

SUPREME COURT OF INDIA

Ajaib Singh

Vs.

Joginder Singh

Crl.A.No.157 of 1965

(S. M. Sikri and V. Ramaswami, JJ.)

30.04.1968

JUDGEMENT

SIKRI, J.:

1. This appeal by special leave is directed against the judgment of the High Court of Punjab dismissing Criminal Miscellaneous Petition No. 8 of 1964. This petition arose out of the following facts. Bhagwant Rai and Chhota Ram were tried under Section 325, I.P. C., read with Section 34, I. P. C., in the Court of Shri Harish Chander Gaur, Magistrate 1st Class, Patiala. Ajaib Singh, Sub Inspector, one of the appellants before us, had investigated the case. The Magistrate, by his order dated April 5, 1957, acquitted both the accused and, inter alia, observed that Bhagwant Rai had been falsely implicated in the case as he was not even present on the day of the occurrence at Patiala. On the application of Bhagwant Rai, Shri Joginder Singh 'Karamgerhia', Magistrate 1st Class, Patiala, who succeeded Shri Harish Chander Gaur, filed a complaint under Sections 193, 195, 211 and 120B, I. P. C., on October 31, 1958, against six persons including the appellants, Ajaib Singh and Malkiat Singh. Shri O. P. Gaur Magistrate First Class, by his order dated June 1, 1959, discharged the accused, holding that the complaint was not competent as it was barred by sub-section (6) of Section 479A, Cr. P. C., because the complaint had not been filed by or directed to be filed by Shri Harish Chander Gaur, who had disposed of the case ending in the acquittal of Bhagwant Rai. In the

revision filed against this order the Additional Sessions Judge upheld this view. The High Court (Capoor, J.), on revision, found it unnecessary to consider the scope of Section 479A, Cr. P. C., vis-a-vis S. 476, Cr. P. C., because two of the offences mentioned in the complaint, namely, Section 211 and Section 120B, I. P. C., did not fall within the purview of S. 479A. Capoor, J., further held that Section 42 of the Police Act, 1861, had no application to a case in which a complaint was made by the Court under Section 476, Cr. P. C. Capoor, J., also held that as the order of Shri Joginder Singh, Magistrate, directing the making of the complaint against the respondents was not appealed from and had become final, the competency of the Court to make the complaint under Section 211, I. P. C., against Jaswant Singh, one of the accused could not be considered at that stage. The High Court accordingly set aside the order of the learned Additional Sessions Judge and directed that the respondents be proceeded against according to law.

2. On the case going back fresh objections were filed before the Magistrate trying the case but these were overruled. Revision was filed before the Additional Sessions Judge who accepted the prayer of Kirpal Singh and recommended to the High Court that the criminal proceedings pending against him in the Court of Magistrate First CIRSS, Patiala, might be quashed. He, however, declined to interfere with the proceedings pending against the appellants mainly on the ground that the objections now taken by them before the Trial Magistrate had been heard and finally disposed of by Capoor, J., in his order dated April 4, 1961.

3. In the meantime, the appellants, put in Criminal Miscellaneous Petition No. 8 of 1964, in criminal revision, in the High Court, praying that along with the recommendation made by the learned Additional Sessions Judge, Patiala, for quashing the criminal proceedings against Kirpal Singh, the grounds urged by them might also be taken into consideration. Capoor, J., accepted the recommendation made by the learned Additional Sessions Judge, Patiala and quashed the criminal proceedings against Kirpal Singh. He, however, directed that Criminal Miscellaneous Petition No. 8 of 1964 should be placed before another Bench for disposal. The matter was then placed before Sharma, J., who held that all the points urged in Criminal Miscellaneous Petition had been taken into consideration and repelled by Capoor, J., in his order dated April 4, 1961. Sharma, J., observed :

"The learned counsel, however, omitted to take note of the fact that revision petition finally was accepted in the terms "is (if ?) the order under revision is not legally sustainable, it must be set aside and the respondents must be proceeded with according to law." Therefore, what the order (said) was that the criminal Case as a whole was to proceed against all the respondents and so the petitioners could not be heard now to say that the case was remanded to the trial court for trial of the respondents for offences punishable under Sections 211 and 120B of the Indian Penal Code. In the circumstances, the trial Court cannot be said to have misconstrued the order of Capoor, J. The other grounds urged by them in the Criminal Miscellaneous us already pointed out by me were taken into consideration by Capoor, J., and findings given against the petitioners and that being so, these cannot be agitated against at this stage."

He accordingly dismissed the Criminal Miscellaneous Petition. The appellants having obtained special leave, the appeal is now before us.

4. The learned counsel for the appellants contends that on the facts prosecution for offences under Sections 193 and 195, I. P. C. was barred under S. 479-A (6) Cr. P. C. In our opinion, this contention must be accepted in view of the ruling of this Court in *Shabir Hussein Bholu v. State of Maharashtra*, (1963) Supp (1) SCR 501 = (AIR 1963 SC 816) and *Baban Singh v. Jagdish Singh*, AIR 1967 SC 68.

5. The learned counsel next contends that the complaint could only be filed by the Magistrate before whom the original proceedings were taken. He says that according to Section 195 (1) (b), Cr. P. C. a complaint in respect of Secs. 193, 195 and 211, I. P. C., can only be made by the Court in which the proceedings out of which the offences arose took place. We see no force in this contention. Section 559 enables a successor in-office of a Magistrate to file a complaint. The relevant portion of Sec. 559 reads as follows :

559. (1) Subject to the other provisions of this Code, the powers and duties of a Judge or Magistrate may be exercised or performed by his successor in office.

(2) When there is any doubt as to who is the successor in office of any Magistrate, the Chief Presidency Magistrate in a Presidency town, and the District Magistrate outside such towns, shall determine by order in writing the Magistrate who shall for the purposes of this Code or of any proceedings or order thereunder be deemed to be the successor in office of such Magistrate."

This section was substituted for the original Section 559 by the Code of Criminal Procedure (Amendment) Act (XVIII of 1923). Since the amendment it has been held, and we think rightly, that a successor in office of a Magistrate can file a complaint under Section 476, Cr. P. C., in respect of an offence under Section 195, I. P. C., committed before his predecessor. See *Behram v. Emperor*, 27 Cri LJ 776 = ILR 7 Lah 108 = (AIR 1926 Lah 305), *Ram Ajodhya Singh v. Emperor*, AIR 1927 Pat 327; and *In re, Subramanian Chettiar*, AIR 1957 Mad 442. This section applies to all Magistrates and there is no reason why the plain terms of the section should be cut down to limit it, as suggested by the learned counsel for the appellant, to Magistrates whose courts are permanent. It seems to us further clear that sub-section (2) has not the effect of limiting Section 559 (1). Section 559 (2) applies when there is a doubt as to who the successor is, and that doubt can be resolved in the manner laid down in sub-section (2). The sub-section does not mean, as contended by the learned counsel, that until a successor is determined under sub-section (2) there is no successor for the purposes of sub-section (1). If there is no doubt about who the successor is, then that person can exercise the powers under sub-section (1). We accordingly hold that the complaint was properly filed by Shri Joginder Singh 'Karangarhia', Magistrate.

6. There is equally no force in the third point raised by the learned counsel that Section 42, Police Act, creates a bar and the prosecution is time-barred under this section. This Court held in Maulud Ahmed v. State of U. P., (1963) Supp (2) SCR 38 at pp. 44-45 = (1964) (2) Cri LJ 71 at p. 73 that Section 42, Police Act, does not apply to prosecutions under the Indian Penal Code or other Acts. Subba Rao, J., as he then was, observed :

"The period of three months prescribed for commencing a prosecution under this section is only with respect to prosecution of a person for something done or intended to be done by him under the provisions of the Police Act or under general Police powers given by the Act. Section 42 does not apply to prosecution against any person for anything done under the provisions of any other Act..... A combined reading of these provisions leads to the conclusion that Section 42 only applies to a prosecution against a person for an offence committed under the Police Actbut the prosecution in the present case was for an offence under Section 212 of the Indian Penal Code which is an offence under a different Act and for which a much higher punishment is prescribed. By reason of Section 36 of the Police Act, section 42 thereof cannot apply to such a prosecution."

7. The fourth point which the learned counsel urges is that the complaint only discloses two offences under Section 193 and Section 195, I. P. C., and no other and it was an abuse of the process of the Court. There is no force in this contention as the complaint on its face mentions Sections 193, 195, 211 and 120B.

8. The learned counsel finally urges that the complaint had been filed because of a private feud and it is not in the interest of justice that the complainant should be allowed to proceed with the complaint. This point was not taken in the High Court at any stage and we do not allow it to be raised at this stage.

9. In the result the appeal fails and is dismissed.

Appeal dismissed.