

In Re: Alfred Paul

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Court : Chennai

Decided On : Sep-28-1943

Reported in : AIR1944Mad166; (1943)2MLJ597

Appellant : In Re: Alfred Paul

Judgement :

ORDER

Horwill, J.

1. This revision petition is against the order of the Sub-Divisional Magistrate of Coimbatore confirming the conviction of the petitioner under Section 353, Indian Penal Code and reducing the fine from Rs. 100 to Rs. 50.

2. The prosecution case is that the complainant, a telegraph peon, had gone to the office of the United Motors, Coimbatore, and that as he passed the gate on Ms return from the office, the accused, a telephone clerk of that company slapped him on the face. After enquiry, the Sub-Inspector of Police, in his report to the Sub-Magistrate of Coimbatore on the investigation made in the case, said that the assault was exaggerated, that the complainant was not very anxious about the case and that under these circumstances and in accordance with the orders of the Inspector of Police he had treated the case as a mistake of fact. With this referred charge-sheet he sent a copy of the records, which disclosed that a number of witnesses had been examined who supported the complainant's story and that the

medical certificate indicated that the complainant had received a minor injury. The Sub-Magistrate thereupon replied to the Sub-Inspector that the offence was not compoundable and so the fact that the complainant was not anxious about the case was no ground for referring the case, and that in view of the medical certificate the occurrence must have happened. He said that if there were any eye-witnesses the case should be charged; and he asked for a copy of the case diary. Thereupon--presumably-a a charge-sheet was submitted and the trial proceeded, ending in the conviction of the petitioner.

3. Various points have been taken in this petition. The first is that the Magistrate had no jurisdiction to refuse to accept the referred charge-sheet and to say that there was no mistake of fact. A judgment of Pakenham Walsh, J., in Venkatasubba Rao v. Anjaneyalu : (1932)63MLJ679 deals with a case somewhat similar to the present, in which the learned Judge says that if the referred charge-sheet disclosed no offence the Magistrate had no power to order the police to put in a charge-sheet, The learned Judge pointed out that there were three ways by which a Magistrate could take cognizance of an offence and they were set out in Section 190, Criminal Procedure Code. He said that obviously Clauses (a) and (c) of that section did not apply and that (b) could not apply, because the report from the Police did not disclose an offence. He therefore concluded that the Magistrate had no jurisdiction to proceed further, and quashed the proceedings in the Magistrate's Court. The present case has however to be distinguished by the nature of the report sent by the Police. In the case, considered by Pakenham Walsh, J., the persons examined by the police were disbelieved and the report did not disclose any offence: In the present case, the Police merely said that the assault was exaggerated. They did not say it was false. As story of assault that is only exaggerated still discloses an offence of assault; and the police gave as a further ground for not taking action the fact that the complainant was not every anxious about the case. That* was not relevant, as the Magistrate pointed out. So the Magistrate did, in this case, take cognizance of the offence Upon the report of the Police.

4. In this connection it is argued that the Magistrate was mistaken in thinking that the offence was of such a nature as to be not compoundable. If, however, the

report disclosed an offence, we cannot question after the trial is over the grounds upon which the Magistrate chose to take cognizance, provided that there was material upon which he could act.

5. It is next argued that the principle enunciated in Section 191 should be applied to this case and that as the Magistrate was the origin of this prosecution, he ought not to have tried the case. No such objection has been taken by the accused at any stage of the trial. It is however conceded that Section 191 does not strictly apply; and the case quoted above, Venkatasubba Rao v. Anjaneyalu : (1932)63MLJ679 is authority for the position that a Magistrate under such circumstances is not taking cognizance under Section 190(1)(c). Criminal Procedure Code. The fact that the Magistrate had to consider whether prima facie a case had been made out would not disqualify him either in law or in equity from proceeding with the trial. A Magistrate often has to form conclusions on preliminary data for interlocutory purposes, such as bail application, for example, but the forming of such tentative conclusions have never been held to disqualify the Magistrate from trying the accused.

6. A third contention of the petitioner is that the offence disclosed was one punishable under Section 332, Indian Penal Code, which is not within the cognizance of the Magistrate who tried the case. Even if it be true that an offence punishable under Section 332 was committed, it is not illegal for a Magistrate to try an accused for a lesser offence, though it has been held that if he is conscious of the fact that a more serious offence has been committed which he cannot try, it would be improper for him to try the accused for a lesser offence and so clutch at jurisdiction. Such a minor hurt as a slap on the face is more often than not treated as an assault, although if the definition of 'hurt' were strictly construed it would come under that section. There is no reason to think in this case that the Magistrate, in order to try this case himself, deliberately framed a charge of a lesser offence, knowing that a more serious offence had been committed. -

7. The learned advocate for the petitioner has tried to persuade me that on the evidence adduced no reasonable Magistrate could have found the petitioner guilty of the offence for which he was charged. I am not prepared to interfere in revision

on a. question of fact, where the findings of fact are concurrent in two Courts below The petition is dismissed.

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