

Vaney Singh Vs. State

Vaney Singh Vs. State

SooperKanoon Citation : sooperkanoon.com/757736

Court : Rajasthan

Decided On : Oct-21-1970

Reported in : 1970WLN650

Judge : Kan Singh, J.

Appeal No. : S.B. Criminal Revision No. 297 of 1969

Appellant : Vaney Singh

Respondent : State

Judgement :

Kan Singh, J.

1. This is a revision application by one Vaney Singh against the appellate judgment of the Additional Sessions Judge, Sirohi, partly allowing the petitioner's appeal against his conviction under Sections 353 and 448 Indian Penal' Code, and the sentence of six months and three months rigorous imprisonment respectively on these counts by the Mnsif Magistrate, Sirohi. While the learned Aditionial Sessions judge maintained the conviction of the accused for the offence under Section 315 Indian Penal Code as also the sentence of six months rigorous imbrisonment, be set aside the conviction of the accused for the offence under Section 443 Indian Penal Code.

2. P.W. 2 Jaideo Singh Patwari of Sirohi was doing his office work in the Ratwar Khana' on 14-8-67; At about 6.00 p.m. the, accused came to the Patwar Khana and asked Jaideo Singh to allot him some land. Jaideo Singh explained to him that he was not competent to make any allotment of land. This annoyed the accused who then assaulted the Patwari with a lathi. The Patwari then left the place' namely, the verandah where he was sitting and entered into the room. He raised an alarm which attracted Padam Singh, Up Sarpanch and One Ridmal Singh Patwari of another village, Positra. They persuaded the accused to go away. While leaving the accused threatened Jaideo Singh that he would not leave him in future. On the next day i. e. 15 8-67, Jaideo Singh lodged a complaint in the court of the Sub Divisional Magistrate, Sirohi. The learned Sub Divisional Magistrate forwarded the complaint to the Station House Officer, Anadra for enquiry and report within a fortnight. The Sub Divisional Magistrate also asked the Station House Officer to see that no breach of peace took place, On receipt of this complaint the Station House Officer, Anadra, treated it as a first information report and registered a case under Section 353 and 448 Indian Penal Code. After investigating the matter the Station House Officer, Anadra, presented a challan against the accused in the court of the Munsif Magistrate, Sirohi. The learned Munsif Magistrate tried the case in accordance with the provisions of Section 251A Criminal Procedure Code and convicted and sentenced the accused as mentioned in the beginning,

3. The prosecution examined P.W, 2 Jaideo Singh, P. W. 3 Ridmal Singh and P.W. 4 Padam Singh as the eye witnesses. The other witnesses were of formal nature, Ridmal Singh and Padam Singh had turned hostile and did not support the prosecution. They were cross-examined by the Prosecutor with the leave of the court and it transpired that they had gone back on their earlier statement before the police. Both-the courts below had, however, found the statement of Jaideo Singh (P. W. 2) trustworthy and acting thereon convicted the accused.

4. Learned Counsel for the petitioner in assailing the conviction of the accused has raised a two-fold contention In the first place, he submitted that the courts below were in error in acting on the sole testimony of Jaideo Singh Learned Counsel submitted that there was. delay of 24 hours, in lodging the complaint and also

there was no reason why the complainant should not have first approached the police. It was also submitted that there was variation between the statement of the witness before the police and that he gave before the court a the second place, it was contended that the case could have been triad by the learned Magistrate, only as a complaint case and not as a challan Case with the result that the trial of the accused was vitiated.

5. I have read the statement of Jaideo Singh and find no infirmities therein as would show that the courts below were in error in accepting it as true. No reason has been assigned by the accused as to why the Patwari should go cut of his way to make a false accusation against the accused, if he was not really assaulted. It is true, the complaint was lodged on the next day, but nothing turns on that. Also much cannot be made out of the fact that the Patwari did not first approach the police. In any case the police had investigated the matter on the complaint received from the learned Sub Divisional Magistra which was treated as a first information report. Further, the variation between the police statement of Jaideo Singh and that by him in court is unremarkable. The police statement of Jaideo Singh is Ex. P 1 and no portion of it has boon marled. The witness was asked whether in the earlier statement he bad said that the accused had come in conrection with the allotments made to other persons. This cmission has no significance regarding the assault said to have been made by the accused. The courts below were thus not in error in appreciating the evidence of Jaideo Singh.

6. I may next time to the second cotention. The complaint was made by Jaideo Singh before the Sub Divisional Magistrate who forwarded it to the Station House Officer, Anadra, for enquiry and report within a fortnight. It does not appear that the Sub Divisional Magistrate has taken cognizance of the offence before forwarding the complaint to the police. As explained by their Lordships of the Supreme Court in R. B. Chari v. State of U.P. : 1951 CriLJ775 , before it can be said that any Magistrate had taken cognizance of any offence under Section 190 he must have applied his mind to the offence for the purpose of proceeding in a particular way as indicated in the subsequert provisions of the Chapter namely, proceeding under Section 200 and thereafter sending the camplaint for enquiry and report Section 203 Criminal Preceedure Code. In the present case it is

noteworthy that in sending the complaint to the police the Magistrate had also said that the police should see that no breach of peace occurs. The complainant had not been examined under Section 200 Criminal Procedure Code which would have been the case, if cognizance were taken. Learned Counsel for the petitioner contended here that as the Patwari was a public servant, according to second proviso to Section 200 it was not necessary for the learned Magistrate to have examined the complainant. Section 200 provides that a Magistrate taking cognizance of an offence on complaint shall at once examine the complainant and the witnesses present, if any, upon oath and the substance of the examination shall be reduced to writing and shall be signed by the complainant and the witnesses and also by the Magistrate, Second proviso provides that when the complaint is made in writing, nothing herein contained shall be deemed to require a Magistrate to examine the complainant, in any case in which the complaint has been made by a court or by a public servant acting or purporting to act in the discharge of his official duties. The plain meaning of the proviso is that the examination of the complainant, is dispensed with when the complaint has been made by a public servant acting or purporting to act in the discharge of the official duties. The words 'acting or purporting to act in the discharge of his official duties' are related to the making of the complaint. In other words, it is only when the complaint has been made in the discharge of the official duties that the second proviso will apply. In any other case the public servant will be only acting as any other citizen and he will have to be examined under Section 200 Criminal Procedure Code. A public servant will be acting in discharge of his official duty while making the complaint, if any provision of law requires that the complaint has to be made by (the public servant. For example, under the Prevention of Food Adulteration Act certain public servants have been enjoined to do so. Likewise under Section 195 for certain specified offences the complaints have to be made by public servants concerned. It is in these cases where the public servant in lodging the complaint is acting in the discharge of his official duty that it can be said that the complainant need not be examined. The present case is one of an assault on the public servant himself and the offence had to be committed was one under Section 353 Indian Penal Code along with the offence of the Section 448 Indian Penal Code for which the accused was acquitted by the learned

Additional Sessions Judge, for such a complaint the Patwari could be said to be acting only like any other complainant and, therefore, the statement of the complainant was required to be recorded under Section 200 Criminal Procedure Code, if the Sub-Divisional Magistrate were to take cognizance of the offence. Since the statement of the complainant was not recorded by the Sub Divisional Magistrate, it cannot, in the circumstance be said that in forwarding the complaint to the police he had taken cognizance of the offence. Apart from this there is a further difficulty in the path of the learned counsel for the accused. Here the challan was not presented before the learned Sub Divisional Magistrate, but it was presented before the Munsif Magistrate. Earlier to his taking cognizance on the challan the Munsif Magistrate had not taken cognizance of the case on the complaint and, therefore, he was not debarred from trying the case as a challan case. If the accused felt that the complaint was still pending before the Sub Divisional Magistrate as he had taken cognizance of the same and the police had during the pendency of the complaint submitted a challan before another Magistrate, then the proper course for the accused was to have moved for transfer of the case from the court of one Magistrate to the other. This he has not done and it is idle to pretend that his case on a complaint remained pending with the Sub Divisional Magistrate while the accused came to be tried by the Munsif Magistrate. Therefore, the second contention also has no force.

7. Lastly, learned Counsel submitted that in the circumstances of the case the sentence awarded should be reduced' because the accused is not a previous convict. Offence under Section 353 Indian penal code is punishable with imprisonment or fine or both. The accused has already suffered imprisonment for more than a week. It will meet the ends of justice if the unexpired portion of the sentence is commuted to fine. A fine of Rs. 2000/- will, in my view; be alright.

8. Consequently I allow the revision application in part, while the conviction of the accused for the offence under Section 353 Indian penal Code is maintained, the substantive sentence of imprisonment is reduced to that already undergone and the unexpired portion is commuted to fine. The accused shall pay a fine of Rs. 200/-, in default suffer two months rigorous imprisonment. The accused is on bail. One month's time is allowed to him to pay up the fine, failing which the District

Magistrate of Sirohi shall have the accused arrested to undergo the imprisonment awarded in default.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com