

Radhey and ors. Vs. Girwar

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Court : Rajasthan

Decided On : Dec-23-1958

Reported in : AIR1959Raj196; 1959CriLJ1114

Judge : J.S. Ranawat, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 12(1) and 12(2)

Appeal No. : Criminal Ref. No. 70 of 1958

Appellant : Radhey and ors.

Respondent : Girwar

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

Disposition : Reference dismissed

Judgement :

ORDER

J.S. Ranawat, J.

1. This is a reference by the Additional District Magistrate of Bharatpur.
2. The facts leading to the reference may be put thus:

A complaint was lodged on 3-12-1956, by Girwar in the Court of the Sub-Divisional Magistrate, Bharatpur against Radhey, Makhan and others under Sections 447, 352, 504 and 506, I. P. C. The case was transferred by the Sub-Divisional Magistrate to the Court of the Magistrate First Class, Bharatpur for disposal according to law. The Magistrate, after issuing process to the accused, on 6-5-1957 dismissed the complaint under Section 259, Criminal P. C., for the reason that the complainant was absent.

The complainant, however, filed a fresh complaint on the same day on the same facts in the Court of the learned Magistrate, First Class, and fresh proceedings were taken by the Magistrate and after issue of process to the accused evidence of the complainant was recorded. An objection was raised on behalf of the accused that the Magistrate once having dismissed the case under Section 259 had no jurisdiction to entertain a fresh complaint, as a fresh complaint could be taken cognizance of by the Sub-Divisional Magistrate alone and not by the Magistrate, First Class for the reason that the area in which the offence was alleged to have been committed lay outside the local area assigned to the Magistrate, First Class under orders of the District Magistrate.

The Magistrate, First Class after hearing the arguments of the parties, rejected the objection and held that he had jurisdiction to proceed with the case. The accused persons went in revision to the Court of the Additional District Magistrate, who has made this reference. In the opinion of the learned Additional District Magistrate, as the area assigned to the Magistrate, First Class did not include the police station, Kumher where the offence was alleged to have been committed, the Magistrate had no jurisdiction to take cognizance of the fresh complaint.

The Magistrate, First Class took cognizance of this case on account of an order of transfer. The learned Additional District Magistrate has further recommended that the order of the Magistrate should be set aside and the complainant be directed to file a fresh complaint in the Court of the Sub-Divisional Magistrate having jurisdiction of the area of police station, Kumher.

3. Notice was issued to the Government Advocate. The parties did not enter into their appearance, and hence the arguments of the learned counsel for the State

only were heard.

4. The question that arises in this case relates to the interpretation of Section 12 (1) and (2) of the Criminal Procedure Code. The language of Section 12 (1) and (2), Criminal P. C., is as follows:

Section 12. (1) 'The State Government may appoint as many persons as it thinks fit, besides the District Magistrate, to be Magistrates of the first, second or third class in any district outside the presidency-towns; and the State Government or the District Magistrate, subject to the control of the State Government may from time to time, define local areas within which such persons may exercise all or any of the powers with which they may respectively be invested under this Code.

(2) Except as otherwise provided by such definition, the jurisdiction and powers of such persons shall extend throughout such district.'

5. It may be noted that the District Magistrate, Bharatpur defined the police stations of Nadbai, Sewar and Rupbas under Section 12 (1), Criminal P. C., as local areas within which the Magistrate First Class of Bharatpur was to exercise all the powers with which he was invested under the Code. In the opinion of the learned Additional District Magistrate by implication the order of the District Magistrate excluded the other parts of the District from the jurisdiction of the Magistrate, First Class and in this view of the matter he has come to the conclusion that the learned Magistrate First Class had no jurisdiction to take cognizance of a fresh complaint after he had dismissed the case under Section 259.

6. The learned counsel for the State has referred to the following cases in order to show that the definition of 'local area' under Section 12 (1) by the District Magistrate does not exclude the jurisdiction of the Magistrate from areas other than the local area described by the District Magistrate: State Government, Madhya Pradesh v. Krishnadas Nima, AIR 1955 Nag 189; Gulabrao Laxmanrao v. Emperor, AIR 1935 Bom 409; K. N. N. Ayyangar v. State; AIR 1954 Madh B 101; Ghulam Hussain v. Saiawal Shah, AIR 1933 Lah 143; Amritrao Udaybhanji v. Chandrabhan Sabooji, AIR 1947 Nag 79; Rameshwar Pathak v. Baijnath Rai, AIR

1935 Pat 436.

7. The observations of Beaumont C. J., in Gulabrao Laxmanrao Chandgude's case, AIR 1935 Bom 409, are as follows:

'The definition of areas of jurisdiction cannot be taken as a provision excluding jurisdiction of the Magistrate in the rest of the district. Sub-section (2), Section 12, Criminal Procedure Code, clearly requires some provision excluding jurisdiction in the rest of the district, which is either express or must be inferred by necessary implication.'

8. The other cases referred to by the learned counsel have followed the same view. There are, however, three cases which need mention on this point. In Syed Alli Gulam Alli v. Emperor, AIR 1938 Nag 448 and Mahangu Lal v. Emperor, AIR 1935 Pat 131 (1), it has been held that the jurisdiction of a Sub-Divisional Magistrate was confined to his sub-division and that he had no jurisdiction over another sub-division. The logic of these decisions proceeds on a consideration of the language of Section 107, Criminal P. C., and these decisions are therefore, not of much help for interpreting Section 12 (1) and (2), Criminal P. C.

Both the above decisions are, therefore, distinguishable for the reasons noted above. The decision in Kunj Beharilal v. Lamia, AIR 1921 All 123, expressed contrary opinion. It was held by Mcars C. J., in that case that defining of local areas under: Section 12 (1), Criminal P.C., necessarily meant exclusion of the jurisdiction over areas other than those defined. The opinion expressed in this case was considered by Beaumont C. J., in the Bombay case (2) referred to above, and was not considered to be good law.

9. It may be noted that the plain language of Section 12 (1) and (2) supports the view taken by Beaumont C. J., in the Bombay Case, AIR 1935 Bom 409, referred to above. Mere allocation of a particular area to a particular Magistrate by the District Magistrate cannot by itself be understood to have the effect of excluding the jurisdiction of that Magistrate from over other areas of the same district over which he exercises jurisdiction by virtue of provision of Section 12 (2), Criminal P. C.

In order to exclude certain areas from the jurisdiction of the Magistrate, there must be something express or by necessary implication in the order defining the local area to warrant an inference that the intention of the said order was to exclude the jurisdiction of such Magistrate from such areas. I am in respectful agreement with the view of Beaumont C. J., noted above.

The Magistrate, First Class, who dismissed the complaint under Section 259 had jurisdiction to entertain a fresh complaint on the same facts and it seems more desirable that the same Magistrate should deal with the same matter. The technicality that has prevailed in the opinion of the teamed Additional District Magistrate is resolved when the provision of Section 12 (1) and (2) is interpreted in the manner noted above.

10. The reference fails and is dismissed.

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