

Smt. Kamla Vs. the State

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Court : Himachal Pradesh

Decided On : May-20-1965

Reported in : 1966CriLJ969

Judge : Om Parkash, J.C.

Appellant : Smt. Kamla

Respondent : The State

Judgement :

ORDER

Om Parkash, J.C.

1. This is a reference, made by the learned Sessions Judge, Mandi and Chamba, Sessions Division. Shri Dhani Ram, a Bailiff in the Civit Nazarat, Mandi, had submitted an application to the Senior Subordinate Judge, Mandi that he had been obstructed, by the petitioner, in the discharge of his public functions, while he was executing a warrant of attachment on the 17th December, 1963. The Senior Subordinate Judge forwarded the application to the Superintendent of Police Mandi, with the request, that enquiry be made in the matter and necessary action be taken. As the of tence, disclosed by the allegations, in the application, fell, under Section 186 I.P.C. which is a non-cognizable offence, the Superintendent of Police wrote to the? Magistrate, First Class, Mandi, that the S.H.O. Mandi may be granted permission for investigating the offence. After getting the necessary

permission, the S.H.O. Mandi investigated the offence and put. in a report, in the Court of the Magistrate, First Class, Mandi that the petitioner had obstructed Shri Dhani Ram, a public servant, in the discharge of his. public functions and had, thereby, committed an offence under Section 186 I.P.C.

2. The petitioner denied the charge, leveled against her.

3. The learned Magistrate believed the prosecution story and convicted the petitioner under Section 188 I.P.C. The petitioner was sentenced to pay a fine of Rs. 25/-. It was contended, before the learned Magistrate, that as Shri Dhani Ram, the public servant obstructed, had not filed any complaint, the Magistrate had no jurisdiction, in view of the provisions of Section 195(1)(a), Cr.P.C. to take cognizance of the offence, against the petitioner. The learned Magistrate did not accept the contention.

4. The petitioner Dhani went up in revision to. the learned Sessions Judge. The contention, that in the absence of a complaint, by Shri Dhani Ram, the Magistrate had no jurisdiction to take cognizance of the offence under Section 186 I.P.C. against the petitioner, was reiterated, before the learned Sessions. Judge. The contention prevailed with him. The learned Sessions Judge has made a reference to this Court that the conviction of the petitioner be quashed, as the Magistrate had no jurisdiction to take cognizance of the offence against the petitioner.

5. Admittedly, the Magistrate had taken cognizance of the offence, under Section 166, I.P.C. against the petitioner, on the report of the S.H.O. Mandi. There was no complaint, before the Magistrate, by Shri Dhani Ram Bailiff, who was alleged; to have been obstructed, in the discharge of his public functions, by the petitioner. In view of the provisions of Section 195(1)(a), Cr.P.C. the Magistrate had no jurisdiction to take cognizance of the offence, under Section 186 I.P.C. in the absence of a complaint by Shri Dhani Ram or some other public-servant to whom he was subordinate. The provisions of Section 195 (1)(a) Cr.P.C., are mandatory and if a Court takes cognizance of an offence in violation of those provisions, its proceedings are illegal vide *Lajja Ram v. State* . The facts in that case were that Lajja Ram was alleged to have obstructed certain officials of the opium department in the discharge of their public functions. The Deputy Superintendent of Opium

reported the matter to the police. After investigation, the police put up a challan against Lajja Ram. The Magistrate, Second Class, convicted Lajja Ram under Section 353 I.P.C. On appeal, the District Magistrate altered the conviction for an offence under Section 186 I.P.C. Lajja Ram came up in revision to this Court. The sole point, urged in revision, was that as there was no complaint by the officials obstructed or their superior, the District Magistrate had no jurisdiction to convict Lajja Ram under Section 186 I.P.C., because of the provisions of Section 195(1)(a) Cr.P.C. This Court accepted the plea and set aside the conviction of Lajja Ram.

6. The learned Government Advocate contended that the word 'complaint', used in Section 195 Cr.P.C. does not mean a formal complaint, as defined in Section 4(1)(h), Cr.P.C., but means merely this that the officer concerned should have complained of the matter to somebody. If this interpretation of the word 'complaint' be accepted, the learned Government Advocate argued, then the application, made by Shri Dhani Ram to the Senior Subordinate Judge, was a complaint within the meaning of Section 195 Cr.P.C., and the Magistrate had jurisdiction to take cognizance of the offence on the basis of that application. In support of his contention, the learned Government Advocate placed reliance on *Barkat v. Emperor*. A.I.R. 1943 All. 6. The Allahabad authority was fully discussed in , *supra*, and was dissented from. It was held by this Court that the word 'complaint', used in Section 195, Cr.P.C., meant a formal complaint, as defined in Section 4(1)(h) Cr.P.C. The Allahabad authority was also, dissented from in *Krishna Tukaram Jadhav v. Secy. to the Chief Minister (S)* : AIR1955 Bom315 and in (Sindhi) *Nathuram Atmaram v. State* . In both these rulings, it was held that the word 'complaint' in Section 195(1)(a) Cr.P.C. referred to a formal complaint, as defined in Section 4(1)(h) Cr.P.C. The facts, in A.I.R. 1958, Raj. 89, were similar to the facts of the present case There, the petitioner was alleged to have gone to the office of the Administrator of a municipality and to have obstructed him in the discharge of his official duties. On this, the Administrator had reported the matter to the sub-Inspector of Police, After investigation, the Sub-Inspector had made a report to the Magistrate, against the petitioner. It was held that the Magistrate had no jurisdiction to take cognizance of an offence, under Section 186 I.P.C., against the petitioner, as there was no complaint, filed by the Administrator.

7. The word 'complaint', used in Section 195 (1)(a) Cr.P.C., means a complaint, as defined in Section 4(1)(h) Cr.P.C. The application, submitted by Shri Dhani Ram Bailiff, to the Senior Subordinate Judge, was not a complaint within the meaning of Section 4(1)(h) above. The Magistrate had taken cognizance of the offence, under Section 186 I.P.C., against the petitioner, on the report of the S.H.O., Mandi in violation of the mandatory provisions of Section 195(1)(a) Cr.P.C. The trial of the petitioner was illegal, and her conviction is liable to be quashed.

8. The reference is accepted. The conviction of the petitioner is quashed. The fine, if paid, shall be refunded to her.

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