

CALCUTTA HIGH COURT

(Sheikh) Biroo Sardar

Vs

Y.C. Ariff

(Page, J.)

09.05.1924

JUDGMENT

Page, J.

1. This is a Reference made to us by the Chief Presidency Magistrate under the provisions of Section 433, Cr. P.C.

2. In November of last year one Biroo Sardar, a Cooly Sardar, complained before the Chief Presidency Magistrate that through the instrumentality of Y. C. Ariff and A. Shuistry a revolver and three live cartridges were planted in the house in which ho resides on the 6th September, 1923, and that in consequence he was arrested. The complainant suggests that this was done because he had refused to join a Union of Stevedore coolies which the accused had started and because he had been instrumental in getting some Sardars, who were members of the Union, bound down under the provisions of the Cr. P.C. The Chief Presidency Magistrate examined the complainant and sent the complaint to a C. I. D. Officer for enquiry and report and having seen the report and connected papers, and the papers in a case against one Shaikh Darbari against whom a charge under Section 193, Indian Penal Code, has been framed of fabricating false evidence by planting the revolver, came to the conclusion that there was evidence which if believed after being given in Court would make out a prima facie case of conspiracy to fabricate false evidence to plant a revolver on the complainant. He accordingly summoned Ariff and Shuistry under Sections 120-B, 193, 182 and 211, Indian Penal Code. The matter proceeded and witnesses were examined for the prosecution and on the 21st February 1924 the Chief Presidency Magistrate framed charges against the accused under Sections 193/120-B, Indian Penal Code. It is conceded that by virtue of the provisions of Section 196-A, Cr. P.C. the Chief Presidency Magistrate could not take cognizance of an offence punishable under Section 120-B, Indian Penal Code, as the Local Government had not by an order in writing consented to the initiation, of the proceedings and he was not empowered in this behalf by the Local Government. As soon as charges under Section 120-B, Indian Penal Code, read with Section 193, Indian Penal Code were framed against Ariff and Shuistry and Darbari and against Darbari under Section 193 a petition was presented claiming that as no sanction from Government had been granted in respect of Section 120-B. Ariff and Shuistry were entitled to an acquittal. The Chief Presidency Magistrate then proposed to draw up a fresh charge against them under Section 193 read with Section 109, Indian Penal Code, and after hearing arguments has referred the question of law as

to whether he can do so to this Court under the provisions of Section 432, Cr. P.C.

3. The Chief Presidency Magistrate contends that the facts before him disclose a prima facie case of an offence under Sections 193, 109, Indian Penal Code, and that notwithstanding the fact that he summoned the accused under the sections above mentioned he can now alter the charges which he has framed under the sections above mentioned to a charge under Sections 193-109, Indian Penal Code for which no consent of the Local Government is necessary. He says that he took cognizance not of the offences named in the summons but of the offences alleged in the complaint whatever they might be made out to be after the accused were summoned.

4. On behalf of the accused it is contended that the Chief Presidency Magistrate could not alter the charges as having taken cognizance of an offence under Section 120-B, Indian Penal Code, the whole proceedings are void ab initio as no consent of the Local Government was obtained prior to the initiation of the proceedings.

5. In our opinion the view of the Chief Presidency Magistrate is correct. If the facts disclosed in the evidence show a prima facie case only under Section 120-B, Indian Penal Code, then clearly the whole proceedings were void ab initio having regard to the provisions of Section 196-B, Cr. P.C., but the facts disclosed show a prima facie case under Section 109, Indian Penal Code, the proceedings were competent and [it makes no difference that the Chief Presidency Magistrate summoned the accused under the wrong sections. The whole test to our mind is not under what sections the accused were summoned but whether the proceedings were competent or not. The Chief Presidency Magistrate considers that upon the facts a prima facie case is made out under Section 109 and has proposed to frame a charge accordingly. That a prima facie case under Section 109 is made out we must accept for the purpose of the present Reference and that to our minds is an end of the matters as we think the proceedings all along were competent if the facts disclosed a prima facie case under Section 109, Indian Penal Code. We accept the Reference and hold that it is competent to the Chief Presidency Magistrate to amend the charges as he proposes to do. The Chief Presidency Magistrate should bear in mind that such evidence as was led with regard to a charge under Section 120-B. must be excluded from his mind in coming to any conclusion that he may come to in the matter. No order is necessary upon the application.

