

In Re: Ewardoss Kalidoss

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Court : Chennai

Decided On : Apr-20-1945

Reported in : (1945)2MLJ115

Appellant : In Re: Ewardoss Kalidoss

Judgement :

ORDER

Happell, J.

1. The petitioner presented a complaint to the Assistant Commissioner of Police, Crime, Madras, against a certain R.V. Bhat alleging that he had committed an offence under Section 406 of the Penal Code in respect of a number of diamonds, valued at Rs. 20,000 entrusted to him by the petitioner. The police filed a charge sheet on the basis of this complaint in the Court of the Chief Presidency Magistrate and the case resulted in the discharge of the accused. In the course of the enquiry the petitioner gave evidence which, in the opinion of the prosecution, was irreconcilable with certain of the statements made in the complaint; and the Assistant Commissioner thereupon filed a complaint against him for an offence under Section 211 of the Penal Code. This complaint was transferred to the file of the Third Presidency Magistrate and the preliminary objection was raked that the Third Presidency Magistrate had no jurisdiction to try the case without a complaint from the Chief Presidency Magistrate in accordance with the provisions of Section 195(1)(b) read with Section 476 of the Criminal Procedure Code. This objection

was overruled by the Third Presidency Magistrate, and the petition now under consideration is against his order.

2. Section 195(1)(b) of the Criminal Procedure Code enacts that:

No Court shall take cognizance of any offence punishable under any of the following sections of the Indian Penal Code, namely, sections (here a number of sections are enumerated of which Section 211 is one) 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.

The offence alleged in the present case was not of course committed in the proceeding in the Chief Presidency Magistrate's Court which resulted in the discharge of R.V. Bhat. The question for determination is whether the offence constituted by the alleged false complaint should be regarded as an offence committed in relation to the proceedings in the Chief Presidency Magistrate's Court.

3. Neither the learned Crown Prosecutor nor the learned Counsel for the petitioner has been able to refer me to any decision of this Court which is directly in point. Earned Counsel for the petitioner relies on a decision of the Calcutta High Court in *Ahmed v. Emperor* : AIR1927 Cal478 . In that case a complaint of theft to the police was prosecuted by them and resulted in a trial in a Sessions Court. The accused was acquitted and the Sessions Judge, holding that the charge was false, made a complaint under Section 476 of the Criminal Procedure Code of an offence under Section 211 of the Penal Code. The learned Judges of the Calcutta High Court held that the false charge to the police, even though the offence was committed before the proceedings began in the Sessions Court, must be regarded as a matter relating to the proceedings in the Sessions Court since it was the basis of those proceedings. *Ahmed v. Emperor* : AIR1927 Cal478 is not distinguishable from the present case. My attention, however, has been drawn to the case of *Emperor v. Prag Datt* I.L.R.(1928)All 382 decided by Dalai, J, in which it is said a different view is taken. This is not quite correct. In *Emperor v. Prag Datt* I.L.R.(1928)All 382, there had been a complaint to the police which resulted in no

further proceedings, and then a complaint by the same person on the same facts to a Magistrate. Dalai, J., held that a Magistrate could take cognizance of a complaint by the police in respect of the complaint to them. It may be doubted whether this view could be taken in Madras; but it is unnecessary to decide the question as the fact that there were two complaints and that the complaint to the police did not directly result in proceedings in any Court clearly distinguishes Emperor v. Prag Datt I.L.R.(1928) All 382 from the present case.

4. As already stated there seems to be no decision of this Court which is directly in point; but the view expressed by the learned Judges of the Calcutta High Court in Ahmed v. Emperor : AIR1927 Cal478 is, in my opinion, in accordance with the judgment of a Full Bench of this Court in Registrar, High Court, Madras v. Kodangi (1930) 62 M.L.J. 425 : I.L.R. 55 Mad. 611 . The question referred to the Full Bench in that case was:

When a charge is made by a complainant to the police against more than one individual and the police while charging before the Court one or more of such individuals of the offence complained of, do not charge them all, is a complaint of the Court under Section 476 of the Code of Criminal Procedure necessary to prosecute the complainant under Section 211, Indian Penal Code, in respect of the person or persons whom the police have not charged before the Court?

The answer given by the Full Bench was that the Court had no jurisdiction to take action under Section 476 against the complainant in respect of the individuals not charged. The question referred does not of course cover the present case; but it seems to me clear that the underlying assumption in the order of reference and in the judgment of the Full Bench is that there would have been no difficulty if the question had been of the prosecution of the complainant in respect of the person charged. In that case the answer would have been that a complaint by the Court was necessary. Wallace, J., indeed observed in delivering the judgment of the Full Bench that:

In a case under Section 211, I.P.C., when the police or the complainant or any one else brings the charge, which is the subject-matter of the offence, to trial in a Court, then it may be fairly contended that the offence has been committed in

relation to a proceeding in the Court.

I have, therefore, no hesitation in following the decision in Ahmed v. Emperor : AIR1927 Cal478 . In my opinion, the offence alleged to have been committed by virtue of the complaint to the Assistant Commissioner of Police--Crime--was committed in relation to the proceedings in C.C. No. 2382 of 1944 in the Court of the Chief Presidency Magistrate; and, that being so, the Third Presidency Magistrate had no jurisdiction to take cognizance of the case against the complainant without a complaint from the Chief Presidency Magistrate. The petition is accordingly allowed, and the proceedings in C.C. No. 2945 of 1944 on the file of the Third Presidency Magistrate are quashed.

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