Johnson Vs. State of Kerala

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Court : Kerala

Decided On : Sep-20-1995

Reported in : 1996(1)ALT(Cri)672; 1996CriLJ2338

Judge : K.P. Balanarayana Marar, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 161, 195(1), 340 and 340(1); Indian Penal Code (IPC) - Sections 193

Appeal No. : Crl. A. No. 485 of 1994

Appellant : Johnson

Respondent : State of Kerala

Advocate for Def. : P.P. and; Franklin Chellath, Adv.

Advocate for Pet/Ap. : P.K. Ashokan, Adv.

Disposition : Appeal dismissed

Judgement :

K.P. Balanarayana Marar, J.

1. Appellant was a witness in Sessions Case 63/92 before Sessions Court, Thrissur. He was treated hostile to the prosecution and cross- examined by the Public Prosecutor. By judgment dated 17-6-1993 the Sessions Judge found the

accused guilty and convicted the accused and sentenced him to undergo imprisonment for life. While so, a direction was given in the said judgment to register a miscellaneous case against the appellant for the offence under Section 195(1) of the Code of Criminal Procedure. A complaint dated 29-6-93 was thereafter filed before the Chief Judicial Magistrate, Thrissur. Ext. A1 is a copy of that complaint. Appellant seeks quashing of that complaint.

2. Heard appellant and Public Prosecutor.

3. The grounds mentioned in the appeal memorandum to quash the complaint are: (i) The Sessions Judge had not recorded a finding that an offence under Section 195(1(b) appears to have been committed by the appellant; (ii) the Sessions Judge has not reached a conclusion that it is expedient in the interest of justice to make a complaint; (iii) the evidence tendered by the appellant would not spell out circumstances to render a finding that he had committed an offence punishable under Section 193, IPC; and (iv) the Sessions Judge had not properly exercised the discretion before ordering prosecution and no show cause notice Was issued before filing the complaint.

4. In order to appreciate the contentions advanced by both sides it is appropriate to extract sub- Section (1) of Section 340 of the Code of Criminal Procedure. The Sub-section reads :

When, upon an application made to it in this behalf or otherwise, any court is of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in clause (b) of Sub-section (1) of Section 195, which appears to have been committed in or in relation to a proceeding in that Court, or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,-

(a) record a finding to that effect;

(b) make a complaint thereof in writing;

(c) send it to a Magistrate of the First Class having jurisdiction;

(d) take sufficient security for the appearance of the accused before such Magistrate or if the alleged offence is non-bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and

(e) bind over any person to appear and give evidence before such Magistrate.

The court should first of all form an opinion that it is expedient in the interests of justice that an enquiry should be made into any offence referred to in clause (b) of Sub-section (1) of Section 195 which appears to have been committed. The opinion or satisfaction contemplated under the section is not a subjective one but an objective one which should be reflected in the finding recorded by the court. Such an order must be supported by valid and justifiable grounds. The court can hold a preliminary enquiry only after forming the opinion as required in Sub-section (1) of Section 340 of the Code. What is important is not the actual words used by the court but the expression of the view that in the interest of justice the person concerned deserves to be prosecuted. In other words, the court making a complaint has to be satisfied that it appears that an offence under clause (b) of Sub-section (1) of Section 195 has been committed and that it is expedient in the interests of justice that an enquiry should be made into that offence. In short the court should see whether the person has given the false evidence intentionally.

5. The next stage is the recording of the finding to the effect that it is expedient that an enquiry should be made. The Sub-section specifically enjoined a duty on the court to record a finding to that effect which implies that an enquiry has to be made. Even if the finding is not specifically recorded it is sufficient if the record shows that the court had applied its mind to the question and has formed an opinion and has come to the conclusion that an , enquiry is expedient. As observed by the Patna High Court in Bankey Lal v. Rampadarath Singh, AIR 1933 Pat 713 : (35 Cri LJ 459), 'To set aside the proceedings of a District Judge merely by reason of the absence from his order of a finding in accordance with the exact words of the section would be an over refinement of technicality and might lead to a failure of justice'. What is required is therefore forming of an opinion and arriving at a conclusion that an enquiry is expedient.

7. The main contention advanced by learned Counsel for appellant is that a preliminary enquiry was not conducted as enjoined under Sub-section (1) of Section 340 of the Code. The holding of apreliminary enquiry is not mandatory but discretionary.

Still that discretion should be exercised judicially The section only provides for making such preliminary enquiry as may be necessary. But it is alway desirable that such a preliminary enquiry be made before a court decides to make a complaint. In a case where the materials available before the court are sufficient there is no necessity of making a preliminary enquiry. On the other hand, when the materials are insufficient to establish a prima facie case it is better to make a preliminary enquiry. The legislature did not contemplate holding of a preliminary enquiry in all cases but only in cases where the court feels that such an enquiry is necessary. That is manifested from the phrase 'may after such preliminary enquiry, if any, as it thinks necessary'. The observation in paragraph 2 of the decision in 1991. (2) Ker LT 153, In Re A. K. Padmanabhan, Ex. M.L.A. that a preliminary enquiry contemplated under Section 340 of the Code is a must is seen to have been made without referring to the phrase 'may after such preliminary enquiry, if any as it thinks necessary'. The abovesaid observation relied on by the counsel for the appellant is therefore of no assistance to him. On a reading of paragraphs 25 to 27 it is clear that the learned Sessions Judge has applied her mind and had formed an opinion that it is expedient in the interests of justice that an enquiry should be made into the offence referred to in clause (b) of Sub-section (1) of Section 195 and proper reasons had also been given therein for making a complaint against the appellant. When sufficient materials were available before the court the question of conducting a preliminary enquiry does not arise. It is the discretion of the court to hold the preliminary enquiry or not. That discretion has been properly exercised by the learned Sessions Judge on the basis of the materials on record. The request for quashing the complaint on this ground has therefore to fail.

8. It is then contended that the intention of the legislature is that there must be sufficient materials before court to show that the offence is likely to have been committed and prosecution can be directed only if conviction is highly likely.

Attention is drawn to the decision of the Supreme Court in Santokh Singh v. Izhar Hussain, AIR 1973 SC 2190 : (1973 Cri LJ 1176). It was held that every incorrect or false statement does not make it incumbent on the court to order prosecution. The court has to exercise judicial discretion in the light of all the relevant circumstances when it determines the question of expediency. The court orders prosecution in the larger interest of the administration of justice and not to gratify feelings of personal revenge or vindictiveness or to serve the ends of a private party. The Supreme Court further held that it is only in glaring cases of deliberate falsehood where conviction is highly likely, that the court should direct prosecution,

9. On a reading of paragraphs 25 to 27 of the judgment and on a perusal of the testimony of appellant as PW-2 there cannot be any doubt that there is likelihood of conviction for the offence under Section 193, IPC. While examined as PW-2 appellant narrated the incident as witnessed by him. But he turned against the prosecution in cross- examination and admitted all the suggestions made by the defence counsel and pretended not to have witnessed the incident. After treating him hostile and cross-examined by the Public Prosecutor he stated that the answers were given by him in cross- examination of the defence counsel by mistake. Sri Asokan, learned Counsel for appellant pointed out that the witness turned emotional and he cannot be found to have given false evidence on the basis of this testimony. Here is not a case of the witness denying having made a statement to the police under Section 161 of the Code. He admitted having stated so. In chief-examination he had spoken to those facts. But in cross-examination he gave answers in favour of the accused to all the suggestive questions put by the defence counsel. Though the defence counsel is not entitled to further cross-examine the witness the learned Sessions Judge appears to have permitted the defence counsel to cross-examine the witness again. The witness again turned hostile and gave answers favourable to the accused. On the basis of the evidence tendered the court below was right in forming an opinion that the witness was giving false evidence intentionally. The complaint was therefore made after forming such opinion and after reaching a conclusion that it is expedient in the interests of justice that an enquiry should be made into the offence. The discretion has been properly exercised by the court below. No interference is called for in appeal.

For the aforesaid reasons the appeal is dismissed.