**The State Vs. Birda**

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**SooperKanoon Citation** : sooperkanoon.com/750922

**Court** : Rajasthan

**Decided On :** Apr-30-1965

**Reported in** : 1966CriLJ166

**Judge** : L.N. Chhangani, J.

**Acts** : Code of Criminal Procedure (CrPC) , 1898 - Sections 195(1), 403(1) and 403(4); Indian Penal Code (IPC) - Sections 182

**Appeal No.** : Criminal Appeal No. 364 of 1964

**Appellant** : The State

**Respondent** : Birda

**Advocate for Def.** : V.L. Thakkar, Adv.

**Advocate for Pet/Ap.** : S.N. Gurtu, Dy. Govt. Adv.

**Disposition** : Appeal allowed

**Judgement** :

**L.N. Chhangani, J.**

1. This is a State appeal and is directed against the order of the Munsif Magistrate, Pali, acquitting the respondent Birda of an offence under Section 182, Indian Penal Code.

2. The facts leading to the prosecution of the respondent which resulted in the present appeal, may be briefly stated as follows:

3. On 30th August, 1961, Birda lodged information with the Circle Inspector of Police, Pali, against Bhuria, Labba, Misria, Sargara and others accusing them of an offence under Section 366, Indian Penal Code. It was stated by Birda that the persons named by him kidnapped his daughter Mst. Indra on 17-8-1961. The Circle Inspector after investigation found that the information given by the respondent was false and was lodged in order to cause harassment to Bhuria etc. by the police. On this finding, a complaint under Section 182, Indian Penal Code, was presented against the accused-respondent and a criminal case No. 3 of 1962 was registered in the court of the Munsif Magistrate, Pali. It was found in that case that the complaint had not been presented by the Circle Inspector of Police before whom the false information was given. The Munsif-Magistrate, Pali, therefore, dismissed the complaint and acquitted the respondent.

4. On 17-8-1963 a fresh complaint signed by the Circle Inspector of Police was presented against the accused-respondent. This complaint was registered and processes were issued against the accused-respondent. On 2-12-1963 the accused-respondent submitted an application pleading that the present trial was barred in view of the acquittal of the accused-respondent in criminal case No. 3 of 1962 which was on the same facts. This plea was allowed by the Munsif Magistrate, Pali and the accused was acquitted by his order dated 10th of January, 1964. Aggrieved by that order, the State has filed the present appeal.

5. It was contended on behalf of the State that the Munsif Magistrate was not competent to try the complaint filed against the respondent in the previous case No. 3 of 1962 as there was no valid complaint by a competent authority. Therefore, the Magistrate was not competent to take cognizance and try the case. The entire proceedings before the Munsif Magistrate in case No. 3 of 1962 were null and void and the order of acquittal was also a nullity. In support of his contention, the learned Deputy Government Advocate relied upon Emperor v. Ambaji Dhakya Katkari, AIR 1928 Bom 143; Abdul Rashid v. Harish Chandra, AIR 1929 All 940; In re, Muthu Moopan, AIR 1937 Mad 301 (FB); Emperor v. Ram

Rakha, AIR 1938 Lah 625; Yusofalli Mulla Noorbhoy v. The King, AIR 1949 PC 264 and Baij Nath Prasad v. State of Bhopal, (S) AIR 1957 SC 494. He also relied upon the observations made in Rex v. Marsham, 1912-2 KB 362 which summarised the legal position with regard to the common rule of autrefois acquit and autrefois convict.

6. In order to avail of the plea of autrefois acquit at common law or the bar against retrial under Section 403, Criminal P. C. it is necessary that the court trying the earlier complaint must have been a court of competent jurisdiction. Conflicting views were, however, expressed by the High Courts in India as to the proper meaning of the expression 'court of competent jurisdiction'. It may be pointed out that in Sub-section (1) and Sub-section (4) of Section 403, Criminal P. C., slightly different expressions have been used in connection with the competence of the Court. In Sub-section (1) a court of competent jurisdiction has been used whereas in subsection (4) the expression used is the court by which he was first tried was not competent to try the offence.

In re, K. Ganapathi Bhatta, ILR 36 Mad 308 Sub-section (4) of Section 403, Criminal P. C. the expression used in Sub-section (4) of Section 403 came up for interpretation. The argument of the learned counsel for the accused in that case was that inasmuch as at the time of the previous trial the complainant had not obtained the sanction of the Superintendent of police which, was necessary for a complaint of an offence under Section 182, Indian Penal Code, the Court which held the previous trial was not competent to try the offence with which the accused was subsequently charged. Repelling the contention, the^ learned Judges observed:--

'We are of opinion that the clause refers to the character ana status of the tribunal when it refers to competency to try the offence, as shown by the illustrations (f) and (g) to the section. The Deputy Magistrate was perfectly competent to try a charge under Section 182, Indian Penal Code. A sanction under Section 195, Criminal Procedure Code, is not a condition of the competency of the tribunal; it is only a condition precedent for the institution of proceedings before the tribunal.'

The view expressed by the Madras High Court did not meet the approval of the Bombay High. Court. In Ambaji Dhakya Katkari, AIR 1928 Bom 143 referring to the Madras case Fawcett J. of the Bombay High Court with whom Mirza J. agreed, observed as follows:

'But with respect, I do not think that the illustrations can justifiably be held to control the wide words of the section 'not competent to try' and that the mere fact that the illustrations are confined to instances where the first tribunal has not the necessary powers to try a particular offence, does not show that the words 'not competent to try' are confined to cases of that kind. Moreover, if they mean 'had not jurisdiction to try', it seems to me that those words are sufficient to cover a case where the Court cannot take cognizance of a case because of the provisions of Section 195, Cr. P. C. That goes to the root of jurisdiction.'

7. The Allahabad High Court in AIR 1929 All 940 and the Lahore High Court in AIR 1938 Lah 625 took the same view as the Bombay High. Court and dissented from the view taken by the Madras High Court.

8. ILR 36 Mad 308 case came up for consideration before a Full Bench of the Madras High Court in AIR 1937 Mad 301 (FB). The facts in the Full Bench case were that the Revenue Inspector initially made a complaint to the police under Section 353, Indian Penal Code, against two accused. A charge sheet was filed by the police before the Sub-Magistrate of Eroda, who, after hearing the prosecution evidence, came to the conclusion that a prima facie case was made out not under Section 353 but only under Section 186 and eventually acquitted the accused on the ground that there was no complaint of the public servant concerned. Thereafter, the Revenue Inspector himself filed a complaint in person before the Court. The accused pleaded the bar under Section 403 Sub-section (1) Crimnal P. C. The plea was overruled. The accused having filed a revision, the matter was referred to a Full Bench. The Full Bench referred to the conflict of opinion as expressed by the other High Courts. The Full Bench did not think it necessary to come to any final conclusion on the meaning of the word 'competent' in Section 403. At the same time, relying upon the provisions of .section 530 of the Criminal P. C. observed that

"section 195 Criminal P. C. prevents him from taking any notice whatever of the offence until a proper complaint is filed. His charge was void. His judgment of acquittal was void. There is nothing which the accused can compel the Court to recognize in support of a plea under Section 403.'

Thus so far as the case before me is concerned, the view of the Madras High Court also cannot be availed of in support of a plea of the bar of trial.

9. It may also be significantly pointed out that conflict, if any, on the point must be deemed to have been set at rest by the pronouncement of the Privy Council in AIR 1949 PC 264. Before the Privy Council it was contended for the accused-appellant that the expression ''court of competent jurisdiction' in Sec. 403 (1) and 'Court..... not competent to try the offence' in Section 403 (4) refer to a Court competent to try the class of cases in which the particular offence falls, and do not involve that the Court must be competent to try the particular case. Their Lordsnips rejected this argument as quite untenable. It was observed that the whole basis of Section 403 (1) is that the first trial should have been before a Court competent to hear and determine the case and to record a verdict of conviction or acquittal. If the Court was not so competent it is irrelevant that it would have been competent to try other cases of the same class, or indeed the case against the particular accused in different circumstances, for example, if a sanction had been obtained.

This case fell under Section 403(1) and the terms of Section 403(4) do not call for discussion. In this case, it was further suggested that the failure to obtain sanction at the most prevented the valid institution of a prosecution, but did not affect the competency of the Court to hear and determine a prosecution which in fact was brought before it. Commenting on this contention, their Lordships stated that the suggested distinction between the validity of the prosecution and the competence of the Court pressed strenuously by Mr. Page, seemed to rest on no foundation. A Court cannot be competent to hear and determine a prosecution the institution of which is prohibited by law and Section 14 prohibits the institution of a prosecution in the absence of a proper sanction. Their Lordships also repelled the contention that apart from Section 403 the accused could plead a bar of trial on the common law rule.

10. It is true that before the Privy Council the case was of the prior prosecution being prohibited on account of lack of valid sanction ut the principle of the decision is applicable with equal force to a case of the present type where the prosecution in the earlier complaint was prohibited on account of the want of a complaint by a competent authority. The Privy Council view has also been followed in, (S) AIR 1957 SC 494.

11. From a review of the cases discussed above, it is clear that the expression 'competent Court' to try an offence should not be narrowly interpreted as to involve merely the consideration of the status or the character of the Court, but in determining the competence it must also be considered whether the Court though otherwise qualified to try the case, could not have done so because certain conditions precedent for the exercise of the jurisdiction had not been fulfilled.

In the present case, in the earlier criminal case No. 3 of 1962 there was no proper complaint before the Munsif Magistrate and he had no jurisdiction to take cognizance and try the case. Consequently, there could have been no proper proceedings and the order of acquittal was of no effect in the eyes of law. Consequently, the second prosecution of the respondent on a valid complaint of the Circle Inspector of Police is not barred on the principle enunciated in Section 403 and the Munsif Magistrate Pali acted illegally in treating the second trial as barred and acquitting the respondent. The acquittal of the respondent, in the circumstances, cannot be sustained.

12. The appeal is, therefore, accepted, acquittal of the respondent is set aside and the case is sent back to the Munsif Magistrate, Pali, for trial of the case on merits.