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Mangat Ram Vs. the State

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Court : Himachal Pradesh

Decided On : Jun-30-1965

Reported in : 1966CriLJ967

Judge : Om Parkash, J.C.

Appellant : Mangat Ram

Respondent : The State

Judgement :
ORDER

Om Parkash, J.C.

1. This is a revision petition, against an order of the Magistrate, First Class, Theog, framing a charge, under Section 193, I.P.C. against the petitioner.

2. The petitioner had appeared as a witness, in execution proceedings, pending in the Court of the Subordinate Judge, Theog, against Rama Nand judgment-debtor. Rama Nand had put in an application, under Sections 476/479A, Criminal P.C. against the petitioner, in the Court of the Subordinate Judge, Theog. praying that a complaint, under Section 193, I.P.C. may be filed against the petitioner as he had intentionally given false evidence in the execution proceedings. The Subordinate Judge, after enquiry, dismissed the application of Rama Nand, holding that it was not expedient in the interests of justice that a complaint should be filed against the petitioner. Rama Nand went up in appeal to the learned District Judge, against the

order of the Subordinate Judge, dismissing his application for lodging a complaint. The appeal was accepted by the learned District Judge. He ordered the Subordinate Judge, Theog, to lodge a complaint, against the petitioner, for intentionally giving false evidence. In pursuance of this order, the Subordinate Judge, Theog filed a complaint, under Section 193, I.P.C. against the petitioner in the Court of the Magistrate, First Class, Theog. After recording evidence, the Magistrate, First Class, framed a charge, under Section 193, I.P.C. against the petitioner.

3. The petitioner has come up in revision, for quashing the charge and other proceedings, taken against him, in the Court of the Magistrate, It is contended, on behalf of the petitioner, that the prosecution of a person, for giving false evidence, in a judicial proceeding, is exclusively governed by the provisions of Section 479A, Criminal P.C., which contains the complete procedure, and not by Sections 476, 476A, 476B, Criminal P.C. etc. and that as no appeal is provided, in Section 479A, against an order of the Court, refusing to make a complaint, the District Judge, in the instant case, had no jurisdiction to entertain the appeal of Rama-Nand, against the order of the Subordinate Judge, Theog, and his order directing the Subordinate Judge to lodge a complaint and subsequent proceedings, taken on the basis of the complaint, were illegal and liable to be quashed. On the other hand, it was contended on behalf of Rama Nand, that Section 479A did not exclude the applicability of Sections 476, 476A, 476B, etc., to the prosecution of a witness for giving false evidence but conferred only additional powers on the Court and that the appeal of Rama Nand against the order of the Subordinate Judge was competent under Section 476B, Criminal P.C. and the District Judge had jurisdiction to entertain the appeal,

4. There was a conflict of judicial opinion, on the point, whether Section 479A Criminal P.C. which was inserted by the Amending Act 26 of 1955, gives only additional powers to the Court to deal with offences of intentionally giving false evidence or for intentionally fabricating false evidence and does not exclude the applicability of Sections 476 to 479 Criminal P.C. for the prosecution, in connection with those offences or whether Section 479A overrides the provisions of Sections 476 to 479 Criminal P.C. so far as the prosecution for the aforesaid offences is

concerned. One view was that Section 478A confers only additional powers on the Court and does not exclude the applicability of Sections 476 to 479 Criminal P.C. The other view was that Section 479A overrides the provisions of Sections 476 to 478 Criminal P.C. and excludes their applicability for the prosecution of the offences of intentionally giving false evidence or intentionally fabricating false evidence. The conflict has now been set at rest by their Lordships of the Supreme Court in Shabir Hussain Bholu v. State of Maharashtra : AIR 1963 SC816 . It was held, by their Lordships, that bearing in mind the non-obstante clause at the commencement of Section 479A and the provisions of Sub-section (6) it would follow that only the provisions of Sub-section (1) of Section 479A must be resorted to by the Court for the purpose of making a complaint against a person for intentionally giving false evidence or for intentionally fabricating false evidence at any stage of the proceeding before it, and that the provisions of Sections 470 to 479 Criminal P.C. are totally excluded where the offence is of a kind specified in Section 479A(1).

The application of Rama Nand was that the-petitioner should be prosecuted, under Section 193 I.P.C. for intentionally giving false evidence in the execution proceedings. The provisions of Sections 476 to 479 Criminal P.C. were not applicable for the prosecution of the petitioner for the aforesaid of tence. The provisions, contained in Section 479-A, were exclusively applicable. Under that section, no appeal lies against an order of the Court, refusing to file a complaint. Therefore, Rama Nand had no right of appeal against the order of the Subordinate judge, Theog, refusing to lodge the complaint against the petitioner. His appeal to the District Judge was not competent. The District Judge had no jurisdiction to entertain the appeal and direct the prosecution of. the petitioner under Section 193 I.P.C. The order of the District Judge directing the filing of the complaint and subsequent proceedings, taken on the basis of the complaint, were without jurisdiction and illegal.

5. It was, next, contended, on behalf of the petitioner, that even if it be assumed that Sections 476 to 479 Criminal P.C. were applicable to the case of the petitioner and the appeal of Rama Nand was -competent under Section 476B, Criminal P.C. even, then the complaint filed by the Subordinate Judge and subsequent

proceedings were without jurisdiction and illegal inasmuch as the District Judge should have himself filed the complaint and he had no jurisdiction to direct the Subordinate Judge to do it. This contention appears to have force. It is abundantly clear from a perusal of Section 476B, Criminal P.C. that in a case, where the Subordinate Court has refused to file a complaint and the superior Court, on an appeal, comes to the conclusion that a complaint should have been filed, then the complaint is to be filed by the superior Court itself and that it has my jurisdiction to direct the Subordinate Court to file the complaint.

It was held in Manir Ahamed v. Jogesh Chandra AIR 1929 Cal 195 that where in an appeal, under Section 476-B Criminal P.C. the District Judge found that there was sufficient justification for placing a party on trial for forgery but instead of himself filing the complaint directed the lower Court to do it, the order was without jurisdiction. Reference may also be made to Ramzani v. State AIR I960 All 350. In the present case, the District Judge, who had accepted the appeal, against the order of the Subordinate Judge, refusing to file a complaint and had come to the conclusion that it was expedient in the interests of justice that the petitioner should be prosecuted for giving false evidence, did not file the complaint himself but ordered the Subordinate Judge to file the complaint. The order of the District Judge was without jurisdiction and the complaint filed by the Subordinate Judge against the petitioner and subsequent proceedings, taken on the basis of the complaint, were also without jurisdiction and illegal.

6. For the reasons stated above, the revision-petition is allowed. The complaint, filed against the petitioner, by the Subordinate Judge, Theog, and the subsequent proceedings taken, including the framing of the charge, are quashed.

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