

Tej Singh and ors. Vs. the State

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Court : Jammu and Kashmir

Decided On : Nov-28-1975

Reported in : 1976CriLJ922

Judge : Mian Jalal-Ud-Din, J.

Appellant : Tej Singh and ors.

Respondent : The State

Judgement :

ORDER

Mian Jalal-Ud-Din, J.

1. This revision is directed against the order of the learned Sub-Judge, Judicial Magistrate, Jammu, dated 3-3-1975 for setting aside the same and also for quashing the criminal proceedings in terms of Section 561-A of the Code of Criminal Procedure,

2. Briefly speaking the facts of the case are that the police presented a challan under Section 188, R.P.C. in the court of Sub-Judge, Judicial Magistrate, JV Jammu against the accused-petitioner, Thereupon .an application was moved by the accused under Section 195(1)(a) of the Code of Criminal Procedure inviting the attention of the court that the police could not challan the accused under Section 188, R.P.C. in view of the express bar operating under that section.

According to the section, no Criminal Court can take cognizance of an offence under Section 188, R.P.C. except on a complaint in writing of the public servant whose lawful authority has been defied. The Court overruled the objection of the petitioner and dismissed the application on the ground that by virtue of the Government Notification SRO 38 of 1970 dated 24-1-1970 offence under Section 188, R.P.C. has been made cognizable and therefore, the police could challan the accused and there was nothing to prevent the court from taking cognizance of the said case. The bar created under Section 195(1) did not operate. Aggrieved by this order the accused petitioner has come up in revision before this Court.

3. learned Counsel appearing for the petitioner has submitted that in view of express provision of Section 195(1)(a) of the Code, the Court below could not take cognizance of the case except on a complaint made in writing by the public officer whose authority was defied. The mere fact that the Notification has made the offence cognizable does not render the provisions of Section 195(1)(a) of the Code nugatory in effect. Notwithstanding the fact that the offence has been made cognizable the bar operates. What the notification intends is that the police can arrest without warrant an accused involved in an offence under Section 188, K.P.C. and nothing more. This does not enable the police to challan the accused without the express consent of the public officer whose authority has been defied. In support of this argument he has relied upon;

: AIR1951 Ori138 .

4. The Additional Advocate General on the other hand has argued that the offence under Section 188, R.P.C. has been made cognizable and has affected the legal position inasmuch as the police can arrest an accused involved in an offence under Section 188, R.P.C. without warrant and can also investigate the offence and can also challan the accused before a court of law. The operation of Section 195(1)(a) Cr.P.C. would not alter the position and would not affect the powers of the police to do so. He has further submitted that the two remedies are mutually exclusive, that two parallel proceedings can run - one can be at the initiation of the public officer and the other by the submission of charge-sheet by the police to the court. He has relied upon AIR 1960 Bom 116 and : AIR1965 Ori114 in support of

his argument.

5. In my view there is considerable force in the argument of the counsel for the petitioner that Section 195(1)(a) operates as a bar to the institution of a case under Section 188, R.P.C. before the Magistrate without the express authority of the public officer whose order has been disobeyed. What the notification intends is that it makes the offence under Section 188 cognizable by the police, but it does not make it cognizable by the court at the request of the police. It is not logical to say that merely by making offence under Section 188 cognizable the necessity of complying with the provisions of Section 195(1)(a) has been dispensed with. The notification relied upon cannot be said to override Section 195(1)(a). There is ample authority for the proposition that the Court cannot take cognizance of an offence under Section 188, R.P.C. except upon the complaint of the public officer whose authority has been defied and that the notification of the Government making the offence under Section 188, R.P.C. cognizable does not in any way override the statutory requirement or affect the operation of Section 195, Cr. P. C (vide : AIR1952 All560 . In : AIR 1962 SC1206 'Daulat Ram v. State of Punjab' their Lordships relied that there is an absolute bar against the court taking session of case under Section 182, I.P.C. except in a manner provided by Section 195 Cr. P, C. Their Lordships of the Supreme Court observed:

Where a person was found to have made a false report before the Tehsildar and the Tehsildar was apprised of the matter and he was asked to take action hi the matter, it was incumbent, if the prosecution was to be launched, that a complaint in writing should be made by the Tehsildar himself and not leave it to police to put a charge-sheet. The complaint must be in writing by the public servant concerned. The trial under Section 182 without the Tehsildar's complaint in writing was therefore, without jurisdiction ab initio.

6. The argument of the Addl. Advocate General that as in the notification there is an expression that offence under Section 188, R.P.C. (has been made cognizable notwithstanding anything contained in Cr, P.C. it has altered the state of law and has affected operation of Section 195, is devoid of merit. As already stated the notification cannot be said to have abrogated or repealed Section 195 of the Code

of Criminal Procedure. If the Legislature really intended to do so, then it should have introduced the necessary amendment in the session itself and should have used so many words to indicate that.

7. For the foregoing reasons, I am therefore, of the view that the proceedings initiated at the police report and the process issued against the accused without a proper complaint made in writing of the public servant concerned, is illegal and without jurisdiction. The order dated 3-3-1975 of Sub-Judge (Judicial Magistrate First Class) Jammu, is therefore, set aside and the proceedings are hereby quashed, it would, however, be open to the police to approach the concerned public officer in order to meet the requirement of Section 195(1)(a) of the Code of Criminal Procedure.

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