Som Chand Sanghvi

Vs

Bibhuti Bhusan Chakravarty

Criminal Appeal No. 90 of 1961

(K. Subha Rao, J. R. Mudholkar JJ)

21.01.1964

JUDGMENT

MUDHOLKAR J. –

This is an appeal against the judgment of the Calcutta High Court quashing the issue of process against the respondent.

The respondent is an Assistant Commissioner of Police in the City of Calcutta and the appellant had made a complaint against him alleging that he had committed an offence under s. 348, I.P.C. that is, wrongful confinement in order to extort a confession or compel restoration of property.

The fact as alleged by the appellant are as follows :

One Manoharlal Seth had lodged a complaint on July 28, 1960 against him and two other persons Fatehlal and Jaichand for offences under s. 120B/420, I.P.C. and s. 420 I.P.C. Manoharlal Seth had alleged in his complaint that these persons had induced him to purchase a bar of brass for Rs. 6,000 on the representation that it was of gold and thus duped him. Upon this complaint, investigation was taken up by the police. He came to know Manoharlal Seth in the course of his business. They were on quite friendly terms in the beginning and later on considerable differences arose between him and Manoharlal Seth. As a result of that Manoharlal Seth told him that unless he settled his differences with Manoharlal Seth according to the latter's dictates he would put him into trouble through his friend, the respondent, and that it is because of this that Manoharlal lodged a complaint against him for cheating. This complaint was thus a false complaint and it is common ground that ultimately it was dismissed by the Presidency Magistrate, 8th Court, Calcutta on January 2, 1961.

Then according to the appellant, on August 3, 1960 at about 6-00 A.M. P. C. Kundu, Sub-Inspector of Police attached to Burrabazar Police Station along with another Sub-Inspector S. Bhattacharya, visited his residence, searched his house and arrested him. Neither of them had any warrant with them for the search of the house or for the arrest of the appellant. Upon enquiry by him from these persons they told him that this was being done under the orders of the respondent. After his arrest the appellant said that he was taken to the Burrabazar police station at about 7-00 A.M. and then to Jorasanko Police Station and produced before T. K. Talukdar, Sub-Inspector in charge of that police station. From there he was taken to various places in Calcutta with a rope tied round his waist by Kundu and Bhattacharya and was eventually produced at about 12 noon before the respondent in his office at Lalbazar. There the respondent started threatening the appellant and asked him to settle the dispute with Manoharlal Seth and pay him Rs. 5,000 or to acknowledge in writing that he would pay this sum of money to Manoharlal Seth. At about 3-30 P.M. on the same day his brother Iswarilal

accompanied by a lawyer Chakravarthy visited the respondent's office and sought the appellant's release on bail as the offence was a bailable one. The respondent, however, refused to grant bail saying that no bail would be granted until a sum of Rs. 5,000 was paid to Manoharlal Seth. The appellant says that he was detained at Lalbazar Police Station till 8-00 P.M. From there he was taken to Jorasanko Police Station and kept in the lock-up for the whole night. On the next day, that is, August 4, 1960 he was again produced before the respondent at Lalbazar where the latter repeated his threats and that after obtaining his finger prints and taking his photographs he was taken to the court of the Additional Chief Presidency Magistrate where he was released on bail at about 2-30 P.M.

On August 19, 1960 the appellant preferred a complaint before the Chief Presidency Magistrate, Calcutta, under s. 348 and s. 220, I.P.C. and s. 13C of the Calcutta Police Act, 1866. In so far as two of the persons named as accused therein, S. I. Kundu and S. I. Talukdar, he decided to issue process against them under s. 220 I.P.C. and s. 13C of the Calcutta Police Act. As regards the respondent, he decided to issue process against him under s. 348, I.P.C. Upon a revision application preferred by the respondent the High Court quashed the process issued against him by the learned Chief Presidency Magistrate. The ground urged before the High Court on behalf of the respondent was that before he could be proceeded against sanction of the State Government under s. 197, Cr.P.C. ought to have been obtained. This contention was upheld by the High Court.

On behalf of the appellant Mr. Sukumar Ghose contends that the High Court in quashing the process has proceeded to decide on the merits of the case even though there was no material before it to do so and that therefore its judgment cannot stand.

It true that for considering whether s. 197, Cr.P.C. would apply the Court must confine itself to the allegations made in the complaint. But that does not mean that it need not look beyond the form in which the allegations have been made and is incompetent to ascertain for itself their substance. Here the substantial allegation is that the respondent questioned the appellant when he was produced at his office in Lalbazar, asked him to restore Rs. 5,000 to Manoharlal Seth who had lodged a complaint of cheating against the appellant and two others and that he declined to release him on bail. No doubt the appellant has made a grievance in his complaint that the respondent said that the appellant would not be released on bail unless he either paid the amount or acknowledged in writing his liability to pay this amount. Assuming that the allegation is true all that the thing boils down to is that the respondent refused to enlarge the appellant on bail and that he wanted the appellant to settle the matter with Manoharlal Seth. It cannot be disputed that whether a person charged with an offence should or should not be released on bail was a matter within the discretion of the respondent and if while exercising a discretion he acted illegally by saying that bail would not be granted unless the appellant did something which the appellant was not bound to do, the respondent cannot be said to have acted otherwise than in his capacity as a public servant. For this reason the sanction of the appropriate authority for the respondent's prosecution was necessary under s. 197, Cr.P.C.

Mr. Ghose, however, contends that the appellant's detention in the respondent's office was illegal and that, therefore, the respondent could not be said to have been in a position to exercise any lawful authority with respect to him. It is difficult to appreciate how the appellant's detention could be said to be illegal because it was in pursuance of the investigation of the complaint lodged by Manoharlal Seth that he was arrested and brought for interrogation before the respondent. It was not disputed before us that investigation into Manoharlal's complaint had been ordered though there is a dispute as to whether it was ordered by the respondent or by the Deputy Commissioner of Police. Whether it was by one or the other makes little difference. We would like to make it clear that Mr.

Ghose did not contend before us that the appellant's detention in the office of the respondent was illegal because his initial arrest was without a warrant. But we may point out that a police officer is legally empowered to arrest a person alleged to have committed an offence under s. 420, I.P.C. without a warrant.

Such being the position the High Court was justified in quashing the process. Accordingly we dismiss this appeal.

Appeal dismissed.

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