

State Vs. Madan Singh

State Vs. Madan Singh

SooperKanoon Citation : sooperkanoon.com/760710

Court : Rajasthan

Decided On : Nov-30-1982

Reported in : 1982WLN(UC)354

Judge : Dwarka Prasad Gupta, J.

Appeal No. : Appeal No. 670/1980

Appellant : State

Respondent : Madan Singh

Disposition : Appeal dismissed

Judgement :

Dwarka Prasad Gupta, J.

1. This appeal has been preferred against the order passed by the Judicial Magistrate, Sirohi dated June 6, 1980 acquitting the accused Madansing in respect of an offence under Section 182 I.P.C.

2. Madan Singh had filed a First Information Report on May 9, 1976 in the police station, Sirohi to the effect that Shanti Devi along-with one other person unlawfully entered the premises of the complaint and hurled abuses upon h m and threw stones at aim. During investigation, the Station House Officer, Sirohi found that the relations between Shanti Devi and Madansingh were strained and proceeding

under Section 107 Cr. P.C. were initiated by Shanti Devi against Madansingh which were ultimately dismissed by the court. The Police officer found on investigation that this much was proved that Shanti Devi while standing at the door hurled abuses at Madansingh and an offence under section 504 I.P.C. was made out against her but there was no reliable evidence to support the theory that Shan Devi threw stones at Madan Singh and as such the offence under Section 336 I.P.C. or under Section 448 I.P.C. was not prima facie established. The S.H.O., Sirohi, therefore, gave a final report on July 29, 1976 which was accepted by the Judicial Magistrate Sirohi on August 16, 1976. It was mentioned in the final report by the S.H.O., Sirohi that as the allegations made by Madansingh about hurling abuses by Shanti Devi and thereby intentionally insulting Madan Singh with an intent to provoke breach of peace was proved, and so proceedings under Section 182 I.P.C. could not be taken against Madansingh.

3. A few months later, the successor S.H.O. Sirohi filed a complaint in the court of the Judicial Magistrate, Sirohi against Madansingh under Section 182 I.P.C. on the ground that Madansingh has given information which, in his view, was believed to be false and was intended by him to cause damage or knowing it to be likely that he will thereby cause the S.H.O., Sirohi to use the lawful power of such police officer to the annoyance of Shanti Devi. The learned Magistrate registered a case under Section 182 I.P.C, but ultimately he acquitted the accused in respect of the offence on the ground that the final report having been accepted by the court, the offence was committed in respect of judicial proceedings and the complaint could have been filed only by the court and further on the ground that the S.H.O., Sirohi had clearly stated in the final report that no offence under Section 182 I.P.C. was committed by Madansingh, in view of the fact that the complaint made by him was partially justified in as much as Shanti Devi had hurled abuses upon Madansingh while standing at the door of his house and as such the said police officer was not justified in filing a complaint against Madansingh in respect of an offence under Section 182 I.P.C.

4 So far as the first ground given by the learned Magistrate is concerned, I am unable to agree with the view expressed by him. The offence alleged in the present case may fall both under Sections 182 and 211 I.P.C. A false charge may

give rise to the prosecution under Section 182 I.P.C. or under Section 211 I.P.C. The expression 'falsely charges' in Section 211 I.P.C. has been interpreted by their Lordships of the Supreme Court in Santokh Singh v. Izhar Hussain and Anr. : 1973 CriLJ1176 and it has been observed as under:

The expression 'falsely charges' does not mean giving false evidence as a prosecution witness against an accused person during the course of a criminal trial. 'To falsely charge' must refer to the criminal accusation putting or seeking to put in motion the machinery of criminal investigation and not when seeking to prove the false charge by making deposition in support of the charge framed in that trial. The words 'falsely charges' have to be read along with the expression 'institution of criminal proceeding.

5. In State v. Bala Prasad Wanchoo, Chief Justice, as he then was, expressed the view that when allegations made may come both under Section 211 as well as under Section 182 IPC and in that event it may be open to the authorities concerned to proceed either under Section 182 or Section 211 IPC.

6. The following observations of Sir John Edge, Chief Justice, in Queen Empress v. Raghu Tiwari ILR 15 All 336 were quoted with approval in the aforesaid case:

Although it is difficult to see what case could arise under Section 211 to which Section 182 could not be applied, yet Section 182 would apply to a case which might not fall under Section 211. The offence under Section 182 is complete when fake information is given to a public servant to institute criminal proceedings against a third person. The offence is complete although the public servant takes no step towards the institution of such criminal proceedings...it is in such a case not at all necessary that the public servant should take any step whatever, on the false information before instituting and prosecuting to a conclusion a charge under Section 182 against the person who had given such false information.... In cases to which Section 211 especially applies and in which a criminal proceeding has been instituted, a Court should, in our opinion, as a rule proceed to determine such criminal proceeding instituted in it and should give the person instituting such proceeding, a reasonable opportunity of supporting his case before proceeding against him for an offence under Section 211.... It appears to us that it has been

left to the discretion of the Court to determine when and under what circumstances prosecutions should be proceeded with under Sections 182 and 211.

7. The offence in the present case could have fallen either under Section 182 or under Section 211 IPC. The accused could not have been acquitted merely on the ground that the concerned Court did not file a complaint under Section 211 I.P.C. and the prosecution on the basis of a complaint filed by the S.H.O. for an Offence under Section 182 I.P.C. could not be taken on account of the provisions of Section 195 Cr.P.C. If the allegations made against Madansingh could constitute the offence under Section 182 I.P.C. then certainly the S.H.O. was competent under Section 195(a) to file a complaint in respect of the said offence irrespective of the fact that the same facts might have also constituted an offence under Section 211 I.P.C., for which a complaint could have been filed only by the Magistrate concerned.

8. The learned Magistrate relied upon the decision of their Lordships of the Supreme Court in *Basir-ul-Huq and Ors. v. The State of West Bengal* : 1953 CriLJ1232 for the proposition that in case Section 195 Cr.P.C. barred the trial of an accused person then the provisions of that Section cannot be evaded merely by resorting to devices or camouflage. That is undisputed. However, their Lordships of the Supreme Court themselves observed in *Basir-ul-Huq's case* : 1953 CriLJ1232 that Section 195 Cr.P.C. did not constitute a bar against the trial of an accused person for a distinct offence disclosed by the same facts. The allegations made in a complaint may on the one hand constitute an offence against the authority of the public servant and on the other hand an offence against public justice might be disclosed. Section 195 Cr.P.C. does not bar the taking cognizance by a Magistrate of a distinct offence disclosed on the same facts, even if on those very facts another offence may also be constituted, of which cognizance could not be taken on account of the provisions of Section 195 Cr.P.C. Thus, in the present case, the police officer could have made a complaint in respect of an offence under Section 182 I.P.C. and the Court was not debarred from taking cognizance of that offence merely because the same facts might have constituted an offence under Section 211 I.P.C. for which a complaint ought to have been made by the Magistrate concerned and trial of which offence was barred in the present case on

account of the provisions of Section 195 Cr.P.C.

9. However, I am in agreement with the learned Magistrate in respect of the other reason advanced by him for acquitting the accused Madansingh of the offence under Section 182 I.P.C. The final report submitted by the S.H.O., Sirohi on July 29, 1976 in the Court of Judicial Magistrate, Sirohi specifically mentioned the fact that a part of the allegations made by Madan singh in his first information report that Shanti Devi was hurling abuses against Madansingh while stand ng at the door of his premises which constituted an offence under Section 504 I.P.C. and as such a case under Section 182 I.P.C. could not be instituted against Madansingh. This report was accepted by the learned Judicial Magistrate, Sirohi on August 16, 1976. There after the successor public officer viz. SHO, Police Station, Sirohi filed the complaint under Section 182 I.P.C. against Madansingh in respect of the very same facts alleging that Madansingh had filed a false report against Shanti Devi in respect of an offence under Section 366 and 448 I.P.C. But as a part of the report filed by Madansingh before the S.H.O., Police Station, Sirohi was found to be prima facie established by the said public officer and on the basis of which he came to the conclusion that proceedings under Section 182 I.P.C. could not be initiated against Madansingh, then the same public officer could not turn round and initiate a proceeding against Madansingh in respect of an offence under Section 182 I.P.C. There is no material on the record of the case to show that after the final report was filed by the S.H.O., any further evidence or material had come to his knowledge or became available to him, which could have led him to file a complaint against Madansingh in respect of the offence under Section 182 I.P.C. In the absence of any further evidence or material coming to the notice or knowledge of the public officer concerned, there was apparently no reason for him to change the view expressed by him in the final report submitted by him to the Court that action could not be initiated against Madansingh in respect of an offence under Section 182 I.P.C. as part of the allegations made by him in his F.I.R. were found to be prima facie substantiated upon investigation. The police officer was not empowered to change his views in respect of the very same facts as often as might have suited him and thus keep the concerned persons under constant threat of criminal proceedings being initiated against them. The S.H.O. had informed Madansingh that according to the final report submitted by him

before the trial Magistrate, no action in respect of an offence under Section 182 I.P.C. will be taken against him. Moreover, in final report submitted by the S.H.O., Police Station, Sirohi in the earlier proceedings, he expressed the view that an offence under Section 504 I.P.C. was prima facie found to have been committed by Shanti Devi and because of this reason the police officer concerned specifically stated in that report that no action could be initiated against Madansingh for an offence under Section 182 I.P.C. No reason has been disclosed for the apparent change of the view of the police officer concerned. Mere fact that another officer had taken charge of the Police Station was hardly a ground for change of opinion and it has not been stated, while initiating proceedings against Madansingh under Section 182 I.P.C. that any fresh material or evidence has come to the knowledge or possession of the police officer concerned which might have led to the initiation of the proceedings.

10. In this view of the matter, the initiation of proceedings under Section 182 I.P.C. by the same public authority viz. the S.H.O., Police Station Sirohi was without any justification. The order of acquittal passed by the learned Magistrate is, therefore, upheld. The appeal has no force and is dismissed.