

Begu Singh Vs. Emperor

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Court : Kolkata

Decided On : Mar-23-1907

Reported in : (1907)ILR34Cal551

Judge : Francis W. Maclean, C.J., ;Harington, Brett,; Mitra; and Geidt, JJ.

Appellant : Begu Singh

Respondent : Emperor

Judgement :

Francis W. Maclean, C.J.

1. The practical question which we have to consider on this reference is whether the case of In the matter of Krishna Gobinda Dutt (1905) 9 C.W.N. 859 was rightly decided. The further discussion to-day leads me to answer that question in the affirmative, notwithstanding the pessimistic opinion of the learned Judges who referred the case, that the results of such a ruling appeared to them likely to be disastrous to the administration of justice.

2. The question simply turns upon the true meaning and effect of Section 476 of the Code of Criminal Procedure.

3. The expressions in the section 'is of opinion that there is ground,' 'committed before it or brought under its notice in the course of a judicial proceeding,' seem to indicate with some clearness that it is the Judge alone who tries the case who can

summarily, and at once, send the case for enquiry to the nearest Magistrate. It is a power conferred upon the Court which may be exercised summarily if an offence has been committed 'before' the Court, or brought under its notice in the course of a judicial proceeding. The matter is one of procedure, but of considerable importance, and in dealing with it he must bear in mind that Sections 476 and 195 deal with different subject-matters. The Court which tries the case may proceed summarily under Section 476, or later on may give sanction to prosecute under Section 195. If months after the trial the Court may act under Section 476, it is difficult to appreciate the necessity of Section 195. Looking to the language of the section, it would be a strong thing to say that any one might come some months afterwards and ask another Judge who had not tried the case to exercise the summary and what I may perhaps call the immediate powers under that section; the proper course would be to proceed under Section 195. If, subsequently, an application for sanction to prosecute under Section 195 of the Code of Criminal Procedure is made to a Judge who is the successor in office of the Judge who tried the case, that sanction may be given, as was pointed out in the case of *Dharamdas Kamar v. Sagore Santra* (1906) 11 C.W.N. 119. But that obviously is a very different thing from asking such successor in office to exercise the summary powers given to his predecessor under Section 476. It is worthy of notice that there is no appeal from the action of the Court under Section 476: there is from an order under Section 195. Section 476 and Section 195 aim at different objects. The former gives a summary power to the Judge who tries the case to send a supposed offender to the nearest Magistrate--a power exercisable only at, or immediately after, the conclusion of the trial in which the offence is alleged to have been committed, whilst Section 195 enables an application for sanction to be made later on, as an entirely different and independent proceeding. I fail to see how this view affords a loophole for the escape of an offender, or that it is calculated to prove disastrous to the administration of justice. The Judges who decided the case of *Krishna Gobinda Dutt* (1905) 9 C.W.N. 859 were not wholly innocent of the distinction between the expressions 'Court' and 'Judge'; what they held there was that to give true effect to the whole of the language of Section 476, the expression 'Court' could only mean the Judge who tried the case.

4. With respect to the cases cited in the reference, the case of Emperor v. Molla Fuzla Karim (1905) I.L.R. 33 Calc. 193 was a case under Section 195, and the observations of the Judges in relation to. the case of Krishna Gobinda Dutt (1905) 9 C.W.N. 859 must be regarded as obiter dicta. Moreover, the language of Section 476 does not appear to have been considered or criticised. The case of Ambica Roy v. Emperor (1905) 2 C.L.J. 65, notes appears only in the short notes to which we cannot properly refer, but, so far as we can discover, the initiative there was actually taken by the Judge who tried the case. It is perfectly true that in the case of Dharamdas Kamar v. Sagore Santra (1906) 11 C.W.N. 119, I said for my own part that the case of In the matter of Krishna Gobinda Dutt (1905) 9 C.W.N. 859 might require further consideration, but my reason for saying that was that I understood that the soundness of that decision had been questioned by other Division Benches of this Court, and out of respect for such divergent opinion I suggested the matter might require further discussion. The argument of to-day has fortified rather than weakened the view I previously expressed--a view which, I understand, is shared by all the members of the present Court. When speaking of the disastrous consequences of that decision, it appears to have escaped the learned referring Judges that although the Judge who tried the case may be the only person who can properly exercise the summary powers under Section 476 from which there is no appeal, his successor can give sanction to prosecute under Section 195.

5. I think the second question should be answered in the affirmative and this practically covers the first.

6. The Rule must be made absolute.

Harington, J.

7. In my opinion the answer must be that the Magistrate had no jurisdiction to make the order under Section 476, and that the case of In the matter of Krishna Gobinda Dutt (1905) 9 C.W.N. 859 was rightly decided.

8. There are two ways in which persons committing offences referred to in Section 195 may be proceeded against--one on the prosecution of a private individual with

the sanction of the Court, the other by the Court itself under Section 476.

9. That section gives the Court in cases in which an offence under Section 195 is 'committed before it or brought to its notice in the course of a judicial proceeding' power to send the accused in custody to the nearest Magistrate who shall 'proceed according to law and as if upon a complaint made and recorded under Section 200.'

10. The section is intended to enable a Court to deal promptly with an offender who commits an offence in the presence of the Court--or whose offence is brought to the notice of the Court in the course of a judicial proceeding had before it. I do not think that if such an offence is committed before one judicial officer, and that officer does not think it proper under the circumstances to exercise the powers vested in him under Section 476 that, his successor in office can exercise these powers in respect of the offence committed before or brought to the notice of his predecessor.

11. It is the judicial officer before whom the offence is committed who is responsible for the prosecution, and as the offence is one committed or disclosed before him, he is able to judge whether reasonable ground exists for ordering a prosecution. He is acting on his own knowledge when he directs proceedings under Section 476, and the powers under that section must only be exercised with the greatest care. Where proceedings are taken under Section 195, the defendant can, if he is acquitted, recover damages from the prosecutor on proving that the prosecution was malicious, and was instituted without reasonable and probable cause. He has no such remedy if proceedings are taken under Section 476. No one is responsible in that case but the Court, and the Court is the particular officer before whom the offence has been committed. It can never have been intended that if that officer does not exercise his powers under Section 476 some other officer should exercise them and should institute proceedings under that section on the application of some private individual who would thus be enabled to set the law in motion, and escape the responsibility for the consequences which he would have had, had proceedings been taken under Section 195.

12. For example, in this case it is alleged that Begu produced a fabricated bahi and gave false evidence before Mr. Collins. If Mr. Collins thought that the case was one for proceeding under Section 476 he could have acted under that section. He did not so act, and therefore it must be taken that he did not think the case a proper one for such summary proceedings.

13. Then Mr. Collins leaves and is succeeded by Mr. Waddell. Mr. Waddell not having tried the case in which Begu gave evidence knows nothing about it until the application of Ram Narain for sanction to prosecute. He is entitled, if he thinks it a case for prosecution, to sanction a prosecution under Section 195. Then, if Ram Narain prosecutes he will be liable, civilly or criminally, if the prosecution is false, malicious and without reasonable and probable cause.

14. But Mr. Waddell does not sanction a prosecution under Section 195. He takes proceedings under Section 476 on the allegations of Ram Narain with the result that, however for and malicious Ram Narain's allegations may be, he cannot be proceeded against civilly in an action for malicious prosecution because he has not prosecuted, but has only asked the Court to enable him to prosecute; he cannot be proceeded against criminally for laying a false charge because he has not made a charge but has only asked the Court to give sanction to the laying of a charge.

15. In my opinion it is the judicial officer before whom the offence is committed or to whose notice it is brought in the course of a judicial proceeding who must order proceedings under Section 476; and that if he does not consider it proper to direct proceedings under that section no other person has power to direct those proceedings to be instituted.

16. The officer before whom the offence is committed alone is in a position to say whether it is, or is not a case for proceeding under Section 476, and it is the fact that that judicial officer is the trying officer in the case in which the offence is committed, that he has heard the witnesses, and knows of his personal knowledge whether the circumstances call for a summary proceeding or not which forms the safeguard against the improper use of those summary powers. If the powers conferred under Section 476 are to be exercised by an officer who has not heard

the witnesses and has no personal knowledge of the circumstances of the case on the allegations of a private individual, that safeguard is taken away and there is no corresponding responsibility placed on the private individual as there would be if a prosecution had been instituted under Section 195.

17. In the case of Emperor v. Molla Fuzla Karim (1905) I.L.R. 33 Calc. 193, the question was as to the validity of a sanction granted under Section 195. The attention of the Court does not seem to have been drawn to the circumstance that while under that section the responsibility for the prosecution rests with the prosecutor, under Section 476 it rests on the Court. In any case the matter before them was distinguishable from Krishna Gobinda Dutt (1905) 9 C.W.N. 359 case.

18. For these reasons, I think that the Magistrate had no jurisdiction to make the order under Section 476, and I agree that the Rule should be made absolute.

Brett, J.

19. I agree with the learned Chief justice.

Mitra, J.

20. I also agree Geidt J.

21. The facts which give rise to the present reference are these. The petitioner Begu Singh was a witness for the defence in a trial held by Mr. Collins, Subdivisional Magistrate of Hajipur, and gave evidence in support of a book of account which he produced. Mr. Collin did not believe the evidence and held that the book of account was fabricated for the purposes of the trial, but he took no steps for the prosecution of the petitioner, nor did he express any opinion that Begu Singh ought to be tried.

22. Some four months afterwards, on 21st September, one Ram Narain applied for the prosecution of Begu Singh. The application was made to an officer bearing the initials S.I.H. who at that time was Subdivisional Magistrate of Hajipur, Mr. Collins having been transferred. The result of this application was that Begu Singh was

called on to show cause why he should not be prosecuted for giving false evidence. The matter eventually, on 15th October, came before Mr. Waddell, who had now become Subdivisional Magistrate. That officer considered the cause shown by Begu Singh to be insufficient and ordered his prosecution before the District Magistrate for an offence punishable under Section 193, Penal Code. This order purported to be made under Section 476 of the Code of Criminal Procedure. Begu_ Singh then applied to this Court and obtained a rule calling on the District Magistrate to show cause why the order directing his prosecution should not be set aside, the main ground, and the only one which we on this reference have to Consider, being that as the petitioner was examined as a witness before Mr. Collins, Mr. Waddell had no jurisdiction to order his prosecution for having given false evidence before the former officer. The learned Judges who heard the rule were of opinion that Mr. Waddell had jurisdiction, but in face of the view expressed in Krishna Gobinda Dutt (1905) 9 C.W.N. 859 found themselves unable to discharge the rule and accordingly referred for the decision of a Full Bench the question whether the case just cited was rightly decided.

23. The answer to the reference depends on the meaning to be attached to Section 476 of the Code of Criminal Procedure. That section empowers a Court to prosecute for certain classes of offences. The offences are enumerated in Section 195 and comprise (i) offences in contempt of the lawful authority of public servants, (ii) offences against public justice, and (iii) offences relating to documents given in evidence. They are such as a Court before which they are committed or to whose notice they are brought would desire to repress either in vindication of its own authority, or in furtherance of a pure, administration of justice. The terms of the section indicate to my mind that the desirability of prosecuting the offender must be present to the mind of the Court during the proceedings in the course of which the offence was committed or brought to notice. I do not think that it was ever intended that when the proceeding had terminated and passed beyond the ken of the Court, the attention of the Court should be subsequently redrawn by some private person to the fact that in those proceedings there had been committed some offence in contempt of the Court's authority or against public justice which deserved punishment. The commission of the offence and the desirability of a prosecution should be so patent as to move

the Court at the time to take action without the stimulus of an application by some interested person.

24. Applying this view of the section to the case before us, I am of opinion that Mr. Waddell's order for the prosecution of Begu Singh was beyond the scope of the section. The true ratio decidendi, I think, is not that Mr. Waddell was not the officer before whom the offence was committed but that the time at which, and the occasion on which, the order for prosecution was made were not those contemplated by the section. Had Mr. Collins remained the Subdivisional Magistrate of Hajipur it would, in my opinion, not have been open to him, on an application made four months after the original case had been disposed of, to order this prosecution. My decision turns not on the word 'Court' as meaning a particular individual but on a consideration of the circumstances in which such a prosecution is meant to be initiated.

25. The fact that there has been a change of officers since the offence was committed will no doubt ordinarily indicate that the conditions requisite for an order to prosecute did not obtain; but I do not desire to be understood as laying down a universal rule that in no case can the order for a prosecution be made by an officer other than that before whom the offence was committed. An officer who tries a case may, for example, be of opinion that a document given in evidence is a forgery, and that a prosecution should be instituted in respect of it, and yet he may not be able on the evidence before him to make up his mind as to the person who should be prosecuted. In order to ascertain this, he orders a preliminary enquiry, but before he can hold that enquiry is transferred. In such a case his successor would in my opinion be competent to hold the enquiry, and on the result of that enquiry to direct a prosecution. The canon which I have formulated as the test still holds good in the case supposed, namely, that the desirability of a prosecution should be expressly present to the mind of the Court during the proceedings in the course of which the offence was committed or brought to notice.

26. I may refer also to a case where a witness is examined before a Judge who dies or is transferred before the trial is concluded. The falsity of the evidence may not be apparent till further witnesses have been examined by the Judge's

successor in office Here, the Judge who completes the trial would be competent to order a prosecution. He is not the officer before whom the offence is committed, but the case would fall within the section because the Court that ordered the prosecution would be the Court before whom the offence was committed.

27. The foregoing observations sufficiently indicate the answer I would give to the questions referred to us. With regard to the second question, I am of opinion that the decision in Krishna Gobinda Dutt (1905) 9 C.W.N. 859 was in the circumstances of that case correct, although the ground I take is slightly different from that on which the learned Judges founded their judgment, the difference perhaps being one more of form than of substance. The order for prosecution passed in that case was in my opinion bad, because neither during the trial of the case in which the false evidence was given nor at its close did the presiding officer disclose his opinion that there ought to be a prosecution, or take any steps to initiate a prosecution. In that case as in this I think that haven if the presiding officer had remained the same, the order or a prosecution would have been bad, as not having been made at the proper time and on the proper occasion.

28. I am unable to follow the preferring Judges in their opinion that the results of the ruling in 'Krishna Gobinda Dutt's case (1905) 9 C.W.N. 859 are likely to be disastrous to the administration of justice. I do not understand why a person who has committed an offence against public justice should escape punishment because the officer before whom the offence is committed is transferred. If the offence is so clear and so serious as to demand punishment, that officer has only to embody his order for prosecution in his judgment. Moreover, the reasons which limit such an order to the time when the proceedings are pending or at its close have no application to the provisions regarding the grant of sanction under Section 195. There is, in my opinion, no inconsistency between the cases of Emperor v. Molla Fuzla Karim (1905) I.L.R., 33 Calc. 193 and Dharamdas Kamar v. Sagore Santra (1906) 11 C.W.N. 119 on the one hand, and the case of Krishna Gobinda Dutt (1905) 9 C.W.N. 859 on the other. There is no reason why sanction for prosecution for giving false evidence should not be granted by the successor of the officer before whom the evidence was given, and even here, as Maclean C.J. pointed out in Dharamadas's case (1906) 11 C.W.N. 119, the application, for such

sanction should be made promptly.

29. As regards the first question propounded for our decision, no answer can be given which will fit every case. I think it sufficient to say that in the present case the order passed by Mr. Waddell was without jurisdiction, because the officer who tried the case neither instituted any proceedings against the petitioner nor recorded his opinion either during the trial or at its close that there was ground for an enquiry. For these reasons, I agree in making the Rule absolute.

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