Harihar Roy Vs. Emperor

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Court : Kolkata

Decided On : Nov-22-1918

Reported in : AIR1919Cal156(1),52Ind.Cas.595

Judge : Richardson and ;Syed Shamsul Huda, JJ.

Appellant : Harihar Roy

Respondent : Emperor

Judgement :

1. This is a Rule upon the District Magistrate of Jalpaiguri to show cause why the criminal proceedings pending against the petitioner under Section 384 of the Penal Code, in the Court of the Deputy Magistrate of Jalpaiguri, should not be quashed or, in the alternative, why the case should not be transferred to some other District for trial.

2. The petitioner is a Police Officer. In June 1918 the Superintendent of Police, Jalpaiguri, by a letter addressed to the Deputy Commissioner, made certain charges of extortion against the petitioned who had been- suspended. The letter on receipt in the Deputy Commissioner's Office appears to have been placed before Mr. A. Majid, Deputy Magistrate, who issued a warrant for the petitioner's arrest and thereby instituted the proceedings against the petitioner to which the Rule relates.

3. Mr. Majid is specially empowered to take cognizance of offences under Section 190, Sub-section (1), Clauses (a) and (b) of the Criminal Procedure Code. The first point taken on the petitioner's behalf is that the Superintendent's letter is not a Police report within the meaning of Clause (6), and that Mr. Majid erred in taking cognizance of the case, as it appears that he did, under that clause. An offence under Section 384 of the Penal Code is a 'non-cognizable' offence and it is argued, on the authority of the decision of a Full Bench of the Bombay High Court in King-Emperor v. Sada 26 B. 150 : 3 Bom. L.R. 586, that the expression 'Police report' in Clause (6) of Section 190 (1) of the Criminal Procedure Code does not include a report made by a Police Officer of his own motion in a non-cognizable case. If that be so, what follows? In the definition of 'complaint' in Section 4(1)(h) of the Code it is stated that the term does not include 'the report of a Police Officer.' If the expression 'Police reports' is to have a restricted meaning, then, as the case cited itself shows, the meaning of the expression 'report of a Police Officer' must be similarly restricted, so as to bring a report made by a Police Officer of his own motion in a non-cognizable case within the definition of 'complaint'. Otherwise, such a report as the Police Superintendent's letter in the present case would be neither a 'complaint,' nor a 'Police report' nor could it be dealt with under Section 190 (1) (c) as 'information received from any person other than a 'Police Officer.' That could not have been intended by the framers of the Code. It is sufficient, therefore, for the purposes of the present case to say that if the Police Superintendent's letter was not a 'Police report,' it was a complaint and the Deputy Magistrate is empowered to take cognizance of offences upon complaint under Section 190(1)(a). It is said that the Deputy Magistrate did not examine the Superintendent on oath under the provisions of section '200 of the Criminal Procedure Code. But, even on the assumption that the Superintendent's letter was a complaint, the mere fact that he was not examined on oath would not, in our opinion, vitiate the proceedings or render them proceedings taken without jurisdiction. Under Section 529, Clause (e) of the Code if a Magistrate not empowered by law to take cognizance of an offence under Section 190, Sub-section (1), Clause (a) or Clause (b) does so erroneously but in good faith, his proceedings are not to be set aside merely on that ground. That being expressly laid down if a Magistrate, duly empowered, takes cognizance of an offence upon

complaint, but omits to examine the complainant on oath, the omission can hardly be more than an irregularity which does not affect the Magistrate's jurisdiction to try the offender. This is the second time the petitioner has moved the Court to intervene in the proceedings against him. On the last occasion this question of jurisdiction was not raised or mentioned. Moreover, the Police Superintendent's letter was based on information received by him and his examination on oath would have been a mere formality.

4. To sum up, if the Superintendent's letter was a 'Police report' no question even of irregularity arises. If it was a 'complaint' the petitioner has no substantial grievance. We are accordingly unable to accept the contentions now put forward as disclosing any sufficient reason for quashing the proceedings.

5. There remains the alternative prayer for the transfer of the case to some other Court for trial. The petitioner, though he is under suspension, is a Police Officer. As a Police Officer he is subject to the disciplinary rules of his department and the lawful authority of the Officers to whom he is subordinate. He complains that disciplinary orders, to which he is bound to render obedience, hamper him in the conduct of his defence. Now it is entirely beyond our province to interfere with the discipline of the force or the exercise by the Superior Officer of Police of their lawful powers. We have no doubt that the observations made on the 23rd August 1918 by the learned Judges who were then dealing with criminal matters have borne fruit and that the Superintendent of Police has honestly attempted to remove any cause of complaint on the petitioner's part that ha was being harshly or inconsiderately treated.

6. On the other hand, we are bound to satisfy ourselves that the conditions under which the petitioner is being tried do not impede him in his defence and for that purpose we must look at the matter not only from the point of view of the superior officers but also from the point of view of the petitioner.

7. The principal order governing the petitioner's movements appear to be an order of the 5th September 1918, quoted in the explanation submitted by the Deputy Commissioner. By that order the Superintendent directs that the petitioner is to foe 'allowed facilities for instructing his legal adviser or taking such other steps as may

be necessary for the conduct of his defence at any time on application made to me.' We are quite prepared to believe that no exception can be taken to the spirit in which that order was meant to be carried out. The order, nevertheless, seems to involve this, that the petitioner has to apply to the Superintendent from time to time for such facilities as he requires. The Superintendent may be quite willing to grant the facilities but there may be at any rate some delay before the petitioner's applications are received or dealt with by him. The result has been to engender in the petitioner's mind a feeling that his movements are unduly restricted and on the materials before us we cannot characterise his state of mind as entirely unreasonable.

8. While, therefore, we make no refection on the conduct of the Superior Police Officers, and while no one questions the impartiality of the Deputy Magistrate before whom the case is now pending, we are of opinion that a transfer of the case is desirable and we direct accordingly that the case be transferred for trial to the Court of such competent Magistrate at Siliguri as the Deputy Commissioner of Darjeeling may appoint.