

Chet Ram Vs. the State

Chet Ram Vs. the State

SooperKanoon Citation : sooperkanoon.com/889096

Court : Himachal Pradesh

Decided On : Aug-06-1953

Reported in : AIR1954HP32

Judge : Chowdhry, J.C.

Acts : [Code of Criminal Procedure \(CrPC\), 1898](#) - Sections 4(1), 195 and 476; ;
[Indian Penal Code \(IPC\), 1860](#) - Section 228

Appeal No. : Criminal Reference No. 27 of 1953

Appellant : Chet Ram

Respondent : The State

Advocate for Def. : C.L. Puri, Acting Govt. Adv.

Advocate for Pet/Ap. : Party in person

Judgement :

ORDER

Chowdhry, J.C.

1. Chet Ram, alias Chattru, was convicted by the learned Magistrate first class Rampur for an offence punishable under Section 228, Penal Code, and sentenced to a fine of Rs. 20/-(and not Rs. 200/-, as erroneously stated by the learned Sessions Judge), or fifteen days simple imprisonment in default of payment of fine.

He went up in revision and the learned Sessions Judge has made a reference to this Court under Section 438, Criminal P. C., with the recommendation that the sentence be reversed. The petitioner is said to have insulted Sri Hari Das, one of the three members of the Gaura Panchayat, and caused interruption to the Panchayat while it was functioning as a Court on 16th Sawan 2009 B.

2. The learned Sessions Judge has made the aforesaid recommendation on the grounds that the Magistrate took cognizance of the case without a proper complaint, that the complaint should have been made by the Panchayat as a whole and not by only one of its members and that even on merits no case had been established against the petitioner. The first ground is well-founded and it is not necessary to go into the other two. The learned acting Government Advocate has not opposed the reference.

3. Now, in the case of a contempt committed coram judice and punishable under Section 228, Penal Code, there are two courses open to the Court: (1) it may itself take cognizance of the offence before the rising of the Court on the same day and sentence the offender under Section 480, Criminal P. C., in which case only a fine not exceeding two hundred rupees can be imposed, or, if it considers that the offender be imprisoned otherwise than in default of payment of fine, or that a fine exceeding Rs. 200/- should be imposed upon him, it may forward the case to a Magistrate having jurisdiction to try the same under Section 482, or (2) it may proceed under Section 476 of the Code and make a complaint to a Magistrate of the first class having jurisdiction. If the Court in respect of which the offence has been committed does not itself take cognizance of the offence under the first alternative, cognizance of the offence by a Magistrate who proceeds to try the offender is barred by Section 195, Criminal P. C., except on the complaint in writing of the said Court under Section 476 or of some other Court to which it is subordinate under Section 476B.

4. In the present case no complaint was made to the trying Magistrate by the Panchayat, as was mandatory under Section 476. What was done was that the member of the Panchayat who is alleged to have been insulted, Sri Hari Das, made a complaint to the Sarpanch, Sri Narain Das, who forwarded it to the police

at Rampur, and the latter forwarded it to the Magistrate who tried and convicted the petitioner.

Not only under the mandatory provision of Section 476, but also according to the definition of 'Complaint' as given in Section 4(1)(h) of the Code, it was necessary that the complaint should have been made to the Magistrate concerned with a view to his taking action under the Code in respect of the alleged offence. The report of a police officer is not included in the term 'complaint'. In the present case, as already seen, the complaint of Hari Das was not addressed to any Magistrate, and the Magistrate took cognizance of the case on receipt of a report of the S. H. O. Rampur endorsed on the back of the complaint. The cognizance of the present case by the learned Magistrate was therefore clearly barred by Section 195(1)(b) of the Code. The recommendation made by the learned Sessions Judge must, therefore, be accepted.

5. Before I conclude I must make mention of the circumstance, referred to by the learned Sessions Judge, that whilst the Sarpanch Sri Narain Das and the Panch Sri Hari Das supported the prosecution, the third member of the Panchayat, Sri Madhi Ram, supported the defence and stated that no insult was offered by the petitioner to Sri Hari Das nor was any interruption caused by him to the Court. This, to say the least, is a sorry state of affairs, for it discloses a rift amongst the members of this Panchayat. How deep it is, and how far it may possibly affect the future proper functioning of the Panchayat, is a matter which the Government might possibly deem it proper to consider.

6. The reference is accepted, the conviction and sentence of the petitioner Chet Ram are set aside and he is acquitted of the offence. If the fine has already been realized from him, it shall be refunded.