

Kamla Prasad Singh

Vs

Hari Nath Singh & Anr

Criminal Appeals Nos. 244-246 of 1964

(M. Hindayatullah, C. A. Vaidialingam JJ)

27.04.1967

JUDGMENT

HIDAYATULLAH, J.

Kamla Prasad Singh the appellant had filed three complaints in the Court of the Additional District Magistrate, (judicial) Varanasi for the prosecution of Harinath Singh (respondent No. 1) under s. 218 Indian Penal Code. In each of these complaints Harinath was a co-accused with another. In one it was Mangla Prasad Pandey, Ahlmed, Court of Tahsildar, Sadar Varanasi, in another it was Ramchander Lakhpal of Village Balua and in the third it was Ram Samravlal Lekhpal of Village Cholapore. In each case Harinath Singh was said to have abetted the offence committed by his co-accused. The circumstance in which the complaints were lodged were common and may now be briefly stated.

Certain Bhumidari lands in these villages were the property of Nankoo s/o Mehar Singh and Sumitra widow of one Ajudhia Singh On December 4, 1962, Nankoo sold his half share to Kamla Prasad Singh and some others. Kamla Prasad's complaint is that Harinath Singh in conspiracy with the two Lekhpals got certain forged entries to be made in the Khasra after the sale in favour of Kamla Prasad, and applied for the correction of the jamabandi, The Ahlmed in conspiracy with Harinath Singh ante-dated the said application to November 9, 1962, to make it appear that it was made prior to the sale-deed and to shield the Lekhpals. The application was entered in the register of Jamabands's as Case No. 116 dated November, 9, 1962 although the case bearing that number was one between Bhagwati Singh and Bhagwati of Birbalpura Kaswal Raja.

After the complaints were in Court Harinath Singh filed an application under s. 561-A of the Code of Criminal Procedure stating that the offence, if any, was one under s. 193 of the Indian Penal Code and the provisions of s. 195 of the Code of Criminal Procedure barred the private complaints. The High Court accepted the application for the above reason and quashing the proceedings against Hari Nath Singh ordered his discharge. In these appeals by certificate, the order of the High court is questioned.

The first question is what are the distinct features of s. 193 and 218 of the Indian Panel Code. Section 193 states the punishment for giving false evidence in any stage of a judicial proceeding or fabricating false evidence for the purpose of being used in any stage of judicial proceeding. Section 191 defines the offence of giving false evidence and s. 192 the offence of fabricating false evidence. We may ignore s. 191 because here admittedly there is no giving of false evidence as defined in the Penal Code. The offence of fabricating false evidence comes into existence when a person causes any circumstances to exist or makes any false entry in any book or record or makes any document

containing a false statement intending that such circumstance, false entry or false statement may appear in evidence in a judicial proceeding etc. and so appearing cause an erroneous opinion be formed touching a point material to the result of such proceeding. The offence is a general one and does not specify the person or the kind of document. It may be any person and the fabricated evidence may be in any form. Section 218 on the other hand deals with the intentional preparation of a false record by a public servant with the object of saving or injuring any person or property. The difference between the two sections is clearly noticeable. Section 192 deals with judicial proceeding and the false evidence is intended to be used in a judicial proceeding. Section 218 deals with public servants and there the gist is the intentional preparation of false record with a view of saving or injuring any person or property. This need not have relation to a judicial proceeding as such.

The bar of s. 195 of the Code of Criminal Procedure which was invoked by Hari Nath Singh arises thus. No Court can take cognizance of an offence under s. 193 when such offence is alleged to have been committed in or in relation to any proceeding in any Court except on the complaint in writing of such Court. In these cases, Hari Nath Singh is charged with abetment of three offences committed by these public servants namely the two Lekhpals who have caused the preparation of an incorrect Khasra knowing it to be likely that they would thereby cause loss or injury to Kamla Prasad Singh and the other vendees. Hari Nath Singh is charged in the third case with abetment of the act of the Ahlmad who is alleged to have intentionally made a false entry about the case intending that the false entry should be used in a judicial proceeding and wrong opinion be formed about the date of the institution of the proceeding.

It will appear from this that the alleged offence committed by the Ahlmad was clearly in relation to a proceeding in Court. In fact he made an incorrect entry about a case actually in Court with the intention that the date of the institution of the proceeding may be taken to be November 9, 1962 although the case was alleged to be instituted after December 4, 1962. His offence is (any be proved against him) would fall within s. 142 Section 218 Indian Penal Code does not apply in this case, because the record was not made with the object of saving or injuring any person or property. The offence of Section 192 Indian Penal Code is punishable under s. 193 Indian Penal Code and the latter section is one of the sections mentioned in s. 195(1) (b) of the Code of Criminal Procedure, the gist of which has been produced above. The decision of the High Court was therefore right that the case could not take cognizance of the offence alleged against the Ahlmad and his abettor, because the offence was fabricating of false evidence in a case which was in fact pending and the false entry was made with the object that an erroneous opinion be formed on a material point. Such a case could only be instituted by a Court in which or in relation to which this offence was committed and a private complaint was therefore incompetent.

The alleged offence against the Lekhpals and their abettor Hari Nath Singh in the other two cases is of a different order. The offence of s. 218 Indian Penal Code is not a minor offence, included against within s. 192. It is a distinct offence which can be proceeded against without the bar of s. 195 of the Code of Criminal procedure. There is some resemblance between s. 192 and s. 218 Indian Penal Code, because both deal with the preparation of a false record. There the resemblance ceases. Whereas in s. 192 the record is prepared for use in a judicial proceeding with the intention that an erroneous opinion be formed regarding a material point, the offence in s. 218 is the preparation of a false record by a public servant with the intention of saving or injuring any person or property. The intention here was to save the property from the vendees namely Kamla Prasad Singh and others. The offence was complete the moment the false record was made with the said intention and it was not necessary for the completion of this offence that the record should be used

in a judicial proceeding so as to cause an erroneous opinion to be formed touching on a point material to the result of such proceeding. In the Ahlmad's case this latter condition was the most important ingredient, In the case of the Lekhpals, it was immaterial whether the record would be produced in a judicial proceeding or not so as to cause an erroneous opinion to be formed. The intention was to form the property from the effect of the same and the preparation of the false record was therefore sufficient from this point of view. In other words, the offence of the Lekhpals(if any be proved against them) would fall within s. 218 and not s. 192/193 of the Indian Penal Code. It may fall the latter sometimes if the entry can be said to be in or in relation to a Court. This cannot be said of the entries in the Khasra. As s. 218 is not named in s. 195 of the Code of Criminal Procedure, the private complaint of Kamla Prasad Singh could be entertained by the Court and there was no bar.

To hold that a record such as is contemplated in s. 218 Indian Penal Code is always one intended for use in a Court would put s. 218 Indian Penal Code in s. 195 of the Code of Criminal Procedure which the Code of Criminal Procedure has not thought of. Therefore s. 218 Indian Penal Code must be treated as an independent and distinct offence. There could be a private complaint in respect of an offence under s. 218 Indian Penal Code.

The result is that the case against Hari Nath Singh of abetment of the act of the Ahlmad could not begin except on a complaint inwriting of the court concerned. There was no bar to the commencement of the case against Hari Nath Singh and the two Lekhpals on the private complaint of Kamla Prasad Singh Accordingly Criminal Appeal No. 245-246 of 1964 shall be allowed and the concerned cases will be remitted to the Court of first instance for trail according to law.

Y. P. Appeal No. 244 dismissed. Appeal No. 245-246 allowed.

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