

In Re: C.P. Jagannathachari

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SooperKanoon Citation : sooperkanoon.com/800704

Court : Chennai

Decided On : Dec-01-1941

Reported in : AIR1942Mad326; (1942)1MLJ105

Appellant : In Re: C.P. Jagannathachari

Judgement :

ORDER

Horwill, J.

1. The petitioner was convicted by the Chief Presidency Magistrate, Egmore, Madras of an offence punishable under Section 193, I.P.C. in that he gave false evidence in a judicial proceeding. The petitioner was sentenced to imprisonment, till the rising of the Court and to pay a fine of Rs. 50.

2. The case against the petitioner which the Chief Presidency Magistrate found to have been proved was that the Judge ordered the return of half costs to him in a certain suit. In order to carry out that order, the Registrar called upon the petitioner to return the receipt given to him at the time when the court-fee was paid. The petitioner falsely replied that he had lost the receipt. In fact he had pledged the receipt with a Marwadi. The Registrar then told the petitioner that he could return the money to him only if he filed an affidavit that he had lost, the receipt ;* so that he might assure himself that the money was returned to the proper person. The petitioner thereupon filed a false affidavit in which he repeated his earlier

statement that he had lost the receipt. Acting on that false affidavit, the Registrar returned the half costs to the petitioner. Subsequently, the creditor who had advanced money on the pledge of the receipt filed an application before the Chief Judge, Court of Small Causes, praying that the Court might take action against the petitioner, an advocate of this Court, under the Bar Councils Act. The Chief Judge thereupon passed an order saying that the incident required further investigation and said:

I order that these papers be sent to the Registrar for an inquiry; so that if there are grounds for starting proceedings against the respondent, the Registrar may take necessary action. The question as to whether any complaint should be presented under Section 10 (2) of the Indian Bar Councils Act will be considered by this Court after this matter is disposed of by the Registrar.

The Registrar made enquiries,, and soon satisfied himself that the statement of the petitioner contained in the affidavit was false. He thereupon filed a complaint in the Court of the Chief Presidency Magistrate. The Chief Presidency Magistrate took cognisance of this offence on that complaint and the petitioner was subsequently convicted and sentenced as above.

2. In revision, two contentions are put forward by the learned advocate for the petitioner. The first is that this prosecution was not instituted within the period of limitation set out in Section 97 of the Presidency Small Cause Courts Act. Section 97, runs thus:

All prosecutions for anything purporting to be done under this Act must be commenced within three months after the offence was committed.

It seems clear that the petitioner was not prosecuted for something purporting to be done under the Act. The filing of a false affidavit is certainly not something purporting to be done under the Act. An illustration of a case to which Section 97 would apply would be where a bailiff distraining property is alleged to have committed trespass; caused injuries to some property, or committed a tort. If he was purporting to act as a bailiff in doing the duty that was cast upon him, then Section 97 would apply. There are many acts mentioned from Section 79 onwards

in the doing of which a person might do something that would afford a ground for prosecution. If so, the prosecution must be brought within three months.

3. The other(c) technical objection raised is that the complaint was not one by the Court of Small Causes. The false affidavit was, I think, filed in a judicial proceeding. The Court ordered, the return of half costs; and it was in proceedings necessary for the return of these half costs that this false affidavit was filed. Section 195 (b), Criminal Procedure Code says that the

Court shall not take cognisance of an offence....punishable under Section 193, I.P.C., 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... .

Although the Registrar is a 'Court' for certain purposes, e.g., when trying a suit for a sum of Rs. 20 or less the Registrar was not acting as a Court in this case. He was acting as a ministerial officer and a complaint by the Registrar was not therefore a complaint by the Court, It is clear that no injustice resulted to the petitioner from the complaint having been filed by the Registrar instead of by the Court; because the Registrar appears to have been ordered to make enquiries and take necessary action. However, the filing of a complaint by a proper person is a condition necessary to the taking cognizance of an offence punishable under Section 193, I.P.C.; so that unless there is a proper complaint the Court has no jurisdiction to enquire into the case at all. Although, therefore, the ground taken by the petitioner is a technical one, his contention must prevail and the proceedings, which are illegal, have to be set aside.

4. The petition is therefore allowed the conviction and sentence set aside, and the complaint ordered to be returned to the Registrar, The setting aside of the conviction and sentence does not of course preclude the Court of Small Causes from filing a proper complaint. The fine, which I understand has been paid, should be refunded.