

State Vs. Bala Prasad

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Court : Rajasthan

Decided On : Jan-22-1952

Reported in : AIR1952Raj142

Judge : Wanchoo, C.J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 182 and 211; [Code of Criminal Procedure \(CrPC\), 1898](#) - Sections 195 and 195(1)

Appeal No. : Criminal Ref. No. 331 of 1951

Appellant : State

Respondent : Bala Prasad

Advocate for Pet/Ap. : Laxmi Narain, Dy. A.G.

Disposition : Reference rejected

Judgement :

ORDER

1. This is a reference by the District Magistrate of Bikaner in a case in which one Bala Prasad was prosecuted under Section 182 of the Indian Penal Code.

2. The facts of the case may be briefly narrated. Bala Prasad sent an application to the Deputy Inspector General of Police, Bikaner, in April 1950, in which he said that certain persons had murdered an old woman for her money and had thrown

her body in a tank and had spread a false rumour that she had left the village. He also said that the body had come afloat on the tank after three days and was quickly cremated and no information was given to the Police about it. The Dy. Inspector General of Police forwarded this application to the Sub-Inspector of Police, Gersar, who investigated the matter and came to the conclusion that the information given by Bala Prasad was false and was given with the intention of putting the persons named in the application to harassment. Thereupon, a complaint under Section 182, Indian Penal Code was filed against Bala Prasad in the Court of Sub-Divisional Magistrate (North) Bikaner. That Magistrate acquitted the accused and thereupon there was a revision before the District Magistrate who has made this reference with the recommendation that the order of acquittal should be set aside.

3. The Magistrate had acquitted the accused on two grounds. The first was that the facts disclosed a case under Section 211 of the Indian Penal Code and not under Section 182. The second was that the complaint should have been made by the Dy. Inspector General of Police and not by the Superintendent of Police. The District Magistrate has disagreed with the conclusion of the Magistrate concerned on both these points. I propose to examine these two points one by one.

4. The question whether an information of this nature falls under Section 211 or under Section 182, Indian Penal Code has been the subject of debate in various High Courts and the view is not unanimous. The Bombay High Court had held that criminal law makes a clear distinction between a false charge which comes under Section 211 and false information given to the police, which comes under Section 182. The distinction has been drawn in this manner: 'If the information conveyed to the police amounts to the false institution of criminal proceedings against a defined person or amounts to the falsely charging of a defined person with an offence, then the person giving such information is guilty of an offence under Section 211. In such a case Section 182 is not the appropriate section under which to frame a charge. Section 182, when read with -S. 211, must be understood as referring to cases where the information given to the public servant falls short of amounting to an institution of criminal proceedings against a defined person and falls short of amounting to the falsely charging of defined person with

an offence.' Reference may be made to the case of 'APAYA TATOBA V. EMPEROR', 14 Cri L J 491 (Bom) in support of this view.

5. But the Allahabad, Calcutta and Madras High Courts have taken a different view. The Calcutta High Court has held that a prosecution for a false charge may lie under Section 182 or Section 211, but if the false charge is a serious one, the graver S 211 should be applied vide 'EMPEROR V. SARODA PROSAD'. 32 Cal 180. The Madras High Court has also held that there is no error in a conviction under Section 182, when the false charge made before the police is punishable under Section 211 vide 'HIGH COURT PROCEEDINGS', 23rd April, 1872; 7 Mad HCR App 5. The view of the Allahabad High Court was expressed by Edge, C. J. in 'QUEEN EMPRESS v. RAGHU TIWARI', 15 All 336 in the following words:

'Although it is difficult to see what case could arise under Section 211 to which Section 182 could not be applied yet Section 182 would apply to a case which might not fall under Section 211. The offence under Section 182 is complete when false information is given to a public servant by a person who believes it to be false, but who intends thereby to cause such public servant to institute criminal proceedings against a third person. The offence is complete although, the public servant takes no step towards the institution of such criminal proceedings...it is in such a case not at all necessary that the public servant should take any step whatever, on the false information before instituting ' and prosecuting to a conclusion a charge under Section 182 against the person who had given such false information..... Incases to which Section 211 especially applies and in which a criminal proceeding has been instituted, a Court should.....as a rule proceed to determine such criminal proceeding instituted in it and should give the person instituting such proceeding, a reasonable opportunity of supporting his case before proceeding against him for an offence under Section 211..... It appears to us that it has been left to the discretion of the Court to determine when and under what circumstances prosecutions should be proceeded with under Sections 182 and 211.'

6. I am of opinion that the view taken by the Allahabad, Calcutta and Madras High Courts is if I may say so with all respect, sound, -- and there is no reason why, if a

case comes both under Sections 211 and 182 of the Indian Penal Code, it may not be open to the authority concerned to proceed either under one section or the other. The view, therefore, of the Magistrate, that the facts of this case make out a case under Section 211 and, therefore, there could have been no prosecution under Section 182, is not correct. It may be that on the facts, a case of falsely charging the persons named in the application for murder might be made out and Bala Prasad might have been prosecuted under Section 211 of the Indian Penal Code. But these very facts also make out a case of giving false information to a public servant with in-tent to use the lawful power of such person to the injury or annoyance of any person. The Magistrate was, therefore, not right in acquitting Bala Prasad on the ground that he should have been prosecuted under Section 211, and not under Section 182 of the Indian Penal Code.

7. Then I come to the second point, namely, whether the complaint in this case should have been made by the Dy. Inspector General of Police, or whether it was enough that the Sub-Inspector of Police, who had investigated the case on receiving the application from the Dy. I.G.P., should have made the complaint. This depends upon the interpretation of Section 195(1)(a) of the Code of Criminal Procedure, which reads as follows:

'No Court shall take cognizance 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.'

8. The main question in such cases is as to who is the public servant concerned. The prosecution under Section 182 of the Indian Penal Code is for giving false information to a public servant with particular intent. Therefore, the 'public servant concerned' meant in Section 195 (1) (a), Criminal P. C. can only be the public servant to whom the false information is given. In the present case, false information was given to the Dy. Inspector General of Police, and he is, therefore, the 'public servant concerned' within the meaning of Section 195 (1) (a) of the Code of Criminal Procedure. The fact that he sent the application to the Station Officer of a particular Police station for investigation would not make the station Officer the public servant concerned to whom information was given. The

complaint therefore, had to be filed either by the Dy. Inspector General of Police, Bikaner, or by some other public servant to whom the Dy. Inspector General of Police is subordinate. I cannot, therefore, agree with the District Magistrate that the complaint in this case could have been filed by the Station Officer of Police Station, Gersar, to whom the application had been sent by the Dy. Inspector General of Police for enquiry.

9. I may refer to certain cases in support of the view that I have taken. It has been held that a complaint under Section 182 has to be filed by the public servant to whom the false information was given, vide 'OYYAPPA KONE v. CHIDAMBARAM CHETTIAR', AIR 1941 Mad 764 & 'RAM RAKHA v. EMPEROR', AIR 1937 Lah 624. Another case to which reference may be made is 'BACHALAL v. EMPEROR', AIR 1936 Pat 56. In that case, a complaint had been made before a Magistrate who sent it for enquiry to a Sub-Inspector of Police. The complaint was found to be false on enquiry by the Police and thereupon the Magistrate directed the Sub-Inspector to make a complaint under Section 182 and Section 211 of the Indian Penal Code. It was held that the proper authority to file a complaint under Section 182 was the Magistrate himself to whom the alleged false complaint had been made.

10. In 'SUDARSAN BARHAMBHAT v. EMPEROR', AIR 1947 Pat 64, a first information report of robbery was lodged by the accused a railway employee, before a Sub-Inspector of Railway Police, who, after recording the statement, sent the report for investigation to the proper Police-station. The investigation was made by the Assistant Sub-Inspector of Police, who as a result of that investigation, applied for prosecution of the accused under Section 182 and Section 211 of the Indian Penal Code. It was then held by the High Court that if the report of the Assistant Sub-Inspector was regarded as a complaint, it was the complaint of somebody who was neither the person to whom the information was given nor of the person to whom he was subordinate.

11. It is thus obvious that a complaint under Section 182 of the Penal Code has to be made either by the public servant to whom information has been given, or by some other public servant to whom he is subordinate. The public servant

concerned under Section 195(1)(a) of the Criminal P. C. is the public servant to whom the information is given. In this case, it was the Deputy Inspector General of Police and. therefore, the complaint should have been made by the Dy. I.G.P., Bikaner, or some officer to whom he was subordinate.

12. In this view of the matter, the reference must be rejected. It will, however, be open to the Dy. Inspector General of Police, if he considers that the case is of sufficient importance to warrant a trial, to make a complaint, if he so desires. With these remarks, I reject the reference and order the return of the record.

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