

State Vs. Bhim Singh

State Vs. Bhim Singh

SooperKanoon Citation : sooperkanoon.com/891967

Court : Himachal Pradesh

Decided On : Dec-02-1977

Reported in : 1978CriLJ1041

Judge : T.U. Mehta and; C.R. Thakur, JJ.

Appellant : State

Respondent : Bhim Singh

Judgement :

T.U. Mehta, J.

1. This contempt petition arises out of the report sent to this Court by the Chief Judicial Magistrate, Kulu against the respondent who happens to be Assistant Public Prosecutor appearing before the learned Magistrate. The facts relevant to this reference are that police investigated an offence under Section 436 I.P.C. in State v. Khubu and ultimately submitted a report which is known as 'cancellation report'. The learned Magistrate perused the case papers and came to the conclusion that there was enough evidence against the accused for the offence in question. She, therefore, took cognizance of the offence under Section 190 of the Cr. P.C. According to the learned Magistrate, she could take cognizance of the matter in spite of the 'cancellation report' under Clause (b) of Section 190(1) of the Code, She thereafter asked the respondent to furnish a copy of the challan to the accused. The respondent, however, did not supply the said challan and informed

the court that as the case was submitted to the Court for cancellation of the challan, he was not bound to make appearance in the Court and to conduct the prosecution. On this, the learned Magistrate thought that the respondent had committed the contempt. The learned Magistrate has considered the relevant provisions of law including the decision given by the Supreme Court in *Abhinandan Jha v. Dinesh Mishra* reported in : 1968 CriLJ97 wherein the Supreme Court has made an observation that if ultimately the Magistrate forms the opinion that the facts set out in the final report constitute an offence, he could take cognizance of the offence under Section 190(1)(b) of the Cr. P.C. notwithstanding the contrary opinion of the police expressed in the final report. According to the learned Magistrate, therefore, the matter fell within the purview of Clause (b) of Section 190(1) of the Cr. P.C. and, therefore, the respondent could not have refused to assist the Court and could not have also refused to conduct the case on behalf of the prosecution.

2. It is not necessary to discuss whether the cognizance taken by the learned Magistrate fell within Clause (b) or Clause (c) of Section 190(1) of the Code, because we are of the opinion that in either of the cases it was the duty of the Assistant Public Prosecutor to assist the Court in the conduct of the case. In the above referred decision of *Abhinandan Jha* (1968 Cri LJ 97) (SC) the Supreme Court has observed that in such cases the matter falls within Clause (b) of Section 190(1) of the Code. It was contended that reference to Clause (b) of Section 190(1) was a printing mistake because really speaking the matter falls within Clause (c) which says that the Magistrate can take cognizance of any offence 'from information received from any person other than a police officer or upon his own knowledge that such offence has been committed'. It was pointed out that when the Magistrate refuses to act on the police report, and proceeds with the matter after taking cognizance, he does take cognizance 'upon his own knowledge' which he has gathered after perusing the police papers, and therefore, the cognizance would be under Clause (c) of Section 190(1). Be that as it may, the question which is involved in this matter is whether the respondent could have refused to assist the Court even if the case was covered by Clause (c) of Section 190(1) of the Code.

3. The Assistant Public Prosecutors are appointed under Section 25 of the Cr. P.C. Sub-section (1) of this section says that they are appointed 'to conduct prosecutions in Courts of Magistrates' by the State Government. Sub-section (3) of Section 26 says that where no Assistant Public Prosecutor is available for the purpose of any particular case, the District Magistrate may appoint any other person to be the Assistant public Prosecutor in charge of that case.

4. It is apparent that where a particular person is appointed as Assistant Public Prosecutor by the State Government under Sub-section (1), or by the District Magistrate under Sub-section (3), of Section 25, his duty is 'to conduct prosecutions in Courts of Magistrates' on behalf of the State. Therefore, we have to look to the duties which the Assistant Public Prosecutor is expected to perform rather than the authority which appoints him. Now, when a Magistrate takes cognizance of an offence not on receiving a complaint from a private complainant, but either on a police report under Clause (b), or upon his own knowledge under Clause (c) of Section 190(1) of the Code, it is the duty of the Assistant Public Prosecutor to conduct the case in the Court of that Magistrate. The matter would be different if the case falls under Clause (d), because in that event, it is for the complainant, who approaches the Court, to arrange for his representation in Court, But if the matter falls either under Clause (b) or Clause (c), it is only the Assistant Public Prosecutor who can discharge his duties for the simple reason that the case in question is not a private case, but is a case in which the State itself is interested. It cannot be said that the State is interested only when cognizance is taken on a police report. State would be equally interested in the prosecution even when the Magistrate takes cognizance of the offence 'upon his own knowledge', in whatever way he gathers this knowledge. Under these circumstances we agree with the learned Magistrate that the respondent could not have refused to conduct the case and to assist the Court.

5. The question, however, is whether this is a fit case in which any action should be taken against the respondent for refusing to conduct the case before the Magistrate. We find that the respondent has refused to conduct the case under a bona fide, though wrong, belief as regards the legal position. As the legal position is now clear, Shri Ramesh Chand, the learned Advocate of the respondent states

that the respondent is now prepared to conduct the case. Under the circumstances, we do not find this to be a case in which we should take any action for punishing the respondent for his refusal to conduct the case before the Magistrate. The legal position having been clarified, it is hoped that the respondent will henceforth act according to this clarification. With these observations, this contempt matter is disposed of.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com