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Court : Rajasthan

Decided On : Jul-28-1965

Reported in : 1966CriLJ576

Judge : I.N. Modi and; V.P. Tyagi, JJ.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 195; Indian Penal Code (IPC) - Sections 182

Appeal No. : Criminal Appeal No. 193 of 1963

Appellant : The State

Respondent : Roopa

Advocate for Def. : B.D. Sharma, Adv.

Advocate for Pet/Ap. : B.C. Chatterji, Deputy Govt. Adv.

Disposition : Appeal allowed

Judgement :

Modi, J.

1. This is a reference by one of us sitting singly and raises an interesting question of law relating to the interpretation of Section 195 of the Code of Criminal Procedure. It arises in this way.

On the 6th of April, 1960, the accused respondent Roopa sent a complaint by post to the Deputy Inspector General of Police, Jodhpur, alleging that in connection with the marriages of his daughters, which were held on the 3rd of March, 1960, the Sub-Inspector of Police, Sojat accompanied by a number of constables had come to his house at the instance of the Sarpanch of the village Panchayat and announced that no one should partake of the feast arranged by Roopa as it was being held in connection with certain deaths which had taken place in his family. It was further alleged that as a result of what the Sub-Inspector had done all his guests had to go without food on that night for a long time until he had agreed to pay a sum of Rs. 600/- to the Sarpanch, the suggestion obviously was that this money had been shared between the Sarpanch and the Sub-Inspector of Police. A copy of this complaint was also forwarded by Roopa to the Collector or District Magistrate, Pali. There is nothing on the record to show that the Deputy Inspector General of Police took any action on this complaint.

But the District Magistrate had an enquiry made by the Sub-Divisional Magistrate and the latter eventually reported that the complaint made by Roopa was palpably false and unfounded. Thereupon, the District Magistrate filed a complaint against the accused in the Court of the Sub-Divisional Magistrate, Pali, under Section 182 of the Penal Code on the 11th of November, 1961. This was transferred for trial to the Court of Munsiff-Magistrate, Pali. On the 28th of September, 1962, an objection was raised on behalf of the accused before the trial Magistrate that the complaint made against him at the instance of the District Magistrate was not maintainable as the latter had no concern with the complaint primarily made by the accused to the Deputy Inspector General of Police. This objection prevailed with the trial Magistrate and, consequently, he acquitted the accused by an order dated the 5th of November, 1962. Against that order the State has come up in appeal to this Court which was, in the first instance, laid before a single Judge who, in view of the importance of the question involved has referred it to a larger Bench. This is how this case has come before us for disposal.

2. The question which thus arises for our determination is whether the complaint filed by the District Magistrate against the accused for his prosecution under Section 182 Indian Penal Code was made by a person who had authority to do so

according to law. The answer to this question is governed by Section 195 of the Code of Criminal Procedure. That section, omitting its immaterial part, reads as follows:--

'195. (1) No Court shall take cognizance--(a) of any offence punishable under Sections 172 to 188 of the Indian Penal Code, except on the complaint in writing of the public servant concerned, or of some other public servant to whom he is subordinate.'

This section is obviously an exception to the general rule that a private individual is free to set the criminal law in motion against any other person by whose action he may feel aggrieved and which act amounts to an offence in law, and the underlying object of the section is to give protection to parties and witnesses when resorting to the machinery of the police or the Courts in their endeavour to seek redress and to place a ban on reckless prosecutions by private individuals for the class of offences contemplated under Section 195.

It is also well settled that where a complaint is made, with respect to any of the offences with which Section 195 is concerned, by a person, who is not authorised thereunder to do so, then the Court can have no jurisdiction to try and convict an accused who is sought to be prosecuted under any one of these sections, and such prosecution or conviction would amount to a nullity in law. It is against this background that the question of the competency of the District Magistrate to make the complaint, with which we are concerned in this case, falls to be determined. The key words of the sub-section are 'except on the complaint in writing of the public servant concerned.' First, what then is the meaning of the phrase, 'the public servant concerned ?' The accepted meaning is that the public servant concerned is the one to whom the complaint is made and not the person complained against. The public servant concerned here, therefore, would be the Deputy Inspector General of Police to whom the complaint was primarily addressed; but, a copy of this complaint was forwarded by the accused to the District Magistrate as well.

It has been hotly debated before us on behalf of the accused that the District Magistrate would not fall within this phrase simply because a copy had been

forwarded to him. This submission was based on the reasoning that the District Magistrate was not concerned with the complaint made against the Sub-Inspector of Police, the latter being subordinate to the Superintendent of Police, the Deputy Inspector General of Police and the Inspector General of Police in the hierarchy of the police administration.

3. The first case to which our attention was invited by learned counsel for the accused is Ramasory Lall v. Queen Empress, ILR 27 Cal 452. The facts in this case were these. The accused gave certain information to the Police, who after investigating the matter reported that the information given was false and that that constituted an offence under Section 182 of the Penal Code. The District Magistrate sanctioned the prosecution of the accused, who was eventually convicted and sentenced under that section. The accused appealed but without success. A revision was then taken to the High Court and it was contended that the prosecution was bad because the District Magistrate was not competent to give the sanction. It was held that although police officers in a district were generally subordinate to the District Magistrate, the subordination contemplated by section 195 of the Code of Criminal Procedure was not such subordination, and that the subordination contemplated some superior officer of police.

4. This case was followed by a learned single Judge of the Lahore High Court in Khazan Singh v. Kirpa Singh, AIR 1923 Lah 341, and it was held that the District Magistrate had no power to grant sanction to prosecute the accused under Section 195 Criminal Procedure Code in that case.

5. The only other case to which we were referred by learned counsel for the accused is Pasupati Banerji v. The King, AIR 1950 Cal 97. In this case, the accused wrote a letter to the chairman of a municipality objecting to the inclusion of the name of one S in the preliminary electoral roll on certain grounds. He sent a copy of this letter to the Sub-Divisional Officer. The Sub-Divisional Officer made an enquiry into the matter and found that the allegations made against S were false. Thereupon he filed a complaint against the accused alleging that he had committed an offence punishable under section 182 of the Penal Code. It was held that the Sub-Divisional Officer was being asked to do something which did not

constitute an act to be done in the exercise of his duties as a public servant, and, therefore, so far as the sending of the letter to the Sub-Divisional Officer was concerned, no offence under Section 182. Penal Code had been committed and consequently he had no right to file the complaint.

6. Our attention was also drawn in this connection to the language of Section 182 of the Penal Code which, inter alia, requires as an essential ingredient thereof that the allegedly false information must have been given with the intention to cause, or knowing it to be likely that it will cause, a public servant in the exercise of his duties as such (a) to do or omit anything which he ought not to do if the true facts were known to him or (b) to use his lawful power to the injury or annoyance of any person.

7. Basing his argument on this particular requirement, learned counsel for the accused strongly contended that the District Magistrate had no power or authority to take any lawful action against the police officer concerned or to use his lawful power to the latter's detriment.

8. We have carefully considered the submissions of learned counsel and the cases on which he places his reliance, and have come to the conclusion that they are without merit.

9. The principal reason which has persuaded us to come to this conclusion is that the District Magistrate cannot be accepted to be a public servant who is unconcerned with the administration of the police in his district. The position seems to us to be positively the other way about. We would refer in this connection to Section 4 of the Police Act, 1861 (Act V of 1861), which was made applicable to the State of Rajasthan by the Rajasthan Adaptation of Central Laws Ordinance, 1950 (Ordinance IV of 1950), which, inter alia, clearly provides that the administration of the police throughout the local jurisdiction of the Magistrate of the district shall, under the general control and direction of such Magistrate, be vested in a District Superintendent and such Assistant Superintendents as the State Government shall consider necessary.

The phrase 'Magistrate of the district' has been defined in Section 1 of the Act as the chief officer charged with the executive administration of a district and exercising the powers of a Magistrate, by whatever designation the chief officer charged with such executive administration is styled. The position, therefore, is incontestable that although the administration of the police within a district is directly vested under the Police Act in a District Superintendent of Police and such Assistant Superintendents as the State Government may appoint therein, yet the District Magistrate, as the chief officer of the district being charged with the executive administration thereof, is empowered by the same statute to exercise general control and direction over the entire police administration in his district.

In this state of relationship between the police administration in a district and the chief Magistrate thereof, we are unable to accept the position contended for by learned counsel for the accused that the District Magistrate was not concerned with the complaint that was made against the Sub-Inspector in this case, or that he was a person who was powerless to act to the detriment or annoyance of that officer within the meaning of Section 182 of the Indian Penal Code. Nor are we impressed by the argument that the accused had addressed his complaint to the Deputy Inspector General of Police for taking action against the Sub-Inspector and had merely forwarded a copy thereof to the District Magistrate, and, therefore, did not intend or contemplate the latter to take any action in the matter complained of. In the first place, we do not see why the accused should have taken the trouble of forwarding his complaint to the District Magistrate if he thought that he was an entirely unconcerned person and his assistance was not being sought to redress the wrong which had been caused to him. In the second place, as we have pointed out above, the District Magistrate by statute, as the chief executive Magistrate in his district, is vested with the general or supervisory control and direction of affairs relating to the police administration in his district.

10. We pause here for a moment to point out that the case decided in AIR 1950 Cal 97, is entirely distinguishable inasmuch as there the complaint which was made to the chairman of a municipality by the accused was forwarded by him to the Sub-Divisional Officer who had no powers whatever relating to the matters of election of the municipality and, therefore, the complaint filed by that officer was

held to be incompetent and, if we may respectfully say so, rightly.

11. As we have analysed the position of the District Magistrate in relation to the administration of police in his district, he is vitally concerned with the state of such administration though his authority is of a general and supervisory character. In this view of the matter, we are disposed to hold that the District Magistrate in the present case is amply covered by the phrase 'on the complaint in writing of the public servant concerned', and that being so, the trial Magistrate, in our opinion, was wrong in throwing out the complaint on the ground that it had been made by a person who had no competence in law to do so.

12. The view taken by us has received support in the following cases. The first case to which we should like to refer is a Bench decision of the Punjab Chief Court in Shibbu v. Emperor, 11 Cri LJ 252 (Lah), wherein it was held that the District Magistrate was competent to sanction prosecution for a false complaint to a police officer because he was invested with general control over, and direction of, the police administration in his district. This case relied on two earlier decisions to the same effect in Crown v. Boodh Singh, 47 Pun Re 1867 (Cr) and Crown v. Boodh Singh, 9 Pun Re 1868 (Cr). A reference was also made in this case to the decision of the Calcutta High Court in Ramasory Lall v. Queen Empress (Supra), but it was not followed and it was further observed that the view taken therein had not been adopted in a later decision of that Court in Emperor v. Sarada Prosad Chatterjee, ILR 32 Cal 180. We should like to point out here that no reference to these decisions was made in AIR 1923 Lah 341 (supra). It seems to us with all respect that these (Punjab) decisions had greater binding authority on the learned single Judge of the Lahore High Court who decided Khazan Singh's case, AIR 1923 Lah 341 (supra) than the Calcutta case in ILR 27 Cal 452 (supra).

13. The next case to which we would refer is Chhotay Lal v. Chhedi Lal, AIR 1923 All 149. The question canvassed in that case was whether the Superintendent of Police of the District of Etawah was or was not subordinate to the District Magistrate of Etawah within the meaning of Section 195 of the Code of Criminal Procedure. It was held that he was. Reference was also made in this case to the decision of the Calcutta High Court in ILR 27 Cal 452 (supra), but it was observed

that the learned Judges of the Calcutta High Court seemed to have changed their view of the matter in ILR 32 Cal 180 (supra). The decision of the Allahabad High Court in State v. Reva Chand, AIR 1961 All 352, appears to us to be to the same effect. It has been held in this case that the District Magistrate is the head of the criminal administration of the district, and if in that capacity makes a complaint in respect of. a false information relating to a police officer within his district he is competent to file a complaint under Section 195 of the Code of Criminal Procedure for an offence under Section 182 of the Penal Code.

14. With respect, we agree with the line of decision adopted in these last mentioned cases in preference to that adopted in ILR 27 Cal 452 and AIR 1923 Lah 341 (supra). The correct position in law, therefore, is that where a District Magistrate receives a complaint against a police officer in his district, it is open to him as the authority in general and supervisory charge of the affairs of police administration in his district to have an enquiry made into the matter and if he is satisfied, as a result of such enquiry, that the complaint made against such police officer is false and unfounded, then he would be perfectly competent to file a complaint against the person responsible for the false complaint under Section 182 of the Penal Code as 'the public servant concerned' within the meaning of Section 195 of the Code of Criminal Procedure. We hold accordingly. Our conclusion, therefore, is that the District Magistrate in the present case was quite competent to make the complaint under Section 182 of the Penal Code against the accused in respect of the allegedly false information given by the latter. It must follow that the order of acquittal passed in favour of the accused on the ground of the incompetency of the complaint cannot be sustained, and we hereby quash it.

15. The result is that we allow this appeal, set aside the order of the trial Magistrate and send the case back to him for a trial on merits in accordance with law.