

State of Rajasthan Vs. Ratna

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Court : Rajasthan

Decided On : Jul-28-1988

Reported in : 1989WLN(UC)464

Judge : Navin Chandra Sharma, J.

Appeal No. : S.B. Criminal Revision No. 407 of 1980

Appellant : State of Rajasthan

Respondent : Ratna

Disposition : Petition allowed

Judgement :

Navin Chandra Sharma, J.

1. I have heard the learned Public Prosecutor in support of this revision. Non-petitioner remained absent despite service.

2. Facts in brief are that Ratna non-petitioner had lodged a First Information Report with the Superintendent of Police Sirohi on Jan. 9, 1978 Jetha therein that on the night of January 8, 1978 Jetha son of Chamna assaulted his servant Magna and also committed theft of Urea bag and some electric machines. It was also stated that some fodder was also burnt. On the basis of this report, a case was registered at Police Station Barloot under Section 447, 435, 427, 380, 342 and 323

IPC. After investigation, the Police found that the FIR lodged by the non-petitioner was false and a final report was submitted to the court of the Judicial Magistrate accepted the final report. Thereafter the Superintendent of Police Sirohi filed a criminal complaint against the non-petitioner under Section 182 Cr.P.C. The Judicial Magistrate, Sirohi by his order dated July 8, 1970 discharged the non-petitioner on the ground that when the Judicial Magistrate accepted the final report, he had passed a judicial order and in such circumstances offence made out could only be that under Section 211 IPC and for that Section 195(1)(b)(i) of the Criminal Procedure Code operated as a bar against private complaint. The learned Judicial Magistrate relied upon the decision of their Lordships of the Supreme Court in *Basir-ul-Huq's and Ors. v. State of West Bengal* : 1953 CriLJ1232 . The decision in *Basir-ul-Huq's* case has no application what so ever to the present, case. In that case Nurul Huda had lodged a FIR at the Police Station to the effect that Hirendra Nath had beaten and throttled his mother to death. After investigation, the police came to the conclusion that the Nurul Huda had lodged a false report against Dhirendranath. Dhirendranath, against whom the FIR was lodged, filed a criminal complaint in the court of the Sub-Divisional Officer. In that complaint it was alleged by Dhirendranath that the information given by Nurul Huda to the Police was false and that Nurul Huda and other appellants had made imputations mala fide out of enmity against him with intention of harming his reputation and further that to wound his religious feelings they had trespassed on the cremation ground. The appellants were tried by the Magistrate under Sections 297 and 500 IPC. The Magistrate held the charges proved and convicted each of the appellants under Sections 297 and 500 IPC and sentenced them. The appellants went up in appeal to the Sessions Judge who set aside the conviction and acquitted the appellants. The Sessions Judge held that on the facts stated in the complaint filed by Dhirendranath the only offence that could be said to have been committed by the appellants was under Section 182 or Section 211 IPC and that the Magistrate was not competent of take cognizance; of this offence except on a complaint by a proper authority under Section 195 Cr.P.C. Against the acquittal order passed by the Sessions Judge, an application in revision was preferred before the High Court The High Court came to the conclusion that on the facts alleged in the petition of complaint by Dhirendranath distinct offences under

Sections 182, 297 and 500 IPC had been disclosed. The Division Bench which heard the revision referred the question to the Full Bench. The Full Bench answered the question in this manner that the Magistrate was not debarred from taking cognizance of offences under Sections 297 and 500 IPC. The appellants came to the Supreme Court. The argument advanced before the Supreme Court was that if on the same facts an offence of which no cognizance can be taken under the provisions of Section 195 Cr.P.C. is disclosed and the same facts disclose another offences as well which is out side the purview of that section and prosecution for that other offence is taken cognizance of without the requirements of Section 195 having been fulfilled, then the provisions of that section would become nugatory and the purpose of the provisions contained in Section 195 will stand defeated. The Supreme Court held that the charge under Section 297 IPC could in no circumstance be described as that within the purview of Section 196 Cr.P.C. As regards the offence under Section 500, IPC it was observed that where the allegations made in a false report disclose two distinct offences, one against the public servant and the other against a private individual, that officer is not debarred by the provisions of Section 195 from seeking redress for the offence committed against him. In the background of these facts, their Lordships sounded a note of caution that it has to be borne in mind that the provisions of Section 195 cannot be evaded by resorting to device or camouflages. The test whether there was an evasion of section or not is whether the facts disclosed primarily and essentially an offence for which a complaint of the court or of the public officer is required. It would thus appear that in Basirul Huq's case, it was not at all a question for determination whether a public servant could file a criminal complaint under Section 192 IPC when the court had after applying its mind accepted the final report. In Basirul Hap's case the private complaint was not filed by any Police Officer but it was filed by Dhirendranath against whom Nurul Huq had lodged a false first information report, Dhirendranath in his statement pleaded that Nurul Huq and others had committed offences under Sections 297 and 500 IPC. The learned Judicial Magistrate has misunderstood the ratio decided in the judgment of their Lordships of the Supreme Court in Basirul Huq's case.

3. I may next refer to the decision of their Lordships of the Supreme Court in State of Punjab v. Brijlal Palta : 1969 CriLJ645 In this case although the Police had

given a final report, but the First Informant had filed a private criminal complaint which was based on the same facts and allegations on which the First Information Report was registered. It was held that it was not open to the Magistrate to take cognizance of any offence alleged to have been committed under Section 211 I.P.C unless there has been proper compliance with the provisions of Section 195. Since a Private complaint filed by the complainant was already pending before the Judicial Magistrate, he could not take cognizance of the offence under Sections 192 and 211 IPC till the private criminal complaint was decided. Such is not the case here. The non-petitioner had not filed any private criminal complaint after the police had given a final report and the same was accepted by the Judicial Magistrate, In Brijlal's case their Lordships of the Supreme Court clearly stated that the offence under Section 182 IPC is distinct from the one under Section 211 though the latter is more serious and may include the offence under the former section The gist of the offence under Section 182 IPC is that public servant should not be harassed by making of false reports or by giving of false informations. As soon as the public servant comes to the conclusion that the information given to him was false and was given to him knowing that it would lead the public servant concerned to do some thing which he would not have done if the truth stated of facts respecting which the information was given were known to him, the offence is complete and the public servant can file a criminal complaint with respect to the commission of offence under Section 182 IPC. In the instant case, no criminal proceedings were instituted by or against the non-petitioner and, therefore, no question of applicability of Section 211 IPC arises. The bar created by Section 195(1)(b)(i) Cr.P.C. will, therefore not operate against the criminal complaint lodged by S.P. Sirohi for offence under Section 182 IPC Such a complaint will come within the purview of Section 195(1)(a)(i) and the Magistrate can take cognizance for offence under Section 182 IPC when a complaint in writing is made to him by the public servant.

4. Before parting with this order, reference may also be made to the majority judgment of their Lordships of the Supreme Court in Kamalapati Trivedi v. State of West Bengal : 1979 CriLJ679 . In Kamalapati Trivedi's case the point for consideration before the Supreme Court was not as to whether the public servant can or cannot file a criminal complaint under Section 190(1)(a) read with Section

195(1)(a)(i) Cr.P.C. The question had arisen before their Lordships in a very different context. The context was that Kamlapati Trivedi had lodged a first information report under Sections 147, 448 and 379 IPC against these persons including Satyanarain Pathak. The Police after holding investigation gave a final report stating that the complaint was false. The Sub-Divisional Magistrate agreed with the report and passed an order discharging the accused. Thereupon Satyanarain Pathak (who was one of the persons against whom the first information report was lodged) by Kamlapati Trivedi filed a private complaint against accused Trivedi of the commission of the offence under Sections 211 and 182 of the Indian Penal Code. In the background of these facts, their Lordships examined the question whether the part of the proceedings which started with the registration of the case by the Police at the instance of Trivedi and culminated in the order of discharge of Satyanarain Pathak and other 5 co-accused constituted proceedings before a Court and it was held by the majority of the Judges that the private criminal complaint filed by Satyanarain Pathak against Trivedi was in respect of the said offence alleged to have been committed in relation to a proceeding in Court. A decision has to be read along with its facts and not by decision has to be read along the law laid down. It is quite clear that cognizance of an offence punishable under Section 182 IPC can be taken by the Judicial Magistrate only when the complaint is filed by a public servant concerned or of some other public servant to whom he is administratively subordinate Never can a cognizance be taken by a Magistrate for an offence under Section 182 IPC on a complaint by a private person. In my view, the decision in Kamlapati Trivedi's case (supra) is not a decision on the point where in such a case the Magistrate cannot take cognizance of the offence under Section 182 IPC on a complaint by the public servant concerned, or of some other public servant to whom he is administrative subordinate.

5. I therefore, allow this revision set aside the order of the Judicial Magistrate Sirohi dated July 8, 1980 and remand the case to him with the direction that he should proceed further with the criminal complaint instituted in his court by the Superintendent of Police Sirohi against non-petitioner for offence under Section 182 IPC in accordance with law.

