Daulat Ram

Vs

State of Punjab

Criminal Appeal No. 126 of 1960

(J. L. Kapur, M. Hidayatullah, Raghuvar Dayal JJ)

25.01.1962

JUDGMENT

HIDAYATULLAH, J. -

This is an appeal by one Dault Ram who was prosecuted under s. 182 of the Indian Penal Code and sentenced to imprisonment for three months. His revision application in the High Court of Punjab at Chandigarh was dismissed in limini; but he obtained special leave from this court and has filed this appeal.

The appellant was working as a Patwari and one August 19, 1958, he wrote a letter to the Tehsildar of Pathankot that on the previous day he had been set upon by two persons Hans Raj and Kans Raj who beat him severely and robbed him of certain of his official papers and some money, which was with him, partly belonging to him and partly to the Government. At the end of the letter which he wrote to the Tehsildar, he stated that the letter was written for his information. The Tehsildar, however, forwarded the letter to the Sub-Divisional Officer who in his turn sent it on to the police. The police enquired into the facts and reported that the allegations in letter were false. Meanwhile, it appears that the appellant entered into some sort of compromise with Hans Raj and Kans Raj and wrote another letter saying that as they were his relatives and he had found the papers and money, the proceedings if any be dropped and the papers be consigned to the record room. The matter however was pursued further and when the report of the police came that the allegations in the original letter were false, the Tehsildar asked the police that a "calendar" be drawn up. The police however launched a prosecution against the appellant under s. 182 of the Indian Penal Code, and after due trial, the appellant was found guilty of that offence and was sentenced to three months' rigorous imprisonment. His appeal and revision failed and we have been informed that the appellant has severed out his entire sentence.

The only question in this case ins whether a complaint in writing as required by s. 195 had been presented by the public servant concerned. The public servant who was moved by the appellant was undoubtedly the Tehsildar. Whether the appellant wanted the Tehsildar to take action or not, the fact remains that he moved the Tehsildar on what is stated to be a false averment of facts. He had charged Hans Raj and Kans Raj with offences under the Penal Code and he moved his superior officer for action even though he might have stated in the letter that it was only for his information. We are prepared to assume that he expected that some action would be taken. In fact his second letter that he had compromised the matter and the proceedings might be dropped clearly shows that he anticipated some action on the part of his superior officer. The question is therefore whether under the provisions of s. 195, it was not incumbent on the Tehsildar to present a complaint in writing against the appellant and not leave the court to be moved by the police by putting in a

charge sheet. The words of s. 195 of the Criminal Procedure Code are explicit. The section reads as follows :

> "(1) No Court shall take cognizance - (a) of any offence punishable under sections 172 to 188 of the Indian Penal Code, except on the complaint in writing of the public servant concerned, or of some other public servant to whom he is subordinate;

The words of the section, namely, that the complaint has to be in writing by the public servant concerned and that no court shall take cognizance except on such a complaint clearly show that in every instance the court must be moved by the appropriate public servant. We have to decide therefore whether the Tehsildar can be said to be the public servant concerned and if he had not filed the complaint in writing, whether the police officers in filing the charge sheet had satisfied the requirements of s. 195. The words "no court shall taken cognizance" have been interpreted on more than one occasion and they show that there is an absolute bar against the court taking seisin of the case except the manner provided by the section.

Now the offence under s. 182 of the Penal Code, if any, was undoubtedly complete when the appellant had moved the Tehsildar for action. Section 182 does not require that action must always be taken if the person who moves the public servant knows or believes that action would be taken. In making his report to the Tehsildar therefore, if the appellant believed that some action would be taken (and he had no reason to doubt that it would not) the offence under that section was complete. It was therefore incumbent, if the prosecution was to be launched, that the complaint in writing should be made by the Tehsildar as the public servant concerned in this case. On the other hand what we find is that a complaint by the Tehsildar was not filed at all, but a charge sheet was put in by the Station House Officer. The learned counsel for the State Government tries to support the action by submitting that s. 195 had been complied with inasmuch as when the allegations had been disproved, the letter of the Superintendent of Police was forwarded to the Tehsildar and he asked for "a calendar". This paper was filed along with the charge sheet and it is stated that this satisfies the requirements of s. 195. In our opinion, this is not a due compliance with the provisions of that section. What the section contemplates is that the complaint must be in writing by the public servant concerned and there is no such compliance in the present case. The cognizance of the case was therefore wrongly assumed by the court without the complaint in writing of the public servant namely the Tehsildar in this case. The trial was thus without jurisdiction ab initio and the conviction cannot be maintained.

The appeal is therefore allowed and the conviction of the appellant and the sentence passed on him are set aside.

Appeal allowed.

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