Taj Khan Vs. the State

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Court : Rajasthan

Decided On : Feb-25-1954

Reported in : AIR1956Raj37; 1956CriLJ269

Judge : Modi, J.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 4(1); Prevention of Corruption Act, 1947 - Sections 3; Indian Penal Code (IPC) - Sections 116 and 161

Appeal No. : Criminal Revn. No. 55 of 1954

Appellant : Taj Khan

Respondent : The State

Advocate for Def. : Kansingh, Deputy Govt. Adv.

Advocate for Pet/Ap. : Chhagansingh, Adv.

Disposition : Revision dismissed

Judgement :
ORDER

Modi, J.

1. This is an application in revision by the accused Taj Khan against an order of the Special Judge, Udaipur, by which he framed acharge against the petitioner under Section 161 read with Section 116. Penal Code.

2. The facts of the case out of which the revision arises may shortly be stated as follows. On 10-1-1952, it is alleged that the accused offered a bribe of Rs. 500/- to the Income-tax Officer, A Ward, Udaipur, with a view to gain his favour in an assessment case relating to the petitioner pending before the said officer. The latter, made a telephonic report to the Deputy Inspector General of Police, Udaipur, who caused an investigation to be made, and it appears that the accused was caught almost red-handed.

The accused was challaned in the court of the special Judge under Section 161 read with Section 116, I. P. C. The learned Judge after recording the evidence produced by the prosecution has framed a charge against him under the aforesaid sections. This revision has been preferred against that order.

3. It is contended before me that the entire proceedings before the learned Special Judge are illegal and deserve to be quashed. Learned counsel puts his case in this way. According to him, an offence under Section 161 read with Section 116, I. P. C. is non-cognizable, and, therefore, the police had no authority to investigate it and present a charge-sheet against the accused, and it is further argued that on the basis of such a charge-sheet', the learned Judge could not have legally framed a charge against the accused as he has done.

It is true that Section 161, Penal Code was originally a non-cognizable offence according to Schedule II thereof. By Section 3 of the Prevention of Corruption Act (No. II) of 1947, however, this offence has been made cognizable. This Act was made applicable to the State of Rajasthan by the Rajasthan Adaptation of Central Laws Ordinance, 1950 (Ordinance No. IV of 1930).

Section 3 has since then been further amended by the Prevention of Corruption (Second Amendment) Act (No. LIX of 1952); but as the offence in the present case is said to have been committed in 1950, the subsequent amendments must be left out of consideration for our present purposes.

Section 3 as it stood before it was amended was in these terms:

'An offence punishable under Section 161 or Section 165 of the Indian Penal Code, shall be deemed to be a cognizable offence for the purposes of the Code of Criminal Procedure (V of 1898), notwithstanding anything to the contrary contained therein:

Provided that a police officer below the rank of Deputy Superintendent of Police shall not investigate any such offence without the order of a Magistrate of the first class or make any arrest therefor without a warrant.'

It was at one stage conceded before me that section 161, I.P.C. was made a cognizable offence as a result of the Prevention of Corruption Act having come into force but it was argued that the Legislature had made no similar provision with repaid to Section 161 read with Section 116 and, therefore, an offence under the latter section still continued to be a non-cognizable one.

It was also argued, however, that even so far as Section 161 was concerned, it was a mistake to call it a cognizable offence, ordinarily so called, because according to the definition of a cognizable offence under Section 4 of the Criminal P. C., a cognizable offence is one in which a police officer may, in accordance with the Second Schedule or under any law for the time being in force, arrest without warrant.

And it was strenously contended that the proviso appended to Section 3 according to which before a police officer below the rank of Deputy Superintendent of Police could investigate any such offence, he must obtain the order of a Magistrate of theFirst Class and further that he could not make anyattest without a warrant indicated that it was not a cognizable offence within the meaning of Section 4(1) of the Code of Criminal Procedure.

Taking up the second argument first, I am of opinion that there is no substance in the contention advanced on behalf of the petitioner. A cognizable offence under the Criminal Procedure Code is one which a police officer may arrest without warrant in accordance With the Second Schedule or under any law for the time

being in force.

The words 'under any law for the time being in force' are wide enough to cover the provision m under the Prevention of Corruption Act. The fact that the power to investigate or to arrest without warrant has been circumscribed by certain conditions (which conditions were clearly provided for the purpose of safeguarding public servants from harassment at the hands of subordinate police officer) under the proviso to section 3 of the said Act cannot, in my opinion, lead to the conclusion that such offence is non-cognizable.

If that was not so, there would be no point in the Legislature enacting the provision made under Section 3 of the Prevention of Corruption Act and saying that an offence under Section 161, I. P. C. shall be deemed to be a cognizable offence for the purposes of the Code of Criminal Procedure (V of 1898) notwithstanding anything to the contrary contained therein. I, therefore, hold that an offence under Section 161 was undoubtedly made cognizable by the Prevention of Corruption Act, and the proviso to Section 3 thereof does not furnish any argument to the contrary.

4. The next question to consider is whether an offence under Section 161 as such having been made cognizable, an offence of abetment thereof under Section 116 still continued to be non-cognizable. The contention of learned counsel for the petitioner is that if the intention of the Legislature was that the offence of abetment should also be non-cognizable, there was nothing to prevent it from saying so.

This contention is also, in my judgment, without any merit. The reason clearly is that Schedule II of the Code of Criminal Procedure makes the offence of abetment under Section 116 cognizable or non-cognizable according to the main offence abetted. In other words, if the offence abetted is non-cognizable, its abetment will also be non-cognizable; but if. the offence abetted is cognizable, then the offence of abetment thereof will also be cognizable.

In this view of the matter I have no hesitation in coining to the conclusion that an offence under Section 161 read with Section 116 must be held to be a cognisable offence. It follows, therefore, that the police was perfectly competent to investigate

the case which was a cognizable one according to Section 3 of the Prevention of Corruption Act read with the entry relating to Section 116 in the Schedule II of the Code of Criminal Procedure. No authority to the contrary has been cited before me by learned counsel for the petitioner.

5. It may perhaps be added that the enactment of Section 465(A) in the Indian Penal Code (by the Criminal Law Amendment Act (No. XLVI) of 1952) and its inclusion in Section 3 of the Prevention of Corruption Act by the Prevention of Corruption (Second Amendment) Act (No. LIXj of 1952, indicates what was the real intention of the Legislature in this connection before the amendment. I may also point out that no contention whatsoever has been raised before me that there was a breach of any of the conditions laid down in the proviso to Section 3 of the Prevention of Corruption Act in the present case.

6. Learned Deputy Government Advocate furtther raised the contention that irrespective of the legality or the illegality of arrest, the learned Special Judge was properly seized of this case under Section 190, Cr. P. C. which under Clause (b) permitted cognizance being taken of any offence upon a report in writing of such facts made by any police officer.

It was argued that there was a report by the police in writing of the facts constituting the offence and that the learned Special Judge was authorized to take cognizance on that basis, and it was of no materiality at all whether the investigation or the arrest preceding it was irregular. I consider it unnecessary to decide this point, as I have already reached a clear conclusion that the offence in the present case was a cognizable one and that the police were within their authority to investigate and chargesheet the accused in respect of it.

7. I may also add that the finding of the learned Judge below that there was a prima facie case against the accused for a charge being framed against him was not challenged before me at all.

8. The result is that this revision fails and ishereby dismissed. Leave to appeal to the SupremeCourt is refused.