

Lajja Ram Vs. the State

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Court : Himachal Pradesh

Decided On : Nov-08-1951

Reported in : AIR1952HP32

Judge : Chowdhry, J.C.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 4(1), 195(1) and 439;
;Indian Penal Code (IPC) - Section 186

Appeal No. : Criminal Revn. No. 45 of 1951

Appellant : Lajja Ram

Respondent : The State

Advocate for Def. : Bakshi Sita Ram, Government Adv.

Advocate for Pet/Ap. : A.N. Bhoil, Adv.

Disposition : Revision allowed

Judgement :

ORDER

Chowdhry, J.C.

1. The petitioner Lajja Ram was convicted by a second Class Magistrate under Section 353, I. P. C. and sentenced to pay a fine of Rs. 50/-. On appeal the District

Magistrate altered the offence to one under Section 186, I. P. C. and reduced the fine to Rs. 25/-. He then went up in revision to the Sessions Judge, but the revision was dismissed. The sole point urged before me, as it was before the learned Sessions Judge, was that as there was no complaint in this case as defined in Section 4 (1) (h), Criminal P. C., the District Magistrate had no jurisdiction to convict the petitioner for an offence punishable under Section 186, I. P. C.

2. There was a preliminary objection taken by the learned Government Advocate that the revision should be thrown out as being a belated one. It appears from the office report, which is not questioned, that the revision was filed on the 90th day. There is, however, no limitation prescribed for the filing of criminal revisions. Since however it is desirable that revision petitions should be instituted without undue delay. High Courts have laid down various period of time for judging whether a criminal revision has been filed without undue delay. For instance the practice in the Calcutta High Court is to allow 60 days to an accused for making an application for revision: 'RAJ CHANDRA v. Emperor', AIR (4) 1917 Cal 680. In Oudh the reasonable time for filing an appeal has been held to be the time granted by the statute for admitting appeals: 'SHAH NAIM ATA v. Emperor', AIR (17) 1930 Oudh 401. In Allahabad High Court a criminal revision filed beyond 90 days is generally rejected on the ground of laches: 'EMPEROR v. Kesri Chand', AIR (32) 1945 All 207. No practice has grown up there, nor is there any precedent of this Court on the point. Considering the long distances through difficult terrain which the litigants have to traverse in this State, it will be the practice of this Court in future not to entertain criminal revisions generally if filed beyond 90 days from the order complained of. I therefore hold that the present petition of revision cannot be thrown out merely on the ground of delay.

3. Coming to the aforesaid legal ground on which alone this petition has been argued before me, it appears that the petitioner was convicted by the appellate Court under Section 186, I. P. C. for obstructing certain officials of the opium department in the discharge of their public functions on the police submitting charge-sheet to the Magistrate on foot of a report lodged by the Deputy Superintendent of Opium. It was argued that as no complaint was made by the Deputy Superintendent of Opium to the Magistrate concerned, the entire trial was

illegal.

4. The offence in question is one of those mentioned in Section 195 (1) (a), Criminal P. C., which runs as follows:

'No Court shall take cognizance of an offence punishable under Ss. 172 to 188 of the Indian Penal Code, except on the complaint in writing of the public servant concerned, or of some other public servant to whom he is subordinate.'

Generally speaking a Magistrate takes cognizance of offence upon a complaint, upon report in writing from a police officer or upon information from any person other than a police officer or upon his own knowledge or suspicion, as provided by Section 190, Criminal P. C. There are however certain offences in respect of which it has been provided that their cognizance cannot be taken except on a complaint, and that by a particular person. These offences and the particular persons entitled to file complaints in respect of thereof are mentioned in Ss. 195, 196, 196A, 198 and 199, Criminal P. C. These provisions may therefore be said to form exceptions to the general rule contained in Section 190, Criminal P. C. And, so far as an offence under Section 186, Penal Code, is concerned, there are three pre-requisites to its cognizance being taken by a Court under the above cited provision of Section 195

(1) (a). These pre-requisites are:

(1) that there should be a complaint,

(2) that the complaint should be in writing and

(3) that it should be of the public servant concerned, or of some other public servant to whom he is subordinate. It is further noteworthy that these provisions are mandatory, so that it has been held that no Court has jurisdiction to take cognizance of any of the offences mentioned therein without the prescribed complaint. In 'RE C. P. JAGANNATHACHAR', AIR

(29) 1942 Mad

326. In the case of the aforesaid offences, therefore, convictions have been set aside either because there was no complaint, which means complaint as defined in Section 4

(1) (h), Criminal P. C., or because the complaint was not by the prescribed person or authority. There is plenty of authority in support of both the positions, but only a few of them may be noted here. The following are cases in which convictions were set aside for want of complaints by the prescribed persons or authorities: 'kailas Kurmi v. Emperor', 30 Cal 285; 'RAVANAPPA v. Emperor', AIR

(19) 1932 Mad. 253; 'JAGDAMBA PARASAD v. Emperor', AIR

(20) 1933 All 626; 'RAM SINGH v. Emperor', AIR

(22) 1935 Pat 214; 'RAM RAKHA v. Emperor', AIR

(24) 1937 Lah 624; 'ram Parsad v. Emperor', AIR

(27) 1940 Oudh 424; 'SHEOMANGAN SINGH v Emperor', AIR

(29) 1942 Oudh 425; 'SUDARSAN v. Emperor', AIR

(34) 1947 Pat 64; 'santi Lal v. Emperor', AIR

(35) 1948 Cal 103 and 'IN RE Chinnayya Goundan', AIR

(35) 1948 Mad

474. The same result followed in the following cases because there was no complaint as defined in Section 4

(1) (h); 'TARA PROSAD v. Emperor', 30 Cal 910 (FB); 'ARUMUGA MUDALIAR v Emperor', AIR

(10) 1923 Mad 59; 'BALDEO SINGH v. Emperor', AIR

(13) 1926 All 566; 'LAKHAN v. Emperor', AIR

(23) 1936 All 788 and 'HAIDAR ALI v. Emperor', AIR

(27) 1940 All 201.

5. So far as the present case is concerned, the relevant authorities are those where convictions were set aside for want of a complaint as defined in Section 4 (1) (h), Criminal P. C. According to that definition complaint means the allegation made orally or in writing to a Magistrate, with a view to his taking action under the Code, that some person whether known or unknown, has committed an offence, but it does not include the report of a police officer. The complaints in the case cited above were found defective because they did not satisfy some one or the other of the ingredients of this definition. The defect pointed out in the present case is that the complaint by the Deputy Superintendent of Opium was not made to the Magistrate but to the police. Among the cases cited above those suffering from this particular defect were the 1923 Madras and the 1936 Allahabad cases. In the first of these the complaint was to the police, and in the second the communication was made by the officer concerned, i.e. a Sub-Inspector of Police, to the Superintendent of Police who forwarded it to the Magistrate. In 'AIR (23) 1936 All 783' it was further laid down that the question as to whether or not a document comes within the definition of complaint has to be very strictly construed, and that where there is no complaint within the meaning of Section 4 (1) (h), Criminal P. C. the defect cannot be cured by Section 537, Criminal P. C. On the consensus of authorities cited above, therefore, it must be held that as there was no complaint as defined in Section 4(1)(h), Criminal P. C. in the present case the entire trial of the petitioner was illegal and his conviction should for that reason be set aside.

6. The learned Sessions Judge came to a contrary conclusion on the authority of 'BARKAT v. Emperor', AIR (30) ' 1943 Ail 6. This authority has been recently followed in 'STATE v. Nandlal, AIR (36) 1951 Sau 8, and the learned Government Advocate has relied on both of them. The Allahabad case also related to an offence punishable under Section 186, I. P. C. The public servant obstructed in the discharge of his public functions in that case was a civil Court Amin, who made a report to the police. On a reference by the Sessions Judge that the conviction and sentence should be set aside because the Magistrate could not take cognizance of the offence except on the complaint in writing of the Amin, or of some public

servant to whom he was subordinate, under the provisions of Section 195 (1) (a), Criminal P. C., Allsop J. held that the objection was a mere technicality and therefore there was no reason for interference. After referring to the fact that the term complaint had been defined as aforesaid 'unless a different intention appears from the subject or context' he observed as follows:

'It seems to me that the intention of Section 195, Criminal P. C., is only that the Magistrate should not punish any person except at the instance of the public officer concerned or of his superior, and I do not think that the term complaint is used in the technical sense in which it is defined in Section 4.'

In laying down that the intention of Section 195 was only that the Magistrate should not punish any person except at the instance of the public officer concerned, or of his superior, the learned Judge took into consideration only one of the three ingredients of Section 195 (1) (a), Criminal P. C., mentioned by me above. And in laying down further that the term complaint was not used in the technical sense in which it was defined in Section 4, he arrived at a finding opposed to the general consensus of judicial opinion of the various High Courts, as shown above. In particular, he came to a conclusion which was in conflict with a previous ruling of the same High Court, i.e., the aforesaid ruling of 'LAKHAN v. Emperor', AIR (23) 1936 All 788. That was a decision of Rachhpal Singh J. on a difference between Sulaiman C. J. and Bennet J., agreeing with the former. Neither this nor any other ruling has been referred to by Allsop J. in his judgment, presumably because none was cited before him. Nor was anything referred to in the 'subject or context' of Section 195, Criminal P. C., pointing to the conclusion that the word 'complaint' occurring there had a meaning different from that given to that term in Section 4 (1) (h), Criminal P. C. The learned Judge referred to one circumstance supporting his view, and that was that a complaint, as defined in Section 4 (1) (h), did not include the report of a police officer. He then observed as follows:

'It is obvious that the term complaint in Section 195 (1) (a) cannot be used in that sense (i.e. in the sense in which it has been defined) because otherwise it would be possible for any person to obstruct a police officer in the execution of his duty

without rendering himself liable to punishment under Section 186, P. C.'

With all respect to the learned Judge, there seems to be no justification for the view that because the report of a police officer is not included in the term complaint as defined in Section 4 (1) (h), Criminal P. C., a police officer cannot make a complaint as provided by Section 195 (1) (a) of the Code. The reason for this is that the report of a police officer is a totally different thing from a complaint which he might make under the aforesaid provision. If a police officer on being obstructed in the discharge of his public functions makes an allegation in writing to a Magistrate in respect of an offence under Section 186, I. P. C. with a view to the Magistrate taking action under Criminal P. C., he will be deemed to have filed a complaint within the purview of Section 195 (1) (a), Criminal P. C., and certainly not a report to the Magistrate. Accordingly, it has been held in 'EMPEROR v. Babulal', AIR (23) 1936 Nag 86, that in view of the wide meaning given to the expressions 'report of police officer' since the amendment of Clause (b) of Sub-section (1) of Section 190, Criminal P. C. by the Code of Criminal Procedure (Amendment) Act (XVIII (18) of 1923), the report of a police officer, whether in a cognizable or non-cognizable case, does not amount to a complaint. The difference between a report and a complaint made by a police officer has been further pointed out in the follownig rulings: 'ABDULLAH Khan v. Emperor', AIR (20) 1933 Sind 188; 'LALBEHARI SINGH v. Emperor', AIR (16) 1929 Pat 514 and 'KING EMPEROR v. Sada', 26 Bom 150. The difficulty pointed out by the learned Judge in 'AIR (30) 1943 All 6' in the way of interpreting the term 'complaint' in Section 195, Criminal P. C. as defined in the Code, does not therefore in reality exist. I am unable, with all respect, to agree with the view expressed in the Allahabad ruling, or with the Saurashtra ruling which follows it, because these rulings are against the plain provisions of Section 195 (1) (a) and Section 4 (1) (h), Criminal P. C., and against the interpretation put upon these provisions by various High Courts.

7. In view of what I have stated above, this revision is allowed the conviction of the petitioner and the sentence imposed upon him are set aside, and it is ordered that the fine, if already paid, shall be refunded.

