

Deb Narayan Chakraborty Vs. the State

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Court : Kolkata

Decided On : Sep-05-1955

Reported in : AIR1957Cal251,1957CriLJ505,60CWN220

Judge : Debabrata Mookerjee, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 195(1) and 476;
;Indian Penal Code (IPC) - Sections 182 and 211

Appeal No. : Criminal Revn. No. 355 of 1955

Appellant : Deb Narayan Chakraborty

Respondent : The State

Advocate for Def. : Sukumar Sen, Adv.

Advocate for Pet/Ap. : Kishore Mukherjee, Adv. for ;S.S. Mukherjee and
;Birendra Narain Sinha, Adv.

Judgement :

ORDER

Debabrata Mookerjee, J.

1. The petitioner in this case lodged an information with the police charging certain persons with having committed offences under Sections 436 and 147 of the Indian

Penal Code. The substance of the information was that on 21-3-1951 when the petitioner was reading in his hut he discovered that a cowshed in front of him was ablaze. People from near-about places came up to put out the fire when he was informed that the focal zamindar had come with miscreants in a motor vehicle and had been responsible for the arson. It was also stated in that information that one of the people had fired some blank shots.

2. There was a police investigation consequent on this information which resulted in the submission of a final report. The police followed it up by a prayer for prosecution of the petitioner under Sections 211 and 182 of the Indian Penal Code. After the final report had been submitted, the petitioner challenged it by means of a naraji petition. The naraji was enquired into but was ultimately dismissed. Then a prosecution under Section 211/182 was started against the petitioner. The learned Magistrate recorded an order on 19-6-1954 by which he stated that he had taken cognizance of the offence under Section 211/182 of the Indian Penal Code read with Section 190(IXb) of the Code of Criminal Procedure. The present Rule is directed against the order dismissing the petitioner's Naraji and alternatively against the order summoning the petitioner under Section 211/182 of the Indian Penal Code.

3. It is contended by Mr. Mukherjee that the procedure adopted by the learned Magistrate was one not sanctioned by the law. This contention seems to me to be well-founded. It appears that the petitioner has after all been summoned under Section 211/182 of the Indian Penal Code. Whatever the genesis of the complaint may be, if a complaint is made under Section 211/182 that by a Court, the procedure laid down in Section 195(1)(b) has to be followed. That in its turn would attract the provisions of Section 476 of the Code of Criminal Procedure. In the present case these provisions have not been complied with and the petitioner was straightaway summoned although on a day subsequent to the date of taking cognizance of the offence against him enquiries were made into the truth of the naraji filed by the petitioner.

4. If it was merely a case under Section 182 of the Indian Penal Code then it could not be said that the procedure that was followed as respects the summoning of the

accused petitioner was in any way erroneous. Here as far as one can see, the complaint under Section 211 is alleged to have been committed in relation to a proceeding in Court. The final report was submitted in Court and therefore from the facts appearing it seems clear that the complaint of the offence under Section 211 of the Code could not completely be divorced from proceedings in Court or in relation to proceedings in Court.

5. The learned -Advocate appearing on behalf of the Shite has contended that it was in substance a complaint under Section 182 of the Indian Penal Code. If that was the position, there would have been no occasion at all for me to interfere; but it seems reasonably clear that after the enquiry which was judicially made by the Court the petitioner is being prosecuted under Section 211. It is indeed difficult in these circumstances to say that the offence in the present case is in no way connected with proceedings in Court. If therefore it is an offence under Section 211 of the Indian Penal Code which is related to a proceeding in Court, it will be the duty of the Court to make the complaint. It appears to me that the learned Magistrate did not consider this aspect of the matter. If it does appear to the Magistrate that the offence is referable to proceedings in Court then his plain duty would be to follow the procedure laid down under Section 195(1)(b) which, as I have already said, will automatically attract the provisions of S. 476 of the Code of Criminal Procedure. In any event, the proceedings as they now stand cannot possibly be upheld and the orders of the learned Magistrate summoning the petitioner under Section 211/182 of the Indian Penal Code as also the order of dismissal of the naraji petition have to be set aside.

6. The matter is therefore returned to the learned Magistrate in order to find out whether the offence alleged against the petitioner really amounts to an offence in relation to proceedings in Court. If that is so, it would be the duty of the learned Magistrate to follow the procedure under Section 195(1)(b) of the Code of Criminal Procedure. The order dismissing the naraji petition under Section 203 of the Code of Criminal Procedure does not appear to me, even on the merits, to be a proper order and the learned Magistrate who comes to deal with this matter will first, consider afresh whether a prima facie case has been made out by the petitioner in the naraji which he filed. In the event of the naraji being found to be unsubstantial

and not fit to be proceeded with, it will then be the duty of the learned Magistrate to proceed in accordance with law so far as the complaint against the petitioner under Section 211/182 of the Indian Penal Code is concerned and in the light of an observation which I have made above.

7. The Rule is accordingly made absolute.

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