

Emperor Vs. Gopal Barik

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Court : Kolkata

Decided On : Aug-20-1906

Reported in : (1907)ILR34Cal42

Judge : Mitra and ;Ormond, JJ.

Appellant : Emperor

Respondent : Gopal Barik

Judgement :

Mitra and Ormokd, JJ.

1. This is a rule calling upon the Sessions Judge of Cuttack and one Gopal Barik to show cause why the order of the Sessions Judge dated the 19th March 1906 setting aside an order for the prosecution of the said Gopal Barik under Section 211 of the Indian Penal Code passed by the Sub divisional Magistrate of Jaipur should not be set aside and why such other order should not be passed by this Court as to it might seem proper.

2. Gopal Barik is a boy of 12 years of age and he complained to the police that the original accused Panu Puri had snatched an ornament from his person. The police thereupon, submitted a report in B form, which means that the complaint was false.

3. On the 24th November last witnesses were examined and the conclusion arrived at is given in these Words: 'The witnesses proved the charge. The accused denied it and adduced evidence of ill-feeling. There is a difference between the Madhupur Raj and the raiyats of Sukdebpur and that is a well-known fact. The accused is one of the leading members of the raiyats of Sukdebpur and the independent witnesses are more or less interested in the Madhupur Raj. The B form true, submitted. I think it would be desirable to hold judicial enquiry into this case or order A form.' The judicial enquiry was held on the 18th December 1905. Seven witnesses were examined by the prosecution and the Court called three witnesses. 'We have gone through the record of the evidence and we have no doubt that, subject to what we shall say presently, the witnesses for the prosecution gave prima facie evidence in support of the charge. But the Subdivisional Magistrate was of opinion that he could not believe the witnesses because of the existence of a dispute between the Madhupur Raj and his raiyats and because the accused was one of the leading raiyats. The result of the judicial enquiry was thus the same as that of the first investigation, the same bias acting on the mind of the presiding officer.

4. No processes were issued against the accused Panu Puri and the Subdivisional Magistrate directed the prosecution of Gopal Barik declaring his complaint to be maliciously false. Gopal Barik moved the Sessions Judge of Cutback and the learned Sessions Judge came to the conclusion that there was no a priori improbability in the story for the prosecution and there was as much reason for believing the witnesses for the prosecution on account of the dispute between the zemindars on the one side and the raiyats on the other side as there was reason for disbelieving them, and he therefore directed that the order under Section 476, Criminal Procedure Code, passed by the Subdivisional Magistrate of Jajpur should be set aside.

5. The Deputy Legal Remembrancer moved this Court against the order of the Sessions Judge and we issued the rule indicated above.

6. It is conceded on all hands that the order of the Sessions Judge Cannot stand. He had no jurisdiction to revise the order of the Magistrate passed under Section

476. This court only has power to revise the order either under Section 439 of the Code or under its general powers of superintendence. In his explanation the learned Sessions Judge has also stated that he made a mistake and we accordingly set aside the order by which he directed the order of the Subdivisional Magistrate of Jajpur to be set aside.

7. But the case is now before us and Mr. Jackson on behalf of the accused Gopal Balik has asked us to revise the order of the Subdivisional Magistrate of Jajpur under Section 439 of the Code. This we have every power to do. 'We are not disposed to follow the decision of the Madras High Court in Eranhali Athan v. King-Emperor (1902) I.L.R. 26 Mad. 98 relied on by the Officiating Legal Remembrancer. It has always been the practice, of this Court to interfere with orders of a Magistrate under Section 476 of the Code, if a case for interference was made out, as also orders of the Civil Courts passed under that section. We have not been referred to any decision of this Court in which it has been held that this Court has no power under the present Code of Procedure to revise orders under Section 476 of the Civil or of Criminal Courts. Looking at the words of Section 439 which confers on this Court power to revise any proceeding, the record of which has been called for by itself or is otherwise before it and to the wide powers given to it to deal at its discretion with any such proceeding as if there was an appeal from the order of the lower Court we do not see why this Court has not power to interfere with orders under Section 476. The Madras High Court in Queen--Empress v. Srinivasalu Naidu (1987) I.L.R. 21 Mad. 124 held that the High Courts had power to revise orders made under Section 476, but in the case of Eranhali Athan v. King-Emperor (1902) I.L.R. 26 Mad. 98 a Full Bench of that Court held the contrary, the learned Judges being of opinion that the introduction of Sub-section (2) in Section 476 in the present Code has taken away the power. We do not quite see how the power has been taken away--the power conferred by Section 439. All that Sub-section (2) says is that on one Magistrate forwarding a proceeding under Section 476 to another Magistrate for taking cognizance of an offence, the other Magistrate shall proceed as if a complaint were made to it and record it as a complaint under Section 200. Sub-section (2) only prescribes the procedure as to how the other Magistrate should act.

8. An order under Section 476 is still a proceeding and a criminal proceeding, if it is an order made by a Criminal Court. It directs the prosecution of a person after a judicial enquiry. In the present case it is, as pointed out by Mr. Jackson, an order directing the prosecution of the accused Gopal Barik.

9. In order to judge whether Section 439 applies or not we have to read the words in that section with the words in Section 476(1) and we have no doubt that a proceeding under Section 476(1) is a judicial proceeding and is covered by Section 439 of the Code. With all respect to the learned Judges of the Madras High Court, who decided the case in *Eranhali Athan v. King-Emperor* (1902) I.L.R. 26 Mad. 98, we are of opinion that the decision is not warranted by the words of Section 439 and Sub-section (2) of Section 476 of the Code. It may be that the Magistrate receiving a proceeding under Section 476 and recording it has the power to dismiss the case against the accused under Section 203, but this is no reason why, before the complaint is received, this Court should not be able to revise the order directing the prosecution. It has always done so, and the practice seems to us to be quit consistent with the intention of Section 439.

10. Coming now to the merits of the case, we have already, stated that there is a large number of witnesses, who have proved the case, and notwithstanding that the learned Sessions Judge had no jurisdiction to interfere, he looked into the evidence and came to the conclusion that the case against Panu Puri ought not to have been thrown out on the ground of improbability. We have thus a case in which the Subdivisional Magistrate has expressed one opinion on the evidence and the learned Sessions Judge has expressed a different opinion, and we have further a case of a boy of 12 who, we cannot easily believe, had acted maliciously in complaining against Panu Puri. He might have been mistaken. He might have been foolish enough to lodge a complaint under the persuasion of his elders, but those who persuaded him to act foolishly cannot be vicariously punished through him.

11. It is not also in every case that a Magistrate considers to be false that he should direct under Section 476 of the Code a prosecution under Section 211 of the Indian Penal Code. Each case must be judged by its own facts, and we have

no doubt on the evidence, which we have perused, that the case is a very doubtful one to say the least.

12. In making this order we also take into consideration the age of the accused Gopal, and we think that it was most inadvisable for the Subdivisional Magistrate to have directed his prosecution.

13. We accordingly set aside the order of the Subdivisional Magistrate dated the 12th January 1906.

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