

The Public Prosecutor Vs. Linga Balija Devamma

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Court : Chennai

Decided On : Dec-04-1941

Reported in : AIR1942Mad513; (1942)1MLJ382

Appellant : The Public Prosecutor

Respondent : Linga Balija Devamma

Judgement :

Horwill, J.

1. The accused gave a complaint to the Village Magistrate alleging that somebody had, entered her house and stolen jewels worth Rs. 429. In due course, the Village Magistrate sent the usual reports to the police and to the Sub-Magistrate; and on the receipt of the report of the Village Magistrate, the police took cognizance of the matter and reported the case as false. The police subsequently filed a charge-sheet purporting to be under Section 211, I.P.C.; but the Sub-Divisional Magistrate found that the offence committed was one punishable under Section 182, I. P.C. He considered on the evidence that the case had been amply proved and convicted and sentenced the accused. In appeal, the learned Sessions Judge, without considering the case on its merits, came to the conclusion on a preliminary objection raised by the accused, that the charge-sheet by the police did not amount to a valid complaint such as is required under Section 195 of the Criminal Procedure Code.

2. A number of cases were quoted before the learned Judge; and he particularly relied on *Pallikudathan v. Budda Goundan* : (1923)45MLJ553 , in which it was laid down that a Village Munsif cannot be treated as a subordinate of a Sub-Magistrate and that therefore where a complaint by a Village Magistrate is necessary, a complaint by a Sub-Magistrate does not satisfy the requirements of Section 195 of the Criminal Procedure Code. The learned Sessions Judge argues from that case that since a Village Magistrate is not a subordinate of a Sub-Magistrate, he is likewise not a subordinate of a Sub-Inspector of Police, and that as the complaint was made to the Village Magistrate, a complaint by the Sub-Inspector of Police would not suffice. He accordingly set aside the conviction and sentence and acquitted the accused. The Crown has appealed against this acquittal.

3. It is true that the Village Magistrate is not a subordinate of the Sub-Inspector of Police and that if a complaint by the Village Magistrate was necessary, then, the accused was rightly acquitted. Section 195 of the Criminal Procedure Code requires as a condition precedent to the taking cognizance of an offence punishable under Section 182, I.P.C. that there should be a complaint by the public servant concerned. Section 182 says:

Whoever gives to any public servant any information intending thereby to cause such public servant- to do anything which such public servant ought not to do shall be punished....

When a complaint is given by a person to a Village Magistrate, it is not expected or intended that the Village Magistrate will himself take any action to assist the person who gives the complaint, except by sending a report to the police. When- therefore a complaint is given to the Village Magistrate ; it is given to him for the ex-press purpose of informing the police; and so a complaint to the Village Magistrate is tantamount to the sending of information to the police through the Village Magistrate- A distinction can therefore be drawn between a complaint by a Sub-Magistrate and one by a Sub-Inspector; for although under Section 3 of Ch. III, part I, of the Village Officers and Ryots Manual, a Village Magistrate is bound to prepare a report in triplicate, sending one copy to the Sub-Inspector, one copy to the 'Sub-Magistrate, and retaining one copy himself, the Sub-Magistrate does not

ordinarily take any action on the report of the Village Magistrate, whereas the Sub-Inspector is bound to do so under Section 154 of the Criminal Procedure Code. A complaint by the Village Magistrate may not therefore amount to the sending of information to the Sub-Magistrate upon which the Sub-Magistrate is intended to act; because the party makes a complaint, not for the purpose of giving information to the Sub-Magistrate, who will not take any action but for the purpose of informing the police, who must take action, and who the complainant knows will take action. Pallikkudathan V. Budchi Goundan : (1923)45MLJ553 , upon which the learned Sessions Judge relied, merely says that a Village Magistrate is not a subordinate of a Sub-Magistrate and goes no further. The learned advocate for the accused here relies on Muthu Goundan In re (1924) 21 L.W. 661 presumably as an authority for the proposition that where there is a complaint under Section 211, Indian Penal Code, there cannot be a conviction under Section 182, Indian Penal Code. The facts in that case are not very clear; but there is no reason to think that the learned Judges laid down any such general principle of law. What is material is that there should be a complaint setting out all the facts which constitute the offence; and it does not matter whether the complainant thinks that the offence committed is punishable under Section 211 or under Section 182. This Court laid down, as long ago as Emperor V. Jonnalagadda-Venkatrayudu I.L.R.(1905) Mad. 535 that information given to a Village Magistrate for the purpose of being passed on to the Station House Officer and which it was his bounden duty to pass on, must be considered to be 'information given to the Station House Officer so as to justify his taking action. In The Sessions Judge of Tinnevely Division v. Sivan Chetty I.L.R.(1909) Mad. 258 which approves of the decision in Emperor v. Jonnalagadda Venkatrayudu I.L.R.(1905) Mad. 535 the majority of the learned Judges held that information given to a Village Magistrate amounts to a complaint to the higher authorities to whom he is bound to pass on the information.

4. It is therefore clear that the learned Sessions Judge was wrong in acquitting the accused on the preliminary ground. The order of acquittal is therefore set aside and the appeal remanded to the Sessions Judge for disposal on the merits.