

Ramasami Vs. the Queen-empress

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Court : Chennai

Decided On : Feb-04-1884

Reported in : (1883)ILR7Mad292

Judge : Kernan and ;Kindersley, JJ.

Appellant : Ramasami

Respondent : The Queen-empress

Judgement :

Kernan, J.

1. The appellant, Ramasami Nayak, was convicted before the Sessions Judge of Madura of making a false charge (Section 211, Indian Penal Code) of theft of a vatti (bowl) against Subbammal. He appealed to this Court on four grounds, and his appeal was dismissed on all the grounds except the fourth by Mr. Justice HUTCHINS, who directed the appeal on that ground to be heard by two Judges.

2. The fourth ground is that the appellant was entitled to have his evidence in support of the charge of theft considered by the Magistrate before sanction was given for his prosecution. To understand the value of this objection it must be recollected that the Criminal Procedure Code, Section 101, provides that, except as thereafter provided, Magistrates may take cognizance of any offence--(a) on receiving a complaint, (b) on Police reports, (c) on information.

3. Section 195 provides that no Court shall take cognizance of the offences therein mentioned, and amongst others, an offence under Section 211, Indian Penal Code, when such offence is committed in, or in relation to, any proceeding in any Court except with the previous sanction, or on the complaint, of such Court, or of some other Court to which such Court is subordinate.

4. The charge on which the prisoner was tried was that he, with intent to injure Subbammal, on the 24th April 1883 falsely charged her before the station-house (Police) officer of Usilampatti with theft in a building.

5. This was not a charge of an offence committed in, or in relation to, any proceeding in any Court (Section 195, Criminal Procedure Code); therefore no sanction to prosecute was necessary under that section.

6. The charge of an offence under Section 211 before the Police would be good, even though the matter never went before the Magistrate--see *The Queen v. Subbanna Goundan* 1 M.H.C.R. 30 *Bhokteram v. Heera Kolita* I.L.R. 5 Cal. 184 *Ashrof Ali v. The Empress* I.L.R. 5 Cal. 281. In *re Giridhari Mondul* I.L.R. 8 Cal. 435 *Empress of India v. Abul Hassan* I.L.R. 1 All. 497.

7. But the facts which give rise to the appellant's contention are these : The Police officer having investigated the charge, -he, on the 9th May 1883, referred the charge to the Magistrate as false. Thereupon the Magistrate summoned appellant, and on the 2nd June he was examined by the Magistrate. He, in examination, repeated the allegation that Subbammal had stolen the vatti. He also mentioned the names of two persons, who, he said, saw the vatti with her. The Magistrate made no further inquiry in the matter and did not give the appellant an opportunity of calling witnesses to prove the charge. The only record made by the Magistrate is in Exhibit B, produced and marked at the trial before the Session Court. Exhibit B is dated the 3rd June [294] 1883 and it is signed by the Magistrate. It refers to the charge being referred by the Police officers as false, and states that the appellant was summoned and examined, and that the Magistrate saw no reason to differ from the opinion of the Police and that the accusation was clearly false, and he ordered the case to be struck off the file, and gave sanction to prosecute the appellant for a false charge.

8. The case was brought by the Police before the same Deputy Magistrate on the 3rd August; witnesses were examined for the prosecution, and the appellant was committed to the Sessions under Section 211. The case was tried on the 2nd September 1883 by the Sessions Judge. The appellant examined four witnesses for the defence, including the persons named in his examination on the 2nd June, and was convicted and sentenced to two years' rigorous imprisonment and a fine of Rs. 200, and in default of payment to one year's further rigorous imprisonment.

9. The trial was had under circumstances very disadvantageous to the appellant, inasmuch as Exhibit B was put in evidence, which contains an expression of the Deputy Magistrate that the appellant's case was clearly false. This expression of opinion was, under the circumstances, irregular and illegal, because the Magistrate did not give the appellant an opportunity of examining his witnesses--see *The Empress v. Girish Chunder Nundi* I.L.R. 7 Cal. 87 *Government v. Karimdad* I.L.R. 6 Cal. 496. It is not stated by the Magistrate that the appellant declined to prosecute the charge or that he desired to call witnesses in support of it. Exhibit B was put in evidence against the appellant under an idea that sanction was required for the institution of the prosecution. If sanction was so required, the Exhibit B was not a regularly or legally given sanction and was invalid. However, the illegal admission of B as evidence would not render the conviction illegal as there was ample other evidence to justify the finding. The prosecution did not require any sanction as the appellant was tried for making a false charge to the Police.

10. Though the prosecution was by the Police and under the illegal sanction, yet these circumstances would not render the prosecution illegal. The case last cited decided that it was not irregular for the Magistrate who took up the case, after illegal sanction and under that order, to give the party who made the alleged false charge an opportunity of proving his case before the Magistrate prior to going into the case against him. But it did not decide that if the prosecution for the false charge was proceeded with without going into that evidence, and if a conviction was had, that such conviction would be illegal. We do not see on what grounds it could be held to be illegal, no sanction being required.

11. We cannot disturb the conviction, but the sentence is very much too severe. The appellant has been in rigorous imprisonment since the 2nd September 1883; we reduce the sentence to twelve months' rigorous imprisonment, without fine. The fine, if levied, is to be refunded.

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