Bholanath Amritlal Purohit

Vs

State of Gujarat

Criminal Appeal No. 43 of 1967

(S. M. Sikri, I. D. Dua, K. S. Hegde JJ)

14.08.1970

JUDGMENT

HEGDE, J. -

1. The appellant was tried and convicted by the judicial Magistrate 1st class, 1st Court, Broach under Section 55 of the Indian Post Office Act, 1898 (to be hereinafter referred to as the Act) and sentenced to suffer rigorous imprisonment for one month and to pay a fine of Rs. 100/- in default to suffer rigorous imprisonment for three weeks. In appeal that conviction was affirmed by the learned Sessions Judge, Broach. In his revision petition before the High Court of Gujarat, the principal contention taken by him was that the learned magistrate was not competent to take cognizance of the case against him as there was no complaint as required by Section 72 of the Act. The revision petition was admitted for hearing and notice issued to the respondent but when the matter came up for hearing before Raju, J., the learned judge rejected the revision petition with these cryptic remarks.

> "Heard the learned Counsel for the Petitioner. I do not wish to exercise my revisional jurisdiction in this matter."

2. Thereafter this appeal was brought after obtaining certificate from the High Court under Article 134(1)(c) of the Constitution.

3. The learned Counsel for the appellant, Mr. H. K. Puri challenged the conviction of the appellant on the sole ground that the appellant's trial was illegal as the case against the appellant was not proceeded on the basis of a complaint made by order of or under authority from, the Director General or Post Master general as required by Section 72 of the Act.

4. The case against the appellant was take cognizance on the basis of a report by the police under section 173 of the Cr. P.C. after making an enquiry under Chapter XIV (Part V) of that Code. It is true that the investigation of the case was launched on the basis of the information given by the postal authorities. We shall even assume that the investigation in question was made after obtaining the sanction of the concerned Post Master General as contended by the learned Counsel for the respondent.

Section 55 of the Act reads thus :

> "Whoever, being an officer of the Post Office entrusted with the preparing or keeping of any document, fraudulently prepares the document incorrectly, or alters or secretes

> or destroys the documents, shall be punishable with imprisonment for a term which may extend to two years, and shall also be punishable with fine."

In brief the accusation against the appellant is that he fraudulently prepared certain documents in the post office where he was serving as a delivery clerk.

Section 72 of the Act prescribes :

> "No Court shall take cognizance of an offence punishable under any of the provisions of sections 51, 53, 54, clauses (a) and (b), 55, 56, 58, 59, 61, 64, 65, 66 and 67 of this Act, unless upon complaint made by order of, or under authority from, the Director General or a Post Master General.

5. The question for consideration is whether there is such a "complaint" in this case ? The expression "Complaint" is not defined in the Act but the "complaint" contemplated under Section 55 one that initiates a prosecution on the basis of which the accused if found guilty is punishable with imprisonment for a term which may extend to two years and also with a fine. That being so the expression "complaint" in Section 72 cannot be equated to mere information or accusation. The context in which that expression is used in section 72 indicates that it is a formal document indicting an officer of the postal department for a criminal offence. The purpose behind Section 72 is that officials of the postal department should not be harassed with frivolous prosecution and that before any of the prosecutions contemplated by Section 72 is launched, the authorities mentioned in that section should have examined the appropriateness of launching a prosecution and either file a complaint themselves or authorise the filing of such a complaint. Such a requirement will not be satisfied if the concerned authorities merely ask the police to investigate into the case and take appropriate action. An information laid before the police or even a sanction granted for a prosecution by the police would not meet the requirements of Section 72. If the legislature contemplated that a mere information to the police by the appropriate authority is sufficient then there was no need to enact Section 72. Further if all that was required was to obtain the sanction of the concerned authority then the legislature would have enacted a provision similar to Section 197 of the Cr. P.C. The fact that the legislature did not choose to adopt either of the two courses mentioned above is a clear indication of the fact that the mandate of Section 72 is that there should be a formal complaint as contemplated by Section 4(1)(h) of the Criminal Procedure Code which says :

> "'Complaint' means the allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person whether known or unknown, has committed an offence, but it does not include the report of a police officer."

6. If we understand the word "complaint" in Section 72 of the Act as defined under Section 4(1)(h) of the Cr. P.C. as we think we should, then (there was admittedly no "complaint" against the appellant which means that the learned magistrate was incompetent to take cognizance of the case. From that it follows that the trial of the case was an invalid one and that the appellant was convicted without the authority of law).

7. The meaning of the word "complaint" in Section 72 of the Act had come up for consideration before several High Courts. The conclusion reached by those High Courts accords with that reached by us. As far back as 1906 the meaning of the word "complaint" in Section 72 of the Act came up

before a Division Bench of the Calcutta High Court in Emperor v. Rohini Kumar Sen (X CWN 1029). The Court held that the prosecution therein was vitiated because of the failure to comply with the requirements of section 72 of the Act. A similar view was taken by the Travancore Cochin High Court in Chanaprakasam Baranabass v. state (ILR 1953 TC 600). Raju, J. himself took that view in Narotamadas Bhikhabadi v. State of Gujarat ((1962) 2 Cr. LJ 165). That decision was rendered by the learned Judge on September 2, 1963. The same view was taken by another bench of the Gujarat High Court in Alubhai Mujabahi v. State of Gujarat. (7 Guj LR 698) No contrary decision was brought to our notice.

8. For the reasons mentioned above we allow this appeal, set aside the conviction of the appellant and acquit him. The fine levied if it had been recovered form the appellant will be refunded to him.

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