Queen-empress Vs. Motha

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Court : Chennai

Decided On : Sep-16-1897

Reported in : (1897)ILR20Mad339

Judge : Arthur J.H. Collins, C.J. and ;Benson, J.

Appellant : Queen-empress

Respondent : Motha

Judgement :

1. In this case one Motha was said to have committed an offence punishable under Section 193, Indian Penal Code, in a case before a Magistrate, and the Magistrate, in giving sanction under Section 195, Criminal Procedure Code, for his prosecution, held an enquiry and recorded other evidence besides that in the case before him to show that there was prima facie ground for the prosecution. It is contended for the petitioner before us that the original case before the Magistrate disclosed no foundation for the charge under Section 193, Indian Penal Code, and that, therefore, the Magistrate had no power to make any enquiry or grant the sanction. In support of this argument reliance is placed on the decisions in Zamindar of Sivagiri v. The Queen I.L.R. 6 Mad. 29 and Abdul Khadar . Meera Saheb I.L.R. Mad. 224. We are unable to accede to the petitioner's contention. The decision in Zamindar of Sivagiri v. The Queen I.L.R. Mad. 29 was based on the language of Section 468 of the Criminal Procedure Code then in force (Act X of 1872), and on certain remarks of GARTH, C.J., in Kasi Chunder Mozumdar in re

I.L.R. Cal. 440 under the same Code. In neither of these cases did the learned Judges refer to the effect of Section 471 of the then Criminal Procedure Code though the Section appears to have been mentioned in the course of the argument in the Madras case. We find it difficult to reconcile the decisions with the provisions of that Section; but since those cases were decided, the provisions of the Code of Criminal Procedure upon the point under consideration have been altered and enlarged. Section 468 of Act X of 1872 provided that ' a complaint of an offence against public justice ' described in certain Sections of the Indian Penal Code, 'when stick offence is committed before or against a Civil or Criminal Court shall not be entertained in the Criminal Courts except with the sanction of the Court before or against which the offence was committed, or of some other Court to which such Court is subordinate.' Section 195 of Act X of 1882 provides that ' no Court shall take congizance of any offence punishable under 'the same Sections 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.' Then Section 476 of Act X of 1882 provides that ' when any Civil, Criminal or Revenue Court, is of opinion that there is ground for inquiring into any offence referred to in Section 195 and committed before it, or brought under its notice in the course of a Judicial proceeding, such Court, after making any preliminary inquiry that may be necessary, may send the case for inquiry or trial to the nearest Magistrate of the first class and may send the accused in custody, or take sufficient security for his appearance, before such Magistrate, and may bind over any person to appear and give evidence on such inquiry or trial.' The powers conferred by this Section are much more extensive than those conferred by Section 471 of Act X of 1872, and we have no doubt but that it is now open to a Magistrate when a person is accused of having committed before him an offence punishable under Section 193 of the Indian Penal Code to inquire into the truth of the accusation, and then, if it seems proper in the interests of public justice, to give sanction for the prosecution, even though the original record did not, on its face, disclose that the offence had been committed.

2. The words of the Sections contain no limitation to an offence appearing on the face of the record though nothing would have been easier than to have expressed such limitation if it was intended to have effect. To admit the petitioner's contention

would be by an artificial rule to screen from prosecution men who might have committed the grossest offences against public justice and offences perfectly capable of being proved, merely because owing to surprise, accident, oversight, or unavoidable circumstances, evidence of the offence was not, or could not be, produced before the Court at the same time that the offence was committed.

3. It is, however, argued for the petitioner that the decision in Zamindar of Sivagiri v. The Queen I.L.R. Mad. 29 was followed in Abdul Iihadar v. Meera Saheb I.L.R. 15 Mad. 224. The former case is no doubt referred to in the latter, but without any reference to the fact that in the interval the law had been materially altered, nor was it necessary for the decision in Abdul Khadar v. Meera Saheb I.L.R. 15 Mad. 224 to follow the decision in Zamindar of Sivagiri v. The Queen I.L.R. Mad. 29 .

4. The report in Abdul Khadar v. Meera Saheb I.L.R. 15 Mad. 224 is very brief and imperfect, but there the sanction was revoked, because the document had not been given in evidence in the case,' and, therefore, no offence under Sections 403 and 471, Indian Penal Code, had been committed. The approval of the decison in Sivagiri Zamindar v. The Queen I.L.R. Mad. 29 [if it was approved] was a mere obiter dictum. It was not necessary for the decision of the case then before the Court, nor was it, in fact, the ground of that decision and no reference was made to the change in the law made by Act X of 1882.

5. We must, therefore, hold that that decision does not support the petitioner's contention.

6. In the recent case of Shashi Kumar Dey v. Shashi Kumar Dey I.L.R. 19 Cal. 345 the view we have taken was expressly maintained with reference to the language of the present Criminal Procedure Code.

7. We dismiss the petition.

8. Ordered accordingly.