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Court : Rajasthan

Decided On : Jan-25-1970

Reported in : 1971WLN30

Judge : Kan Singh, J.

Appeal No. : S.B. Criminal Revision No. 59 of 1970

Appellant : Bhawani Singh

Respondent : State

Judgement :

Kan Singh, J.

1. This is a revision application by one Bhawani Singh. He was convicted of an offence under Section 193 Indian Penal Code by the Additional Munsif Magistrate No. 1, Bundi and sentenced to 3 months rigorous imprisonment and a fine of Rs. 100/, in default further simple imprisonment of 15 days. His appeal was dismissed by the learned Additional Sessions Judge, Bundi.

2. The accused who was a Patwari had issued a certified copy of Jama Bandi Ex. P/2 produced in a criminal case challaned by the police against one Jagannath and Raghunath. That case was commenced by the police on the information lodged by one Laxman Singh on 22.11.61 to the effect that from his agricultural

land Khasra No. 150 in village Borkhera a 'Babool' tree had been cut by Jagannath and Raghunath. The copy of the Jame Bandi was produced by the police in support of the stand taken by Laxman Singh that the land on which 'Babool' tree was standing was in his possession. The accused appeared as a witness in that case. In the course of the proceedings it transpired that the following words did not exist in the original Jama Bandi of which Ex. P/2 was the copy:

ccwy dk isM+ tks dkVk gS budk gS A bld vUnj rhu xV~Bs tehu ds vUnj ys j[kh gS A ;g Hkh budh gS A

Laxman Singh complainant, on the one hand, and Jagannath and Raghunath accusrd in that case, on the other, entered into a compromise and on the basis of compromise the learned Sub-Divisional Magistrate who was trying the case acquitted Jagannath & Raghunath. At the same time, however, he ordered that as Bhawani Singh petitioner had fabricated false evidence in relation to a judicial proceeding a complaint be lodged against him for an offence under Section 193 Indian Penal Code. In pursuance of this order dated 17.1.63 a written complaint was sent by the learned Sub Divisional Magistrate to the court District Magistrate, Bundi, who transferred the complaint to the court of the Additional Munsif Magistrate No. 1, Bundi with the result mentioned in the beginning. The courts below came to the conclusion that the accused caused certain circumstance to exist by making a false entry in the document that he did so intending that such circumstance or entry should appear in evidence in a judicial proceeding pending or prospective &that; the court before the judicial proceedings were to be conducted had to form an opinion in which such false document was produced. Consequently the accused was convicted.

3. In challenging the conviction of the accused his learned Counsel has raised two points. He submitted, in the first instance, that the proceeding before the learned Additional Munsiff Magistrate were without jurisdiction as the complaint had not been lodged by the learned Sub-Divisional Magistrate after complying with the requirements of Section 479A Criminal Procedure Code. It was argued on this point that no show cause notice was given to the accused before lodging the complaint and, secondly, the learned Sub Divisional Magistrate bad rot recorded

any finding in the judgment that the lodging of the complaint was necessary for the eradication of the evils of perjury and fabrication of false evidence and in the interest of justice it was expedient that the witness be prosecuted. It is maintained that as the requirements of Section 479A Criminal Procedure Code were not; complied with, the lodging of the complaint itself was illegal and without jurisdiction and consequently the learned Munsif Magistrate could not have taken cognizance of the offence under Section 193 Indian Penal Code on the Basis of such a complaint. In the second place, it was contended that the accused had made certain additional remarks in the certified copy issued by him by way of an expression of opinion and this he must have done at the behest of the investigating agency. Then it was submitted that the certified copy was produced before the police only and was not intended by the accused to be used in relation to a judicial proceeding.

4. Now, a Magistrate takes cognizance of an offence under Section 190 Criminal Procedure Code which lays down the conditions requisite for initiation of proceedings. The first condition for taking cognizance is upon receiving a complaint of facts which constitute such offence (vide Clause (a) of Section 190(2) upon a report in writing of such facts made by any police officer (vide Clause (b) thereof) (S) under Clause (c) upon information received from any person other than a police officer, or upon his own knowledge or suspicion, that such offence has been committed, Then there is Section 195 which inter alia lays down that no court shall take cognizance of any offence punishable under Section 193 Indian Penal Code when such offence is alleged to have been committed in, or in relation to, any proceeding in any court, except on the complaint in writing of such court, or of some other court to which such court is subordinate. There is no dispute that the Sub-Divisional Magistrate was such court within the meaning of Section 195 Criminal Procedure Code who could have instituted the complaint. It is also not disputed that the complaint made by the Sub Divisional Magistrate was in writing. The contention is that it was not a valid complaint on account of the Sub Divisional Magistrate not complying with the requirements of Section 479-A Cr.P.C. Section 479A Cr.P.C. inter alia, provides that notwithstanding anything contained in Sections 476 to 479 when any civil, revenue or criminal court is of opinion that any person appearing before it as a witness has intentionally given false evidence in

any stage of the judicial proceeding or has intentionally fabricated false evidence for the purpose of being used in any stage of the judicial proceeding and that, for the eradication of the evils of perjury and fabrication of false evidence and in the interests of justice, it is expedient that such witness should be prosecuted for the offence which appears to have been committed by him, the court shall, at the time of the delivery of the judgment or final order disposing of such proceeding, record a finding to that effect, stating its reasons therefore and may if it so thinks fit, after giving the witness an opportunity of being heard, make a complaint thereof in writing signed by the presiding officer of the court setting forth the evidence which, in the opinion of the court, is false or fabricated and forward the same to a Magistrate of the first class having jurisdiction. Sub-section (2) of Section 479A enacts that such Magistrate shall there upon proceed according to law and as if upon complaint made under Section 200. Sub-section (3) provides that no appeal shall lie from any finding recorded and complaint made under Sub-section (1). A perusal of this section shows that, in the first instance, the finding bet to be given in the judgment or final order that the witness appears to have been given false evidence or fabricated evidence and that for the eradication of the evils of perjury and fabrication of false evidence and in the interest of justice it was expedient that such witness should be prosecuted. Then an opportunity of being heard has to be given to the witness before making a complaint. These provisions are mandatory, as pointed out in *Abdul Shake v. State of Rajasthan* 1965 RLW 141. The point before me, however, is whether the breach of Section 479A Cr.P.C. by not giving opportunity of hearing to witness or by not expressly saying in the order that the prosecution was expedient for the purpose of eradication of evils of perjury, will make the complaint itself non est so that even if it is by the court concerned and is in writing and thus fulfils the requirements of Section 195 Criminal Procedure Code, the court, who tried the accused, could not have taken cognizance of the offence; Section 195 Cr.P.C. occurs in a group of sections which enacts a bar against the taking of cognizance of certain offences by the courts of Magistrates. Such bar takes the form of the requirement of a sanction in certain cases. For example Section 197 Cr.P.C. In certain cases it is only the particular aggrieved person who can launch a complaint, for example, complaint of bigamy or adultery could be lodged only by the husband. Similarly, a complaint of defamation can be

launched by the person defamed and so on. Section 479-A Criminal Procedure Code occurs in Chapter XXXV which deals with the procedure of lodging of complaints by courts in relation to certain offences affecting the administration of justice. Section 475 Criminal Procedure Code is a general provision whereas Section 479-A Criminal Procedure Code relates to offences of perjury and fabrication of evidence when committed by a witness appearing before a court. It is not necessary to enter into the points of difference between Sections 476 and 479-A Criminal Procedure Code. Suffice it is to say that against an order for the launching of a complaint under Section 476 an appeal can be filed by the person against whom the complaint is to be lodged, whereas under Section 479-A where a complaint is ordered to be lodged against a witness, such an order is not appealable. There is, however, no doubt in my mind that if an order has been passed under Section 479-A Criminal Procedure Code by a criminal court that order will be revisable under Section 439 Criminal Procedure Code, because Section 435 enables the revisional court to satisfy itself as to the correctness, legality or propriety of any finding, sentence or order. Here the question is when such finding or order under 479-A Criminal Procedure Code was not challenged by the petitioner in revision, can he be allowed to challenge that order in the criminal case itself when the complaint that came before the learned Munsif Magistrate did fulfil the requirements of Section 195 Criminal Procedure Code namely, that the complaint was by the court concerned and it was in writing? I should think, if it could only be predicated that the order of the learned Sub-Divisional Magistrate was a nullity namely, it was absolutely void then alone it can be held that the learned Munsif Magistrate who took cognizance of the case under Section 190(a) Criminal Procedure Code could not have taken cognizance on the complaint on account of the complaint being a nullity or absolutely void. There is no manner of doubt about the competence of the learned Sub-Divisional Magistrate 'o lodge the complaint. The commission of the illegality, if any, by the learned Sub-Divisional Magistrate in not fully complying with the requirements of Section 479-A will not result in the action of the learned Sub Divisional Magistrate being treated as non est. It has to be remembered that the act of lodging a complaint is not like the determination of rights or liabilities of a party by a court. The act of lodging of a complaint in its true character is nothing but an administrative action. A public

serverant lodging a complaint in accordance with any of the Section 195 to 199, will only be engaging himself in an administrative act. Similarly, where the State launches any prosecution it is nothing but an administrative act. The character of the act will not change merely because it is the court who is the complainant, though there is no gain saying the fact that before launching the complaint the court has to follow the provisions of the statute. The court which has taken cognizance of the offence under Section 190 Criminal Procedure Code was not obsessed by the bar under Section 196 Criminal Procedure Code, because it had the complaint from concerned court and the same was in writing. The concept as to when an act is a nullity, void or voidable is imprecise and also the position is far from being clear, as to when an order, can be made a subject matter of an attack in a collateral proceeding though it was never made a subject matter of direct attack. I may only refer to a recent article in the Modern Law Review of January, 1968, captioned 'Void or Voidable', At page 2 referring, to the, Marshalsea's case it was pointed out that a Judgment is void only, if made without jurisdiction; other defects merely render the judgement, voidable, it was added that the Marshalsea's case went on to explain the effects of this distinction viz., a voidable judgment is by definition open to direct attack, but it is not open to collateral attack, only a void judgment may, be impugned in collateral as well as, direct proceedings, flaying discussed this topic in two issue it was pointed out that collateral proceedings may take many forms and ultimately it was pointed out in the conclusion that there is no, simple answer to the question, when a decision is void or voidable, As I have observed above, the true character of an order for lodging a complaint is administrative in character and not strictly judicial in the sense that it has resulted in holding the person guilty of an offence or in exonerating him. If one were to keep in his view the purpose of Section 195 and that of Section 476 and 479A Criminal Procedure Code, one will find that the former has created a bar against the taking of cognizance by the criminal court under Section 190 Criminal Procedure Code, unless there is a complaint in writing from the competent court. Section 476 and 479-A only lay down the procedure so, far as courts are concerned as to how they should initiate prosecutions in relation to offences relating to the administration of justice. The violation of all rules of procedure will not result in the nullification of the apt itself. If, the person concerned was

aggrieved of the order for lodging the complaint against him he could have pursued the remedy available to him against that order itself, at the time it was passed. If he would have been successful in challenging that order of lodging that complaint, the proceedings, before the criminal court in pursuance of the complaint would have fallen through ipso facto. Learned Counsel then drew analogy from the requirement of sanction under Section 197 Criminal Procedure Code. He submitted that the order for giving sanction for prosecution by an authority can be challenged in the course of the criminal proceedings. It is true, the order of sanction can be challenged in the course of the proceedings to the extent : (1) whether there was any order of sanction or not; and (2) if there was such an order, the authority giving a sanction had, been satisfied by applying its mind that the case was of such a nature in which the prosecution be sanctioned. On similar grounds the order could have been challenged namely, that there was no complaint in writing from the court concerned. The analogy of the application of mind will hardly be available when the complaint is filed by the court itself who must have applied its mind to, what it has written down in the complaint. The nub of the matter is, as already pointed out, whether the non-fulfilment of the requirements of Section 479-A Criminal Procedure, Code by the Sub divisional Magistrate would result in the act of the lodging the complaint itself being rendered non est. Having considered the matter, I am not prepared to go that far. Assuming that the order rendered by the learned Magistrate was illegal, it could only be the committing of an illegality in the exercise of the jurisdiction, but there was no absence of jurisdiction in the lodging of the complaint. The first contention raised by the learned Counsel has, therefore, to be rejected.

5. The second submission need not detain me long. What the petitioner had issued as a true copy contained something in addition to what was in the original jama Bandi. The addition namely, the remarks may partake of the character of an opinion, but that will not, in my view, detract from the position that it was a copy which was not in accordance with the original and the additional things tended to help the version of the complainant in that case regarding his possession over the land where the 'Babool' tree was standing. It is also true that the certified copy was produced before the police in the course of the investigations, but then the petitioner had appeared as a witness in the case and had referred to that certified

copy. The offence was, therefore, undoubtedly committed in relation to the proceedings before the court by the accused who was a witness in the case. The conviction of the accused was, therefore, correct.

6. Lastly, learned Counsel submitted that looking to the fact that the offence was committed in 1961, the sentence be reduced. Looking to the fact that the accused had to face a prolonged prosecution and he has already undergone about 13 day's imprisonment, I consider that the ends of justice will be amply met if the unexpired portion of the sentence is committed to an additional fine. The additional fine of Rs. 100/- should be sufficient,

7. In the result, therefore, I allow the revision application in part. The conviction of the accused for the offence under Section 193 I.P.C. is maintained, but the unexpired portion of the sentence is commuted to an additional fine of Rs. 100/-; total Rs. 200/-. The accused shall undergo two months simple imprisonment in default of fine. Two months time is allowed to the accused to pay up the fine, failing which District Magistrate of Bundi shall have the accused arrested to undergo imprisonment in default of fine as award by this Court.