

Amar Chand Vs. Emperor

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Court : Kolkata

Decided On : Feb-07-1933

Reported in : AIR1933Cal364

Appellant : Amar Chand

Respondent : Emperor

Judgement :

Rankin, C.J.

1. In this case the appellant together with a number of other persons was tried before a Special Judge under Ordinance 10 of 1932. The charges were really three-conspiracy to murder, abetment of attempt to murder and harbouring a person who had taken part in an attempt to murder, the latter charge being laid under Section 212, I.P.C. The appellant was acquitted by the Special Judge on the first two charges but he was convicted of the offence under Section 212 and sentenced to two years' rigorous imprisonment. The evidence upon which the appellant has been in the end convicted of the offence of harbouring is very short and simple. It consists really, as the Special Judge puts the matter of the judicial confession of the accused himself coupled with corroboration in a letter found in the room in which the accused was arrested and alleged to be in his handwriting, At the hearing of this appeal two contentions were raised upon which I shall say something first. The first contention was that in this case Ordinance 10 of 1932 was invalid and ineffective because it was contrary to the provisions of the

Government of India Act which vests original criminal jurisdiction in this High Court within the limits of the town of Calcutta. In my judgment there is nothing in that contention. Section 106, Government of India Act, leaves the definition of this High Court's original criminal jurisdiction to be made by the Letters Patent and we derive a particular original criminal jurisdiction from Clause 22, Letters Patent, 1865. It is within the power of the Indian legislature to alter and amend the Letters Patent and consequently within the Ordinance-making power of the Governor-General under the Government of India Act. In any case however the argument has little substance because it appears that this offence was committed partly at all events within the 24-Parganas and the Special Judge who tried the case was a Special Judge for the area of 24-Parganas among other areas. That point therefore fails altogether.

2. The second question with which it is necessary to deal is this: The Local Government under Section 32 made a special order directing the Special Judge to try this particular case. In the special order made by the Local Government in advance of the trial it was recited that the Local Government was of opinion that the offence was committed in furtherance of a movement prejudicial to the public safety or peace. At the trial which proceeded according to the method of warrant cases the learned Judge on the fourth day proceeded to frame charges. Then for the first time a question was raised on behalf of this accused that the offence, if committed at all, was not committed in furtherance of a movement prejudicial to the public safety or peace. The learned Special Judge referring to the recitals in the order already made by the Local Government refused to refer the matter to the Local Government at that stage, he being of opinion that this course would be futile in view of the declaration contained in the order directing the form of the trial. In this Court it has been contended that the learned Special Judge was not justified in refusing to refer the matter as is required by Sub-section (2), Section 48 of the Ordinance. In my opinion it cannot be a good reason for refusing to obey the direction of an enactment in a matter of this kind that the Court thinks that no good purpose would be served by obeying. Assuming that the Local Government is not obliged to decide the question according to the evidence taken in the case it is at all events within the discretion of the Local Government to have some regard to that evidence, and if on the fourth day of the trial the learned Judge was to obey

the Statute I think it was his duty to make a reference at the time the question was raised. It may be quite true that it would have been open to the learned Judge to raise the question himself at the beginning of the trial; it may be quite true that he was not obliged to make a reference the moment the point was taken if he had made it some time or another before he gave final judgment in the case. But in thinking it futile to make a reference the learned Special Judge omitted to consider whether it would not be equally futile to go on with the trial of the case without making the reference. The Statute nowhere says that this question should be determined by the Local Government in advance and the particular provision of Section 32 under which the Government's order was made begins with the phrase 'subject to the provisions of Section 48.' Nothing therefore that the Local Government could do under Section 32 would escape being subject to the provisions of Section 48 and Section 48 begins by saying:

No Court shall try any offence unless it is an offence punishable under this Ordinance or was committed in furtherance of a movement prejudicial to the public safety or peace.

3. Notwithstanding anything contained under Section 32 the Special Judge was prima facie prohibited from trying this case unless it satisfied that condition; but by Clause 2, Section 48 it is said that:

the question whether or not an offence is of the nature described shall not be raised in any Court other than the Court trying the offence and where such question is so raised then, if the Court is that of a Special Judge the question shall be referred to the Local Government.

4. It seems to me that in these circumstances in order to give himself power to deal with this case the Special Judge was under an obligation to carry out the requirements of sub Section (2). The requirements of Sub-section (2) not having been carried out, it does not appear to me that there has been any determination so as to satisfy the Statute upon the question whether the offence was committed in furtherance of a movement prejudicial to the public safety or peace.

5. In these circumstances, it has been pressed upon us by the Deputy Legal Remembrancer that as the point can be raised at any time and be referred to the Local Government we ought to make such reference now. It is clearly not competent for us to decide ourselves upon the fact whether the offence was committed in furtherance of a movement prejudicial to the public safety or peace because the Statute intends that matter to be left solely with the Local Government. Upon consideration I am not prepared to make any such reference by this Court. It is quite true that by Section 428, Criminal P.C., this Court has ample power to take additional evidence or to order additional evidence to be taken; but this is not a question of taking evidence. This a question of referring a certain matter to the Local Government for administrative order. I see nothing in the Criminal Procedure Code giving us power to deal with such a position as that and while it is very tempting to say that this Court of appeal has all the powers of the original trial Court I am not certain, looking to the history of the various editions of the Criminal Procedure Code, that proposition in all its universality is true in our criminal law. The matter however is more difficult by reason of the provisions of the Ordinance itself which prohibits the question from being raised in any Court other than the trial Court; and it is rendered more difficult still by the consideration that the Ordinance having ceased to take effect the Court itself, if I may use the expression, is no longer functioning.

6. We have however under Section 423, Criminal P.C., power to order a retrial by a Court of competent jurisdiction with power if we think fit to order a commitment. In my judgment, having regard to the fact that this accused Was acquitted of all charges, save the charge under Section 212, I.P.C., having regard to the fact that the local jurisdiction under Section 182 is equally good in the Presidency town and in the. 24-Pargannas and having regard to the fact that the ease under Section 212 is now an exceedingly simple one, the proper course for us to adopt is to allow the appeal, to set aside the conviction and the sentence and to direct that the appellant be retried by the Chief Presidency Magistrate upon a charge under Section 212, I.P.C., only in his ordinary jurisdiction. We intend to decide upon a review of all the matters which would be proper for a Magistrate to consider under Section 347, Criminal P C., that it is not necessary and desirable that this man should be committed to the Sessions upon this charge and that the Chief

Presidency Magistrate shall try the case himself.

Ameer Ali, J.

7. I agree.

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