

Pukhraj Vs. Sheshmal

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Court : Rajasthan

Decided On : Aug-23-1960

Reported in : AIR1961Raj231; 1961CriLJ691

Judge : L.N. Chhangani, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 173, 195 and 476;
Indian Penal Code (IPC) - Sections 211

Appeal No. : Criminal Ref. No. 67 of 1959

Appellant : Pukhraj

Respondent : Sheshmal

Advocate for Def. : Madhusudan Narain, Adv. for; Pukhraj, Adv.

Advocate for Pet/Ap. : Raj Narain, Asst. Govt. Adv.

Disposition : Reference rejected

Judgement :

ORDER

L.N. Chhangani, J.

1. The Additional District Magistrate, Jodhpur has made this reference with a recommendation that the offence under Section 211 I. P. C. for which Parasmal is

being prosecuted having been committed in relation to proceedings before a Court, the prosecution of Parasmal on the private complaint of Sesmal is not competent and desires this Court to issue necessary orders, which obviously implies the quashing of the proceedings for prosecution.

2. The facts briefly stated are that Parasmal lodged information with the police accusing the present complainant Sesmal of art offence of theft i. e. under Section 379 I. P. C. in respect of a truck. The complainant was arrested and the truck was recovered from him. The accused applied to a Magistrate for enlarging him on bail and handing over the truck to him. The accused was released on bail and the truck was handed over to one Badri-narain with the direction to maintain it in a proper condition. After investigation the Police found Parasmal's information false and submitted a final report which was accepted by the Magistrate and the truck was returned to the present complainant Sesmal. After the disposal of Parasmal's information in this manner, the complainant Sesmal filed a complaint against Parasmal and Pukhraj under sections 211/500 IPC in the Court of the Second Class Magistrate, Bilara.

The Magistrate after summoning and perusing the old file registered a case on 25-1-58 under Section 500 I. P. C. against both Pukhraj and Parasmal and under Section 211 I. P. C. against Parasmal. Parasmal and Pukhraj filed a petition in revision before the Additional District Magistrate against the order of the First Class Magistrate dated 25-1-53 registering the case against them and contended that the Magistrate could not take cognizance in the absence of a complaint by the Court as the offence was committed in relation to proceedings in the Court. The Additional District Magistrate purports to hold that the acceptance of the final report by the Magistrate and proceedings taken by the Magistrate in connection with the delivery of property were all judicial proceedings and consequently offence of Pukhraj must be deemed to have been committed in relation to the proceedings before the court and, therefore, his prosecution was barred except on the complaint by the Court.

It was also contended before the Additional District Magistrate that the Magistrate who accepted the police report having issued a notice under Section 476 Cr. P. C.

to the complainant Parasmal to show cause why he should not be prosecuted and having subsequently vacated it, the present proceedings in prosecution are barred. The Additional District Magistrate however did not accept this contention. In this view of the matter, the Additional District Magistrate has made the present reference.

3. I have heard Mr. Madhusudan Narain for the accused petitioner Pukhraj and Mr. Raj Narain for the State.

4. The main question of law arising in the case on which a serious controversy was joined may be stated as follows:

'When a report is made to the police charging any other person with the commission of an offence and the police after investigation finds that the report is false and gets the case cancelled under the provisions of Section 173 Cr. P. C., is the order of the Magistrate accepting Police report sufficient to bring the offence in respect of false charge or false information to the police under sections 211 and 182 IPC within the categories of offences committed in relation to proceedings in a Court?'

On this question there is a good deal of judicial conflict. One view is that the Magistrate passing an order on a final report of the police under Section 173 Cr. P. C. referring the cases should be deemed to be a court passing a judicial order disposing of the information given to the police and that in such a case the complaint of the Magistrate is necessary for the prosecution of the informant under Section 211 or 182 of the Indian Penal Code.

This view has been taken consistently by the Bombay High Court and in *Chuhermal Nihalmal v. Emperor*, AIR 1929 Sind 132 and earlier Lahore decisions including *Ghulam Rasul v. Emperor*, AIR 1936 Lah 238. The other view is that a Magistrate accepting police report does not take judicial notice of the proceedings nor are the proceedings judicial at all. The Madras High Court, the Full Bench of the Lahore High Court in *Emperor v. Hayat Fateh Din*, AIR 1948 Lah 184 and the Nagpur High Court in *Emperor v. Birdhichand Chunnilal*, AIR 1948 Nag 244 have taken this view.

5. Examining the first view it is unnecessary to discuss at some length the Sind and the Lahore cases. In the Sind case, AIR 1929 Sind 132 the accused who was being prosecuted for an offence under Section 211, I. P. C. had made a false accusation at the same time in two documents, one a petition addressed to the Assistant Superintendent of Police and the other a complaint posted to a criminal Court. Roopchand A. J, C. observed in the first instance that

'where a person is put on his trial under Section 211, I. P. C. in respect of an alleged false accusation by him against another it is a question of fact to be decided in the particular circumstances of that case whether that person made such false accusation in contemplation of proceedings which he intended to take in a Court or not.'

Then referring to the facts he observed that 'it may be fairly presumed that he did so with the object of moving the criminal Court to take proceedings. The facts of that case are clearly distinguishable. The Lahore cases, AIR 1936 Lah 238 and AIR 1948 Lah 184 were considered in a subsequent Full Bench case in AIR 1948 Lah 184 and were not followed and a contrary view was adopted. Taking up the Bombay cases the important case in this connection is J. D. Boywalla v. Sorab Rustomji Engineer, AIR 1941 Bom 294. Before the Bombay High Court it was contended that the order made by the learned Magistrate extending bail and subsequently discharging the accused and cancelling his bail bond was an administrative order and not a judicial order since the Magistrate never considered the merits of the case. The eminent Judge Beaumont, C. J. in repelling the contention observed as follows :

'I am quite unable to accept that argument. Indeed, it is a novelty to me to hear it suggested that there is any authority which can make an administrative order discharging an arrested person from Judicial custody.'

The learned Judge after referring to the two alternative courses which may be adopted by the Magistrate:

(1) refusing to accept police report and directing inquiry;

(2) accepting the report and discharging the accused;

observed that in either cases the Magistrate is taking the cognizance of the case. He cannot discharge the accused or direct a further investigation unless he first takes cognizance. This view has been subsequently followed in the later Bombay cases and by the former Saurashtra High Court.

6. With all respect for the eminent Judge, I find it difficult to subscribe to his view. A consideration of the relevant provisions of the Criminal Procedure Code and an examination of cases leads to a conclusion that it will not be proper to hold that a Magistrate receiving a report from the police (that no offence was committed) acts as a Court while merely receiving it and accepting it. It is also not correct to hold that a Magistrate takes cognizance of an offence while accepting the police report. In AIR 1948 Lah 184 decided by a Full Bench, Tejasing, J. examined this question at some length, The learned Judge observed

'Section 173 Cri. P. C, forms part of Chapter XIV the heading of which is 'information to the police and their powers to investigate.' Most of the sections of this chapter deal only with this subject. There are some sections which lay down certain duties of the Magistrate but they too are in connection with the investigation and are confined to the stage before the case is put in court.' He pointed out that an initial report by the police under Section 157, Cri. P. C., can be disposed of by the Magistrate by means of an administrative order directing investigation or he may take cognizance and dispose of the case. In the latter case only the proceedings will be judicial. Similarly, with regard to the final report under Section 173, Cri. P. C. acceptance of it will be a mere administrative order whereas the non-acceptance of the report and taking cognizance of an offence will give rise to judicial proceedings. The learned Judge concludes that a Magistrate can be regarded (to act judicially only if he takes cognizance of an offence under Section 190 Cri, P. C. and not until he does so. Agreeing with the above view I hold that the Criminal Procedure Code contemplates some actions by the Magistrate in connection with the investigation and that those actions are of administrative nature and do not result in proceedings before courts.

It is also obvious that acceptance of the police report or taking cognizance of an offence under Section 190 Cri. P. C. are two inconsistent alternative courses which may be adopted by the Magistrate and it will be self-contradictory to say that the Magistrate accepting the police report and omitting to proceed under Section 190 Cri. P. C. takes cognizance of the case. Beaumont C. J.'s above opinion relating to the cognizance of the offence cannot be accepted in view of the observations of the Supreme Court in *R. R. Chari v. State of Uttar Pradesh*, AIR 1951 SC 207. The Supreme Court after examining cases on the proper connotation of the expression 'taking cognizance' approved the following observations of Das Gupta, J. in *Supdt. and Remembrancer of Legal Affairs, W. B. v. Alani Kumar*, AIR 1950 Cal 437:

'What is 'taking cognizance' has not been defined in the Cri. P. C. and I have no desire to attempt to define it. It seems to me clear however that before it can be said that any Magistrate has taken cognizance of any offences Under/Section 190(1) (a) Cri. P. C., he must not only have applied his mind to the contents of the petition but he must have done so for the purpose of proceeding, in a particular way as indicated in the subsequent provisions of this Chapter,--proceeding Under/Section 200, and thereafter sending it for inquiry and report Under/Section 202. When the Magistrate applies his mind not for the purpose of proceeding under the subsequent sections of this Chapter but for taking action of some other kind e.g. ordering investigation Under/Section 156(3), or issuing a sealed warrant for the purpose of the investigation he cannot be said to have taken cognizance of the offence.'

Even the Bombay High Court itself in a recent case in *State v. Shanker Bhaurao*, AIR 1959 Bom 437 doubted the correctness of the view expressed by Beaumont, C. J. Beaumont, C. J. seems to think that the Magistrate while accepting police report in a way discharges the accused. His judgment contains different expressions 'discharge from judicial custody' 'discharge of accused' presumably indicating the same meaning. It was by emphasising the expression 'discharge of the accused' that the Bombay case was distinguished. In AIR 1948 Nag 244, Section 173, Cri. P. C. however does not contemplate 'an order of discharge. Sub-section (3) of Section 173 which governs such cases says 'that whenever it

appears from' a police report forwarded under this section, the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.

The order for the discharge of the bond is not the same thing as the discharge of the accused. An order discharging accused can be passed only after cognizance and not before it. The order for the discharge of the bond is a pure administrative or ministerial order. It will be relevant to point out that orders for enlarging persons on bail under sections 496 and 497, Cri. P. C. can be passed by police officers also during investigation stage. A bond referred to in Section 173 Cri P. C. will generally be got executed under an order of a police officer. An order for the discharge of such a bond cannot be said to have been passed in judicial proceedings before a Court and it is purely administrative or ministerial order.

On a proper interpretation of Section 173 it is not possible to hold that a Magistrate accepting a police report takes cognizance of an offence and discharges an accused. In the light of the above observations I find it difficult to accept the Bombay view and prefer to follow the other view taken by the Madras High Court and the Lahore High Court in the Full Bench decision and other cases mentioned above, and accordingly hold that when a report is made to the police charging any of the persons with the commission of the offence and the police after investigation finds that the report is false and gets the report cancelled under the provisions of Section 173 Cri. P. C. the Magistrate receiving the information and accepting it does not act as a Court and that the act of the Magistrate accepting the police report does not give rise to judicial proceedings. The offence of false charge preferred before the police in respect of which the report was made, cannot be said to have been committed in relation to proceedings of a Court and a complaint of the Court is not necessary for prosecution of the offender under Section 211 I. P. C.

7. The learned Additional District Magistrate has also referred to the issue of notice for delivery of property and considered that proceedings in that connection were surely judicial. The provisions relating to disposal of property are contained in Chapter XLIII of the Criminal Procedure Code. The various sections contemplate

orders of the Court in connection with inquiries and trials. A move before a Magistrate for the proper custody of property during the course of investigation by the police does not fall within the scope of Chapter XLIII.

In my opinion, it will not be proper to treat such proceedings before a Magistrate as judicial proceedings. Further these proceedings are incidental and it will not be proper to hold that on account of these proceedings an offence of false charge under Section 211 or false information should be deemed to have been committed in relation to the proceedings before a Court when the police sends final report under Section 173 Cri. P. C. and the Magistrate accepts it.

8. In the light of these observations, I am clearly of the opinion that the offence under Section 211 I. P. C. of which Pukhraj is being prosecuted cannot be said to have been committed in relation to proceedings before the Court and that a complaint of the Court was not necessary. The recommendations of the Additional District Magistrate are not correct and cannot be accepted. The reference is accordingly rejected.

9. Before parting with this case, I may observe that a question is bound to arise whether a complaint by the police officer was necessary or not and that the prosecution can be said be barred on account of the absence of a complaint by a police officer. As this question was not considered by the Additional District Magistrate and as the learned Advocate also did not seriously raise this question, I do not feel inclined to express any opinion on the question.