

The State Vs. Radhey Shyam

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Court : Rajasthan

Decided On : Mar-25-1960

Reported in : AIR1960Raj288; 1960CriLJ1661

Judge : J.S. Ranawat and; D.M. Bhandari, JJ.

Acts : [Prisons Act, 1894](#) - Sections 45, 45(2), 46 and 52; Indian Penal Code (IPC)
- Sections 352 and 353

Appeal No. : Criminal Appeal No. 410 of 1958

Appellant : The State

Respondent : Radhey Shyam

Advocate for Pet/Ap. : Kansingh, Dy. Govt. Adv.

Judgement :

Ranawat, J.

1. This is an appeal by the State from the judgment of the Magistrate First Class, Bikaner, dated the 18th of August 1958 acquitting the accused Radheshyam under Section 353 of the Indian Penal Code on the ground that the case was triable under the Prisons .Act of 1894 by the Superintendent of Prisons.

2. The facts of the prosecution case were that the accused Radheshyam was an under-trial prisoner on the 15th of October 1957 when the occurrence took place. He was in detention in the District Jail, Bikaner. On the 15th of October 1957 he was taken to the court premises for attending the hearing of the case against him. He was led to the latrines for allowing him to attend to the call of nature and when he insisted to go in a particular latrine to contact some lady who was already inside it, Fakir Mohammad, constable on duty, did not permit him to go there. The prisoner then tried to assault Fakir Mohammad, but he was stopped from doing so by another constable on duty, namely Ganpatsingh. Fakir Mohammad brought this fact to the notice of the Sub-divisional Magistrate, who referred the case to the Police Station Sadar, Bikaner.

The police after investigating the case challaned the accused Radheshyam under Section 353 I. P. C. to the court of the Sub-divisional Magistrate, Bikaner City, who after framing a charge transferred the case to the Magistrate First Class, Bikaner. The defence of the accused was that he was falsely prosecuted on account of the fact that he had lodged a complaint against Fakir Mohammad in the court of the Sub-divisional Magistrate, Bikaner. The learned Magistrate, First Class, Bikaner, after holding a trial recorded an order of acquittal in favour of the accused on the ground that he had no jurisdiction to try the case for the reason that the facts of the case constituted an offence under Section 45(2) of the Indian [Prisons Act, 1894](#) which was cognisable and punishable by the Superintendent of Prisons under Section 46 of the said Act and unless the Superintendent of Prisons forwarded such a case to the District Magistrate under Section 52 of the Prisons Act, the ordinary criminal courts could not try the case.

3. In this appeal it has been contended on behalf of the State that the view adopted by the learned Magistrate in the court below is erroneous and the intention of the Prisons Act of 1894 cannot be construed to oust the ordinary jurisdiction, of the criminal courts. It was also urged that a case under Section 353 of the Indian Penal Code was alleged to have been committed by Radheshyam which was not a prison offence as defined by Sec, 45 (2) of the Prisons Act, which corresponds with an offence under Section 352 of the Indian Penal Code and not with an offence under Section 353 of the Indian Penal Code.

4. The question at issue in this case is whether the intention of the Indian Prisons Act is to oust the jurisdiction of the ordinary criminal courts to try offences under the Indian Penal Code which are also prison offences mentioned in Section 45 of the Indian Prisons Act. Section 45 declares the acts mentioned in the section to be prison offences when committed by a prisoner. In the list of the acts, any assault or use of criminal force has been specified in item No. 2. Prison offences have been made cognisable and punishable by the Superintendent of Prisons by Section 46 of the Prisons Act, and a number of punishments have been specified which can be awarded by the Superintendent of Prisons in such cases.

In cases where the Superintendent is of the opinion that he cannot adequately punish by inflicting the punishments provided under Section 46, he is given the discretion to refer the case to the District Magistrate, who after holding an inquiry and after trying the case is empowered to sentence the prisoner to imprisonment which may extend to one year. It may be noted that the Prisons Act does not contain any specific provision on the point of ouster of jurisdiction of the ordinary criminal courts. The opinion of the learned Magistrate appears to be that when jurisdiction was conferred on the Superintendent of Prisons, it should be inferred by implication that the jurisdiction of the ordinary criminal courts was taken away in respect of the offences mentioned in Section 45 and made punishable by Section 46 of the Prisons Act.

An offence of use of criminal force or of assault is a non-cognisable offence according to the Code of Criminal Procedure. Police officers do not take notice of such an offence unless a complaint is lodged before them; but in cases of prisoners, an offence of assault or use of criminal force has been made cognisable by the Superintendent of Prisons in order to maintain the discipline of the Prison. The Superintendent of Prisons has been empowered to punish the cases of prison offences in which the case of assault or use of criminal force is also included. Where in the opinion of the Superintendent of Prisons, a prisoner is guilty of committing prison offences frequently likely to affect the prison discipline, he has been further given the discretion of making a reference to the District Magistrate who is authorised under Section 52 of the Prisons Act to visit such cases with punishment up to one year's rigorous imprisonment.

The provision of Section 52, however, it may be noticed, does not purport to take away the jurisdiction of ordinary courts of law. Where a regular challan or a complaint is instituted, the ordinary courts of criminal law can proceed with the inquiry and trial of the cases, notwithstanding the fact that such offences may also fall in the definition of prison offences under Section 45 of the Prisons Act. In order that the jurisdiction of the ordinary criminal courts may be deemed to have been ousted, it is necessary that the provision of such ouster must be either express or at least by necessary implication. There is no provision whatsoever in the Prisons Act from which an intention of ouster of jurisdiction of the ordinary criminal courts may be gathered. The learned Magistrate was obviously in error in holding that his jurisdiction was barred merely because the Superintendent of Prisons was also given similar authority to take cognizance of such cases and visit them with some penalty.

5. The second point urged by Mr. Kansingh is also not without force that an offence under Section 45(2) corresponds with an offence under Section 352 of the Indian Penal Code and it does not correspond with an offence under Section 353 of the Indian Penal Code which is an offence of assault or use of criminal force to deter a public servant from discharge of his duty. This case, therefore, could not be treated as an offence under Section 45(2) of the Prisons Act. The offence under Section 353 of the Indian Penal Code is a cognisable offence. Section 5 of Criminal Procedure Code governs the inquiries and trials of all offences under the Penal Code.

The Prisons Act defines certain acts as prison offences which may in some cases overlap with some of the offences under the Indian Penal Code and in such cases there may be plurality of procedure. So far as the prison offences are concerned, the Superintendent of Prisons has been given the authority to punish them in accordance with the provisions of that Act. In cases where the offence also constitutes offence under the Indian Penal Code, the Superintendent of Prisons has the option either to take cognizance of the cases himself or to file regular complaint in a criminal court. In the present case, the constable, who was assaulted, made a complaint to the Sub-divisional Magistrate, who referred the case to the police.

As the offence complained of was one under Section 353 of the Indian Penal Code and was cognisable, the police took cognisance of it and submitted a challan to the Sub-divisional Magistrate. Under these circumstances, it cannot be said that the police or the Sub-divisional Magistrate acted without jurisdiction in taking cognisance of the case. The Magistrate was obviously in error in refusing to exercise jurisdiction. The appeal succeeds and is allowed and the case is remanded to the court of the Magistrate First Class, Bikaner, with a direction to proceed further from the stage up to which he had already tried it. Case remanded.

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