**SUPREME COURT OF INDIA**

State of Punjab

Vs.

Brij Lal Palta

Crl.A.No.173 of 1966

(S. M. Sikri, R. S. Bachawat and A. N. Grover, JJ.)

26.08.1968

**JUDGEMENT**

**GROVER, J. :-**

1. This is an appeal by special leave against the judgment of the High Court of Punjab quashing the proceedings pending against the respondent in the court of a Magistrate at Faridkot under Ss. 408, 467, 471, 381, 385, 182, 211, 193 and 109, Indian Penal Code.

2. The factual position as it emerges out of a confused mass of facts stated in the petitions filed under S. 561-A in the High Court and the affidavits etc., may be briefly stated. The respondent submitted an application to the Assistant Superintendent of Police, Faridkot, on November 3, 1963 for registration of a case under Ss. 420 and 406 read with Ss. M, 120-B of the Indian Penal Code against Shibbu Ram Mittal a Director of Shiv General Finance (P) Ltd., New Delhi, who was originally stated to be residing at Kot Kapura and certain other persons who were the directors of the aforesaid company or connected therewith. The main allegations made by the respondent were that be was induced by Shibbu Ram Mittal to part with a sum of Rs. 25,000/. for the purchase of

property in Delhi with an assurance that the property when purchased would yield profits. The payment of this amount was alleged to have been confirmed by P. D. Srivastava, Managing Director of the said company by a letter dated April 28, 1962. Out of this amount a sum of Rs. 10,000/- was alleged to have been paid over to Om Parkash Gupta Director and Secretary of the company. As no property was purchased by Shibbu Ram Mittal the respondent pressed for the refund of the amount. On October 5, 1963, a sum of Rs. 1500/- was refunded in part payment The respondent got a report noted in the police station Paharganj, New Delhi, on that date regarding the factum of a visit to Delhi for the purpose of claiming the refund of the entire amount. According to him he pressed for the payment of the balance of the amount of Rs. 23,500/- but ultimately he was told that no amount had ever been entrusted by him to Shibbu Ram Mittal and that all the documents on which he relied were forged. It appears that on the basis of the letter addressed by the respondent to the Assistant Superintendent of Police, First Information Report No. 4 dated January 16, 1964 was registered at the Police Station Kotwali, Faridkot. After investigation Shri Sita Ram, District Inspector, Bhatinda filed a police report dated March 18, 1965 under S. 173 of the Code of Criminal Procedure. In this report it was stated that as a result of the investigation it had been found that the case of the respondent as made out in his application on which the First Information Report had been registered was altogether false and it was the respondent and one Hukam Chand who had been guilty of various offences including forgery. A charge sheet was submitted against them under Ss. 408, 467, 474, 193, 385, 109, 211 and 182 of the Indian Penal Code. Meanwhile on 16-2-1965 the respondent filed a complaint before a Magistrate, First Class at Faridkot against Shibbu Ram Mittal and others making the same allegations which he had made in the application submitted to the Assistant Suprintendent of Police on the basis of which the First Information Report No. 4 was registered. The respondent filed a petition under S. 561-A of the Cr. P. C. in the High Court for quashing the proceedings pending against him. Although in that petition a number of points were raised the decision of the High Court rested mainly on the ground that until the First Information Report which had been registered at the instance of the respondent had been cancelled by the Magistrate it was not open to the police to ask for prosecution of the respondent for the alleged offences. The High Court also referred to the complaint which had been filed by the respondent on the same allegations on which the First Information Report had been registered and which was still pending.

3. The learned counsel for the State contends that there is no warrant for the view expressed by the High Court that once the First Information Report had been registered it had to be cancelled by the Magistrate either under S. 169 or under any other section of the Cr. P. C., before a charge sheet could be submitted disclosing the offences committed by the informant himself including offences under Ss. 182 and 211 of the Penal Code. It is not necessary to decide this point in view of our decision on the second point

4. It has been contended by the respondent - this point was raised in some form or the other even before the High Court - that in the presence of the complaint which has been filed by the respondent and which is pending before the Magistrate, the police cannot ask for his prosecution for alleged offences under Ss. 182, 211 and 193 of the Penal Code. The respondent has filed an affidavit dated October 22, 1966 in this court in which it has been stated in para 11 that the complaint instituted by him had been referred to the Tehsildar, Faridkot, who had the powers of a Magistrate, 2nd Class in December 1965 for making a report. That Magistrate made a report dated January 7, 1966 that a prima facie case had been made out under Ss. 420/409 read with S. 34 of the Penal Code against

Shibbu Ram Mittal and others. Thereafter all these accused persons had been ordered to be summoned by Shri Dina Nath, Judicial Magistrate, First Class, Bhatinda, on April 18, 1966 to appear on May 3,1966. Shibbu Ram Mittal and others filed a Revision Petition before the Sessions Judge, Bhatinda, against that order but their petition was rejected. No counter-affidavit has been filed controverting those facts. At any rate, it is not disputed that a complaint containing allegations on the same facts which were alleged in the letter of the respondent to the Assistant Superintendent of Police on the basis of which the First Information Report was registered is pending and proceedings in accordance with law are being taken pursuant thereto. The respondent has invited our attention to a number of cases, some of which may be noticed, in which a view has been taken that during the pendency of a complaint proceedings cannot be held against the complainant for offences under Ss. 182 and 211 of the Indian Penal Code till the disposal of the complaint. [See Queen Empress v. Sham Lal, (1887) ILR 14 Cal 707 (FB); Gati Mandal v. Emperor, (1906) 4 Cri LJ 68 (Cal); Munshi Isser v. King Emperor, (1910) 11 Cri LJ 354 (Cal) and Lachmi Shaw v. Emperor, 33 Cri LJ 514 = (AIR 1932 Cal 383).] In Tayebulla v. Emperor, ILR 43 Car 1152 = (AIR 1917 Cal 593) a Division Bench consisting of Mookerjee and Sheepshanks JJ. made a distinction between a case where a false charge has been made to the police and has not been followed by judicial investigation thereof by the court and where the police makes a report as to the falsity of the information and the complainant insists on a judicial investigation. It was held that in the former case no complaint under S. 195 (1) (b) of the Cr. P. C., was necessary but in the latter case it should be deemed that a complaint had been preferred to the Magistrate and if the Magistrate found the case to be false sanction would be required as the offence could be said to have been committed in a proceeding in a court. In Brown v. Anandalal Mullick, ILR 44 Cal 650 =(AIR 1917 Cal 596) Sanderson C. J., delivering the judgment of the Division Bench went into the matter exhaustively and came to the conclusion that where an information to the police was followed by a complaint to the court based on the same allegations and the same charges and such a complaint had been investigated by the court the sanction or the complaint of the court itself was necessary for the prosecution of the informant under S. 211 of the Indian Penal Code even in respect of the false charge made to the police.

5. The Madras High Court in K. Dholiah v. King Emperor, ILR 54 Mad 1018 = (AIR 1931 Mad 702) had to deal with a case in which a person gave information to the police at certain persons had broken the seal and lock of a temple and entered it. After some investigation the police reported to the Magistrate that the case was false. Thereupon the original informant pressed the same complaint before the Magistrate who discharged the accused person under S. 252 (2) of the Cr. P. C., finding the charge against them to be groundless. Subsequently the police filed a complaint against the informant for giving false information and the Sub-Divisional Magistrate convicted him under S. 182 of the Penal Code. The High Court held, setting aside the conviction, that as the complaint disclosed an offence under S. 211 alleged to have been committed in relation to proceedings in a court the Magistrate could not take cognizance of the case without a complaint in writing by a Magistrate as required by S. 195 (1) (b) of the Cr. P. C. The Madras Court relied on the Calcutta decisions and referred to Mohammed Yassin v. Emperor, ILR 4 Pat 323 = (AIR 1925 Pat 483) in which the Calcutta view had been followed. The Madras Court, however, owing to the conflict between the various decisions, proceeded to say that where the charge was confined to an offence under S. 182 it was doubtful whether a complaint by a Magistrate would be required. The Bombay High Court in Bajaji Appaji v. Emperor, AIR 1946 Bom 7 discussed numerous decisions given by the various High Courts and the conflict which existed on the question under consideration. In the Bombay case the facts were more or less similar to the present case and it was held that for the

purpose of S. 195, Cr. P. C., the crucial date is the date where the court takes cognizance of the offence. So where the alleged false complaint is first made by A to the police and then to the Court a complaint under S. 211 Penal Code subsequently filed by the police against A is a complaint of an offence alleged to have been committed in or in relation to a proceeding in court and cannot be taken cognizance of except on a complaint of the court. In coming to that conclusion the Bombay High Court relied on two reasons; one is that the complaint before the police becomes merged in the subsequent complaint in court as is the view of the Calcutta High Court and the other is that by making a complaint to the court the informant has withdrawn information from the category of a mere police proceeding and has raised it to the category of a proceeding in a court. This was based on the observation of Ross J., in Mohd. Yasin's case, ILR 4 Pat 323 = (AIR 1925 Pat 483) (supra). Dalal J., in Emperor v. Prag Datt ILR 51 All 382 = (AIR 1928 All 765) took a view contrary to that of Calcutta, Bombay and Madras High Courts and held that when a false charge was made to the police and offence under S.211 of the Penal Code was complete it could not be said that merely because a similar complaint was subsequently made to a court the offence was committed in or in relation to any proceeding in any court within the meaning of S. 195 (1) (b) of the Cr. P. C.

6. According to Nota Ram v. Emperor, AIR 1943 Lah 31 where an offence under S. 182 of the Penal Code is complete and prosecution is launched under it the proceedings cannot be quashed because the accused, not content with a false regent to the police, subsequently makes a false complaint to the Magistrate and thereby exposes himself to a prosecution under S. 211 of the, Penal Code. In Sarup Singh Murat Singh v. Emperor, AIR 1939 Nag 226; Pollock J., said that whether it was legal or not it was undesirable that the police should file a complaint under S. 182 where the informant whose report had been found to be false by the police had preferred a complaint to a Magistrate on the same facts. He had no doubt, however, that in such circumstances if the charge was under S. 211 a complaint of the court would be necessary. In Ramdeo v. State of Rajasthan, AIR 1962 Raj 149 it has been held that if a complaint by the police in respect to a commission of an offence under S. 182 of the Penal Code is filed after the complainant has preferred a complaint before the Magistrate the proceedings for prosecution of the complainant under S. 211 or S. 182 of the Penal Code on the police complaint are incompetent. Some of the reasons given by the learned Rajasthan Judge deserve notice. One is that if the police files a complaint for prosecution under S. 182 during the pendency of a complaint by the informant it will amount to assertion by the police of a right to prejudge the matter before judicial determination. The other is that such a course will impinge upon the safeguards provided for regulating and controlling prosecution in respect of offences against admission of justice and contempt of lawful authority in the Cr. P. C.

7. It seems to us that so far as prosecution under S. 211 of the Penal Code is corrected, once a complaint filed by the informant is being proceeded with which is based on the same facts and allegations on which the first information was registered it is not open to a Magistrate to take cognizance of any offence alleged to have been committed under that section unless them has been proper compliance with the provisions of S. 195 (1) (b) of the Cr. P. C. It will lead to very anomalous results if any other view is accepted e.g., if the complaint is ultimately dismissed and the Magistrate refuses to lodge a complaint under S. 195 (1) (b) its provisions will be defeated or circumvented if the police can move the Magistrate to take cognizance on a police report of an offence under S. 211. We are fortified in the view we are taking by the following observations at p. 528 (of SCR) = (at p. 532 of AIR) in M. L. Sethi's case, 1967-1 SCR 520=(AIR 1967 SC 528).

"The question on which the decision in the present case hinges is whether it can be held that any proceedings in any Court existed when that Magistrate took cognizance. If any proceeding in any Court existed and the offence under S. 211, I. P. C. in the complaint filed before him was alleged to have been committed in such a proceeding, or in relation to any such proceeding, the Magistrate would have been barred from taking cognizance of the offence. On the other hand if there was no proceeding in any Court at all in which, or in relation to which, the offence under S. 211 could have been alleged to have been committed, this provision barring cognizance would not be attracted at all."

8. As regards the position in similar circumstances in respect of an offence under S. 182, the conflict of judicial opinion has already been notice . The text books are full of a vast number of cases taking one view or the other. In our opinion the present case is of the type where the facts stated in the police report disclosed an offence under S. 211, Indian Penal Code. It is true that the offence under S. 182 is distinct from the one under S. 211 though the latter is more serious and may include the offence under the former section. The Magistrate can take cognizance of an offence under S. 182 on a complaint in writing of the police officer by virtue of the provisions contained in Section 195 (1) (a) of the Cr. P. Code. But it would virtually lead to the circumvention of the provisions of Section 195 (1) (b) if the proceedings under Section 182 can continue where the offence disclosed is covered by Section 211 Indian Penal Code and a complaints pending which has been filed by the informant on the same facts and allegations as were contained in his first information report.

9. On a parity of reasoning which has prevailed with us with regard to an offence under Section 211 of the Penal Code no cognizance can, be taken by the Magistrate for the alleged offence under Section 193 of the Penal Code which is one of the Sections mentioned in Section 195 (1) (b).

10. The next question is whether the other offences in respect of which a police report and a charge sheet have been submitted against the respondent can be proceeded with. The High Court has quashed the entire proceedings which would include offences other than those under Sections 182, 211 and 193. Some of them were even non-cognizable offences i. e., Sections 467, 471, 385 etc. It is well settled by now that while investigating the commission of a cognizable offence the police officer is not debarred from investigating any non-cognizable offence which may arise out of the same facts. He can include that non-cognizable offence in the charge-sheet which he presents for a cognizable offence. (Vide Pravin Chandra Mody v. State of Andhra Pradesh, AIR 1965 SC 1185.) There can be no objection therefore to the continuance of proceedings relating to offences alleged against the respondent other than those covered by Sections 182, 211 and 193 of the Penal Code.

11. The respondent sought to raise certain other points which do not appear to have been agitated before the High Court. For that reason it was considered neither proper nor necessary to go into them. We would, however, like to make it clear that to the extent they are not covered by our judgment it will be open to him to raise those points before the appropriate courts below.

12. In the result the appeal is allowed to the extent that the proceedings in respect of offences other than those under Sections 182, 211 and 193 shall continue but the proceedings in relation to offences under Sections 182, 211 and 193 alleged to have been committed by the respondent shall stand quashed.

Appeal partly allowed.