

Gopal Chandra Mandal Vs. the State

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Court : Kolkata

Decided On : Mar-13-1957

Reported in : AIR1957Cal382,1957CriLJ716,61CWN967

Judge : Debabrata Mookerjee, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 195, 195(1), 247, 248, 403 and 476; [Indian Penal Code \(IPC\), 1860](#) - Section 182

Appeal No. : Criminal Rev. Case No. 1283 of 1956

Appellant : Gopal Chandra Mandal

Respondent : The State

Advocate for Def. : Surathi Mohan Sanyal, Adv.

Advocate for Pet/Ap. : Kishore Mukherjee, Adv.

Judgement :

ORDER

Debabrata Mookerjee, J.

1. The petitioner has been convicted by a Presidency Magistrate under Section 182 of the Indian Penal Code and sentenced to pay a fine of Rs. 200/- in default, to suffer rigorous imprisonment for six weeks.

2. A false information, the furnishing of which to a public servant was the subject matter of the charge, was given by the petitioner and is contained in exhibit 2. That petition was drafted on his instructions by a pleader who has been examined as a witness in the case. The petition was addressed to the Deputy Commissioner, detective Department, Lal Bazar, and contained allegations against the petitioner's master Jogendra Nath Das. The allegations related to the conduct of Jogendra as respects a lottery ticket said to have been purchased by the petitioner. It has suggested that the petitioner had obtained prize money to the extent of Rs. 22000/- which was said to have been deposited in a Bank, Some time later the petitioner was put into police custody upon certain allegations and there he was tortured and compelled to sign two cheques for withdrawal of his money from the Bank. In these circumstances, the Deputy Commissioner was requested to institute an enquiry. As the result of the enquiry held, it was found that the allegations made in the petition against Jogendra were all false and that they had been made with intent to cause a public servant to use his lawful power to the injury of others.

3. A complaint was accordingly filed by Sub-Inspector Paramanik who held the enquiry into the allegations made by the petitioner; but this complaint was later withdrawn by a superior officer of police, B.B. Dey and on the 15th February 1956, the present complaint was filed by the Deputy Commissioner of the Detective Department and the Prosecution was thus commenced. The petitioner pleaded innocence, and his case appears to be that the allegations made in exhibit 2 were substantially true. The learned Magistrate found, however, that the allegations made by the petitioner in exhibit 2 were deliberately false and made with intent to use the lawful power of a public servant to the injury of others, and in that view, convicted and sentenced the petitioner as stated above.

4. Mr. Mukherjee appearing in support of the Rule has contended in the first place that the complaint originally filed by Sub-Inspector Paramanik having been withdrawn later by Inspector B. B. Dey, the petitioner could not thereafter be proceeded against by reason of the provisions contained in Section 248 of the Code of Criminal Procedure. That section provides that if a complainant at, any time before a final order is passed in a summons case, satisfies the Magistrate

that there are sufficient grounds for permitting him to withdraw his complaint, the Magistrate may permit him to do so, and shall thereupon acquit the accused. The argument is that the Magistrate having permitted the withdrawal of the complaint, there was an acquittal, and so long as the acquittal remained in force, the petitioner could not again be tried and convicted of the same offence. I am afraid I cannot accept this argument since I hold that Section 403 of the Code of Criminal Procedure can be a bar only when there has been a trial. Under Section 243 the trial is not concluded, and before a final order is passed, permission is accorded to withdraw from the prosecution, and the result is a statutory acquittal. Section 403 provides that a person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge might have been made against him under the provisions of the Code. Reliance is also placed on Section 247 of the Code of Criminal Procedure where due to the absence of the complainant in a summons case the Magistrate acquits the accused in case he does not see reason to adjourn the trial on account of the absence of the complainant. In my view, however, Section 403 can be called in aid only when there has been a trial to a close. It is only then that the question of previous acquittal or previous conviction comes into play.

5. The next point urged by Mr. Mukherjee is that no opportunity was given to the accused calling upon him to show cause why he should not be prosecuted under Section 182 of the Indian Penal Code. I do not think there was any compelling reason in this case that an additional opportunity should have been given before the prosecution was launched. Section 195 of the Code of Criminal Procedure provides that no Court shall take cognizance of any offence punishable under Sections 172 to 188 of the Indian Penal Code except on the complaint in writing by the public servant concerned or some other public servant to whom he is subordinate. Section 476 of the Code of Criminal Procedure provides that when the Court is of opinion that it is expedient in the interests of justice that an enquiry should be made into any offence referred to in Section 195, Sub-section (1), Clause (b) or Clause (c), then the Court may, after such preliminary enquiry, if any, as it thinks necessary, record a finding and make a complaint. The terms of

Section 476 do not make it obligatory in any case to direct a preliminary enquiry before the making of the complaint; such preliminary enquiry may be held only when the offence is one of those referred to in Clause (b) or Clause (c) of Sub-section (1) of Section 195. Section 182 with which I am concerned at the present moment is not one of the offences mentioned in either of the two clauses of the sub-section. I do not think, therefore, that there was any reason why there should have been a preliminary enquiry before a complaint was actually made by the public servant. Again Section 476 speaks of holding a preliminary enquiry, if at all, by the Court; in this case, it was the public servant who was making the complaint and not the Court. I do not think there is any substance in the contention.

6. Mr. Mukherjee has next argued that the petition exhibit 2, which is the foundation of the prosecution case, incorporated not merely the statement of the petitioner but also of some other persons who happened to be present at the time when instructions were given to the pleader who eventually drafted the statements and put them into shape and form. I do not think this contention can succeed in view of the evidence of the pleader himself who deposed that he had drafted the petition according to the instructions of the petitioner; he merely added that there were two other persons who were present and 'interfered occasionally and supported the narration.' That being the evidence in the case. I do not think it can reasonably be said that the petitioner has been improperly found guilty under Section 182 of the Indian Penal Code in respect of statements which were not his own.

7. It appears, however, that the petitioner was a mere servant and it is stated before me that he is just now out of employment. Taking into account the facts and circumstances of the entire case, I think the ends of justice will be sufficiently met if the fine of Rs. 200/- imposed upon the petitioner is reduced to a fine of Rs. 100/- (Rupees one hundred only), in default, rigorous imprisonment for one month.

8. The Rule is disposed of accordingly.