of any Criminal Court shall be set aside merely on the ground that the inquiry, trial or other proceeding in the course of which it was arrived at or passed, took place in a wrong sessions division, district, sub-division or other local area, unless it appears that such error has in fact occasioned a failure of justice.' The other Section is 537, Criminal P.C. which says that no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered under Chap. XXVII or on appeal or revision on account of any error, omission or irregularity in the complaint, charge or otherwise and in determining whether any error omission or irregularity in any proceeding under this Code has occasioned a failure of justice, the Court shall have regard to the fact whether the objection could and should have been raised at an earlier stage in the proceedings.

7. The Learned Counsel for the State contends that though Jammu and Kashmir is not a part of India, the trial of the respondent could have taken place in Gurdaspur by virtue of the provisions of Section 188, Criminal P.C. and Section 4, Penal Code. The proviso, in the submission of the counsel, could not apply as there is no Political Agent in Jammu and Kashmir and the sanction of the State Government should be presumed, the prosecution haying been launched in Gurdaspur. On the other hand, Mr. Narula for the respondent, in a very forcible argument, has canvassed the proposition that the extra-territorial jurisdiction vested in Indian Courts

has to be subjected strictly to the terms of the proviso. The Political Agent and in the alternative State Government should nave given sanction to the prosecution which is an essential pre-requisite. Neither the State Government of Jammu and Kashmir nor of Punjab has given any sanction to the prosecution and on that ground the complaint must fail.

8. Mr. Jagga, the Learned Counsel for the State haa relied upon the provisions ofSub-section531 and 537, Criminal P. C., firstly for the proposition that the jurisdiction in any event having been exercised wrongly in respect of a local area the order of the Magistrate could not have been set aside on this ground alone and Section 537 would cure such an irregularity in the final analysis, Mr. Narula submits, on the other hand that Section 531 cannot be pressed into service and is intended to deal only with regard to the cognizance of a case within the local area of a State or at the most of territories which were called 'British India'. With regard to Section 537 it is the case of the respondent that the section is not meant to cure the defects in jurisdiction.

9. On behalf of the State reliance is placed on two authorities of the Punjab Chief Court. In Shahmir Khan y. The Empress, 35 Pun Re 1888 Cr which is a decision of Plowden and Battigan JJ., the position was that the case could have been tried against the accused either by the Court at Ferozepur or Faridkot, It was, however tried in Ferozepur district instead of Faridkot State. It was held that the error as to place is technically an error of venue underSub-section177 to 184, and the error or omission as to certificate seems, therefore, 'an irregularity in the proceedings rather than a defect of jurisdiction'. Fatah Din v. Emperor 4 Pun Re 1902 is a Full Bench decision of Clark Chief Justice, Reid and Chatterji JJ. The matter is disposed of in one brief paragraph of the Full Bench at page 13 in these words:

On the second question our opinion is that the objection ought not to be entertained at this stage, and is at all events not fatal to the conviction. The-facts are closely analogous to 35 Pun Re 1888 Cr and we adopt the reasoning of Sir Meredyth Plowden in, holding that the objection not having been taken to the trial of the case and having been urged only after conviction at a late stage of the appeal, is one relating to venue, and that the trial of the case without a certificate is therefore an irregularity which is cured by Section 537, Criminal P. C, as no prejudice is alleged or proved....

The learned Judges of the Punjab Chief Court appear to have been influenced by the provisions of Chap. 15, Criminal P. C., dealing with the place of inquiry or trial. The general principle as stated in Section 177 is that 'every offence shall ordinarily be in queered into and tried by a Court within the local limits of whose jurisdiction it was committed'. In the situation which they were dealing, the case appeared to have been taken to a wrong Court and the view was taken that the irregularity related only to venue.

10. Mr. Narula, however, has asked us to hold that the view taken by the Punjab Chief Court does not deal with the mandatory provisions with regard to jurisdiction contained in Section 188 of Criminal P.C. and in any case this view is not sustainable and is in conflict with a string of authorities of the various Courts in India. One of the earliest decisions is of the Calcutta High Court in Bichitranund Dass v. Bhugbut Perai I L R 16 Cal 667. Certain persons,. and officers of the Maharajah of Khepnjur, one of whom was a resident of the Cuttack district and the others residents of Kheonjur, were charged before the Deputy Magistrate of Tajpore with certain offences under the Penal Code. They were convicted and on appeal to the Sessions Judge the conviction was upheld. The Sessions Judge found that the scene of occurrence was within the territory of Kheonjur. It was held by Trevely an and Beverley JJ. that the Deputy Magistrate and Sessions Judge had no jurisdiction to try the case and the conviction was set aside. In-incidentally, it may also be observed that the Judges of the Calcutta High Court also held that the words 'local area' in Section 531, Criminal P. C, can refer to districts, divisions, sub-divisions and local areas governed by the Code of Criminal Procedure.

11. In Emperor v. Kali Charan (1902) I L R 24 All 256, Sir John Stanley Chief Justice of the Allahabad High Court held that where an inquiry into an offence to which Section 188, Criminal P. C, was applicable was commenced without the certificate provided for by that section having been obtained the proceedings were void altogether' Reference may be made to Nandu v. Emperor ILR 42 All 89 : AIR 1919 All 44 where Wallach J. held

that the existence of an agreement between the Darbar of a Native State and the authorities of the neighboring portion of British India to render mutual assistance in the arrest of persons found gambling in either territory will not do away with the necessity of obtaining the certificate of the Political Agent or the Local Government where such certificate is required by Section 188, Criminal P.C. A Bench of Sir Jwala Prasad and James J. of the Patna High Court in Ram Prasad Guru v. Emperor 31 Cri L J 364 : A I R 1930 Pat 501, held that the obtaining of sanction under Section 188 is imperative and the omission to do so vitiates the trial and the conviction of an accused in a charge of forgery committed in a feudatory State without the permission of the local Government. In Bombay, the question was considered in Queen Empress v. Baku (1900) I L R 24 Bom 287. In this case a minor girl under the age of sixteen years was taken by the accused from Sholapur to Tuljapur in the Nizam's territory knowing it to be likely that the minor would be used for purposes of prostitution. It was held by the High Court that the offence of disposal of the minor took place out of Britsh India and the Magistrate had no jurisdiction to try the offence in the absence of a certificate of the Political Agent or the sanction of the Local Government as required by Section 188 of the Criminal P. C

12. Even in the Punjab High Court, a contrary view has been taken in Ram Charn and Mst. Gopi v. Emperor ILR 5 Lah 416 : A I R 1925 Lah 185J. In this case, an offence of kidnapping two minor girls was said to have been committed in Bharatpur State and a Magistrate in Gujranwala district, where the girls had been conveyed, held an inquiry and committed the accused to the Sessions Court of Gujrun. wala for trial. Campbell J. held that the offence of kidnapping having been committed in Bharatpur. State the committing Magistrate had no jurisdiction to hold an inquiry into the case without a certificate the Political Agent obtained under Section 188 of the Code of Criminal Procedure, The Division Bench authority of 35 Pun. Re. 1888 Cr was discussed, but Campbell J. followed another decision of the Punjab Chief Court in Queen Empress v. Mastana 11 Pun. Re. 1899 Cr. In Mastana's case 11 Pun, Re. 1899, Cr. which is a judgment of Chatterji and Robertson JJ., the accused persons were committed for trial before the Sessions Court for a murder in the territory of the Patiala State. No certificate had been given by the Political Agent as required by Section 183 of the Criminal Procedure Code and though no objection was taken by any of the accused to the jurisdiction of either the committing Magistrate or the Sessions Judge, the Sessions Judge himself being of opinion that the Magistrate had no jurisdiction to commit the accused and that the Sessions Court had no jurisdiction to try them, referred the question to the Chief Court which found that the defect arising from want of a certificate had been noticed and objection there on raised before the trial of the accused and the commitment being bad was quashed. It seems to us that the ratio decided of Mastana's case, 11 Pun. Re. 1899 Cr., runs in conflict with the Full Bench decision which was delivered by Chat terji J. in 4 Pun. Re. 1902 (FB). Adverting once again to the judgment of Sir Meredyth Plowden in 35 Pun. Re. 1888 Cr. it may be pointed out with advantage that the learned Judge himself hid made a distinction between an irregularity in the proceedings and the defect of jurisdiction and considered that the lodging of a complaint at the wrong place was merely an irregularity in the proceedings. The provisions prior to Section 188 in Chapter 15 of the Code or Criminal Procedure relate to the irregularities and their distinction from a defect of Jurisdiction has been pointed out by Sir Meredyth Plot himself in Shahmir Khan's case, 35 Pun. Revn. Cr. Keeping in view this distinguishing fee which the learned Judge himself brought out, it is possible to reconcile the general trend of authority with the seemingly discordant note which appears to have been struck in the two Chief Court judgments in 35 Ptia. Re 1888 Cr. and 4 Pun. Re. 1902.

13. Lakshmana Rao J., in M. Subba Rao v. Kamaraju A.I.R. 1939 Mad. 577, was of the view that in the absence of a certificate of the Political Agent or sanction of the Local Government a charge of an offence under the Child Marriage Restraint Act committed in French territory cannot be inquired into in British India. In re, M. L. Verghese, A. I, R. 1947 Mad. 352, Vahya Ali J., held that the proviso to Section 188 of the Code of Criminal Procedure is not controlled by any of the preceding sections of the chapter and that the British Indian Court had no jurisdiction to try the accused without a certificate from the authority prescribed in the first proviso to Section 188 and the fact that the ornaments had been received within its jurisdiction was of no avail. In our view there is clear preponderance of authority in favors of the proposition that the prior sanction of the Political Agent or the State Government is necessary for prosecution of the complaint which was lodged

against the respondent.

14. It remains briefly to notice the other two contentions of the Learned Counsel for the State. With regard to the applicability of Section 531 of the Code of Criminal Procedure, it seems plain to us that the advantage in favor of apt order of conviction can be invoked only where a wrong local area has been selected as a forum of complaint; the local area in the situation contemplated in Section 531 can refer only to an area within the State or at the most within the territories of British India. If a prosecution is launched in a wrong local area and no failure of justice has resulted the defect can be cured. The Staten of Jainmu and Kashmir, however, cannot be regarded as a local area for purposes of Section 531 of the Code of Criminal Procedure. Reliance his been placed on the Division Bench Judgment in Ganapathy Chetty v. Rex ILR 42 Mad. 791 : AIR 1920 Mad. 824. In this case proceedings were taken before the Chief Presidency Magistrate of Madras and not in the Court at Chingleputi both places being is the Presidency of Madras. It was found that the proceedings could be cured under Section 531. This is clearly case which is distinguishable from the facts on which we have to decide. The case in point has been dealt with by Horwill J. in V. Balakrishna Naidu v. Mrs. B, Sakun. tala Bai A I R 1942 Mad 666, where it was held that Section 531 of the Code of Criminal Procedure is naturally intended to apply only to inquiries in British India for the Criminal Procedure Code applies only to British India. Section 531 does not condone the wrongful exercise of jurisdiction by a British Indian Court when no British Indian Court would have jurisdiction in the matter. A similar situation was dealt with in (1889) I. L.R.16 Cal 667, to which reference has already been made. There seems to be no force in the contention of the Learned Counsel for the State that the case is attracted by the provisions of Section 531 of the Code of Criminal Procedure.

15. Likewise, we do not see any merit in the third and final contention of Mr Jagga. The requirements of Section 188 being mandatory, we do not think that the curative provisions of Section 537 of the Code of Criminal Procedure can be pressed into service. The matter came up for consideration by a Full Bench of Sulaiman C J., Kendall and Bajpai JJ. in Emperor v. Mohd. Mehdi A.I.R. 1934 All. 963 and it was held that where it was absolutely essential to obtain the previous sanction of the registration authorities for the prosecution of the accused under Section 83 of the Registration Act, the prosecution without such permission being illegal and contrary to the provisions of that section cannot be cured under Section 537 of the Code of Criminal Procedure. A trial which is illegal for want of jurisdiction cannot be legalised under the provisions of Section 537 of the Code of Criminal Procedure on the ground that no prejudice has been caused. Ramaswami J. in In re Subramanlan Chertier. A. I. R- 1957 Mad. 442, made a distinction, with which we agree, between the want of sanction requited under any provision of jaw and the irregularities In sanctions, the latter being curable under Section 537 of the Code of Criminal Procedure and the former not. The initiation of proceedings without sanction vitiates the proceedings abilities and is not an irregularity curable under Section 537 of the Code of Criminal Procedure. This distinction, we venture to think, - was also present in the mind of Sir Meredyth Plowden in the passage to which reference has been made and if that were correct there is in fact no divergence in judicial authority.

16. In the result, this appeal must fail and is dismissed.

J.S. Bedi, J.

17. I agree.