In Re: Sundaresan

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SooperKanoon Citation : sooperkanoon.com/786834

Court : Chennai

Decided On : Dec-19-1919

Reported in : 55Ind.Cas.684; (1920)38MLJ219

Appellant : In Re: Sundaresan

Judgement :
ORDER

Abdur Rahim, J.

1. The District Magistrate of Coimbatore who is also the President of the District Board, had been informed that a certain cheque had been forged and he has taken cognizance of the offence against the accused under Section 190(1)(c) of the Code of Criminal Procedure. It is argued that he had no such power. But I must admit, it is difficult to find any basis for such an argument in face of the language of Section 190(1)(c) which is to the effect that the District Magistrate may take cognizance of any 'offence upon information received from any person other than a police officer, or upon his own knowledge or suspicion, that such offence has been committed.' There can be no doubt upon the order recorded by the Magistrate, that he suspected that the accused had committed an offence of forgery and he has set out the facts which led him to that suspicion. Reliance has been placed in support of the petition upon several decisions of the Calcutta High Court, one of which is reported in Thakur Pershad Singh v. The Emperor 10 C.W.N. 775. There it is laid down, following two older decisions of the same Court

(In the matter of Surendranath Roy (1870) 5 Beng. L.R. 274 and In the Matter of Mohesh Chunder Bannerjea 1870) 13 W.R.1 that a Magistrate taking cognizance of an offence is bound to disclose the information, private or otherwise, upon which he issues a warrant for the arrest of the accused. So far as that goes, the information is set out in the order of the Magistrate in this case. But it is further observed: ' There is nothing on the record to show that the information, whatever it may have been, which he received was not lodged to him as Collector; and if that were so, it was not open to him as Magistrate to act on that information and proceed to issue warrants against the petitioners. Practically by such action he is making himself a Judge in his own case, for the case seems to be that he with the other co-proprietors granted a lease on certain terms to Chamroo Sahoo and that Chamroo has tampered with that lease.'

2. It is urged that here the information which Mr. Macqueen had, was derived from his position as the President of the District Board and that therefore he could not use that information in order to act under Section 190(1)(c). With all respect to the learned Judges who decided the case in Thakur Prasad Singh v. Emperor (1906) 10 C.W.N. 775 it is difficult to see wherefrom they obtained the limitation which they imposed upon Section 190(1)(c) and I find that in a later ruling of the same Court Lakhi Narayan Ghose v. Emperor I.L.R. (1910) Cal 221 one of; the learned Judges, Mr. Justice Carnduff doubted the correctness of that ruling. It seems to me that when a District Magistrate is given such a wide power as to take cognizance of an offence on suspicion, it would be disregarding the express language of the legislature to lay down that he cannot act if his suspicion or knowledge is based on facts which came within his cognizance in another capacity. It may be that in some cases the exercise of such a power by Magistrates may cause considerable hardship and such a power may be liable to be harshly exercised. But we have nothing to do with that. Where certain powers are conferred on Magistrates by the legislature it is no business of the Court to lay down limitations which are unwarranted by the language of the Code.

3. The petition therefore must be rejected, but the accused will remain on the same bail pending trial.

Spencer, J.

4. I concur. I only wish to add that I agree with the opinion of Mr. Justice Carnduff in Lakhi Narayan Ghose v. Emperor I.L.R. (1910) Cal 221 that the decision in Thakur Prashad Singh v. The Emperor 10 C.W.N. 775 goes beyond the provisions of the Code and is not a decision which can be followed without question.

5. Another case in Jhuna Lal Sahu v. The King Emperor (1917) 2 Pat. L.J. 657 was quoted to us. But, as I understand that case, there was a com-plaint in writing of which, the Magistrate might have taken cognizance under Section 190(1)(a) and the learned Judges were of opinion that, having such a complaint before him, the Magistrate was not justified in taking cognizance of the same under Section 190 Sub-section 1(c) as if it was a matter that had come to his knowledge from a source other than a complaint of facts constituting an offence, as 'complaint' is defined in the Code.