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Court : Rajasthan

Decided On : Apr-16-1961

Reported in : AIR1962Raj94

Judge : Sarjoo Prosad, C.J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 155(2), 173, 190(1), 200 and 529; Railways Act, 1890 - Sections 110

Appeal No. : Criminal Ref. No. 47 of 1961

Appellant : Triloki Nath Sinha

Respondent : State

Advocate for Def. : B.C. Chatterjee, Deputy Government Adv.

Disposition : Reference rejected

Judgement :

ORDER

Sarjoo Prosad, C.J.

1. This is a reference made by Shri Chander Singh Moratia, Sessions Judge of Ganganagar, for quashing an order of conviction under Section 110 of the Indian Railways Act, passed against the petitioner by the Railway Magistrate, First Class, Jodhpur, sentencing him to pay a fine of Rs. 20/- under the above section by his

judgment dated 16th July, 1960.

2. The relevant facts giving rise to the reference are that on 7th February, 1960s at Railway Station Binabad while the train from Hanumangarh to Sadulpur was passing on that route the petitioner, who was travelling in a First Class compartment of the train with certain fellow passengers, started smoking in the compartment. His fellow passengers protested against his smoking but the petitioner persisted in his conduct, asserting that he was a railway officer and threatened that he would get them charged for ticketless travelling. Shri Gauri Shanker, a police officer, made a complaint of the incident under Section 110 of the Indian Railways Act against the petitioner. On that complaint the Magistrate having taken cognizance of the offence proceeded to try and convict the petitioner as aforesaid. According to the case of the petitioner he pleaded that he stopped smoking when the fellow passengers raised objection. The learned Magistrate on the evidence of the prosecution witnesses accepted the case in the complaint that in spite of protest the petitioner continued to smoke and rejected his version to the contrary. Against this order the petitioner moved the learned Sessions Judge who has made this reference for quashing his conviction.

3. The order of reference is an unduly long order; but a perusal thereof shows that the recommendation for quashing the conviction is based mainly on two grounds. The first ground is that the offence under Section 110 of the Indian Railways Act was a non-cognizable offence; and therefore, the Magistrate was not competent to take cognizance on the complaint made by the police officer in respect of any such offence and the irregularity, if any, could not be cured by Section 537 of the Code of Criminal Procedure. The second ground taken by the learned Sessions Judge is that Section 110 of the Railways Act did not apply to railway employees. It applied only to railway passengers. Having examined the matter carefully I am of opinion that none of, the two grounds given by the learned Session's Judge can be sustained.

4. Section 190 of the Code of Criminal Procedure provides that a competent Magistrate can take cognizance of any offence-

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a report in writing of such facts made by any police officer;

(c) upon information received from any person other than a police officer, or upon his own knowledge or suspicion that such offence has been committed.

In this case there was a report made by the Station House Officer who was a police officer about the commission of a non-cognizable offence. The Magistrate treated it as a complaint and took cognizance of the offence on the basis of that report. In the case of a complaint of course the Magistrate is required to examine the complainant on oath under Section 200 of the Code. There is, however, a proviso to Section 200 which says that:

'When the complaint is made in writing nothing herein contained shall be deemed to require the examination of a complainant in any case in which the complaint has been made by a Court or by a public servant acting or purporting to act in the discharge of his official duties.'

Even if it is held to be doubtful whether in this case the Station House Officer was acting in the discharge of his official duties in presenting the report in writing which may amount to a complaint, yet the omission to examine the officer can be at best regarded as an irregularity; and if the Magistrate has proceeded to take cognizance and to try the accused, the conviction cannot be set aside merely because of this irregularity. Section 529 of the Code provides that if the Magistrate was competent to take cognizance of the offence and to try the accused then merely because the cognizance was not in accordance with Section 190, Sub-section (1), Clause (a) or Clause (b) it will not vitiate the proceedings and the proceedings shall not be set aside merely on the ground of that irregularity. In this case there is no reason to assume that the report submitted by the Station House Officer disclosing a non-cognizable offence could not constitute a report in writing made by a police officer within the meaning of Section 190 of the Code of Criminal Procedure so as to entitle the Magistrate to take cognizance of the offence disclosed in the report.

It may be that Section 173 of the Code refers to a report on investigation by a police officer in connection with a cognizable offence and that under Section 155

(2) no police officer is competent to investigate a non-cognizable case without the order of a Magistrate of the First or Second Class having power to try such case. But these sections, in my opinion, do not prevent the Magistrate from taking cognizance of an offence on a report submitted by a police officer even in the case of a non-cognizable offence. These sections merely prevent the police officer from investigating without lawful authority from the Magistrate in the case of a non-cognizable offence; but Section 190 (1) (b) is not necessarily controlled by these provisions. The report in writing by a police officer under this provision may refer to a report both with reference to a cognizable as also a non-cognizable offence and in fact to any other offence which may be also non-cognizable and in respect of which the law requires a report to be submitted by a police officer. The point appears to be well settled by a long course of decisions and should now be held to fall beyond the pale of controversy. In *Abdul Ali v. Emperor* AIR 1920 Pat 700, *Jwala Prasad J.*, an eminent Judge of that Court observed that :

'The report of the police is not restricted merely to reports under Chapter 14 of the Code upon information lodged to the police but embraces all reports by the police submitted under Section 24, Police Act.'

An application, therefore, by a police officer to a Magistrate for taking action in respect of any offence against a person amounts to a police report and the Magistrate would be competent to take cognizance of that offence on the report in question within the meaning of Clause (b), Sub-section (1) of Section 190 of the Code. The failure to examine the police officer in such a case, even if it did amount to an irregularity, was curable and would not vitiate the proceedings. A Full Bench decision of the Madras High Court is also to the same effect (see *Public Prosecutor v. Ratnavelu Chetty*, AIR 1926 Mad 865). In that Court there appears to have been some difference of opinion on the point, but on reference to the Full Bench it was held that the report of a police officer mentioned in Section 190 (1) (b) is not confined to a report of a cognizable offence. It includes even the police report in a non-cognizable case and the examination of the police officer in such a case is not necessary. Similar views have been expressed in certain other decisions of various other Courts, see for instance *Bholanath Das v. Emperor*, AIR 1924 Cal 614, *Rustom Ardeshir Banaji v. Emperor*, AIR 1948 Bom 163 and *Biroo*

v. State, AIR 1960 All 509.

In the Bombay case the judgment was delivered by Gajendragadkar J. as he then was and although the case referred to a non-cognizable offence, yet the Magistrate proceeded to take cognizance thereof on a charge sheet submitted by the Police. His Lordship observed that even if the petitioner had been right in contending that the investigation of such an offence and the arrest of the petitioner were illegal, it would not have followed that the Magistrate had no jurisdiction to try the case. His Lordship further observed that even if the case did not fall under Section 190 (1) (b), still it could be held that it fell under Section 190 (1) (a) and would not affect the jurisdiction of the Magistrate to try the case and to take cognizance of the offence. It is not necessary to multiply authorities. I am, therefore, definitely of opinion that the Magistrate was competent to take cognizance of the offence under Section 110 of the Railways Act, even though it was a non-cognizable offence on the police report submitted by the Station House Officer, Hanumangarh.

5. The other point which relates to the interpretation of Section 110 of the Railways Act, in my opinion, is equally untenable. Section 110 of the Railways Act is in general terms and it applies to all persons. On the face of it does not make any distinction between one passenger or another and a railway officer may be as much a passenger in the compartment as any other passenger. The words used in that section are that if 'a person' without the consent of his fellow passengers in the same compartment smokes except in a compartment specially provided for the purpose, he shall be punishable with fine. I see no reason why any distinction should be made in the application of this section to an offence committed by a railway servant. He comes equally within the definition of the word 'person' and the use of the words 'fellow passengers' does not make any difference because a railway servant is a passenger in the compartment if he happens to be travelling therein. Some artificial distinction is sought to be made on the ground that certain sections of the Act apply to railway servants in particular.

This, however, does not suggest that the other sections of the Act do not apply to them; and the matter, in any case, appears to be concluded by the decision given

by my brother Bhargava in Durga Prasad v. State, Criminal Ref. No. 90 of 1960, D/-22-2-1961 : AIR 1962 Raj 92) with which I entirely agree. Bhargava J. there pointed out, after discussing a number of rulings on the point, that the word 'person' used in Section 120 was of wide in-port and there was no reason why a restricted meaning should be given to it so as to exclude railway servants from its purview. The word should be given its plain meaning unless it leads to absurdity or is susceptible of another meaning in the Context. He therefore, observed that even if it may be that the provisions of Section 120 to some extent overlap the provisions of Section 100 and that Sections 99 to 105 dealt with offences by railway servants alone, it could not be said that the offences mentioned in Sections 106 to 120 of the Act would not relate to railway servants also. These offences can be committed by other passengers just as much as by railway servants who would be equally punishable under those provisions. Both the grounds in my opinion, therefore, are without any substance and the reference must be rejected and the conviction upheld.

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