RAJASTHAN HIGH COURT

Ramdeo,

Vs.

State and another

Criminal Ref. No. 160 of 1960 from order of S.J. Merta in Cri. Revn. No.54 of 1960
(L.N. Chhangani, J.)

17.08.1960

ORDER

L.N. Chhangani, J.

1. This reference by the Sessions Judge, Mehta raises for determination the following question: Whether it is open to a police officer with whom an information of the commission of an offence was lodged, to prosecute the informant under section 182, I.P.C. (giving false information) even after the informant had filed a complaint before a Magistrate on the same facts and allegations, a complaints of Court under section 195(1)(b) being unnecessary. The facts and the circumstances leading to the reference are these:

2. At about 8 or 9 P.M. on 1-6-1957 Ram Deo, the accused petitioner gave information to the S.H.O. Deedwana to the effect that Sri Kedarmal and Radha Kishan committed a trespass into his house at Deedwana with preparation to cause hurt on 1-6-1957 at about 4 P.M. The case was investigated by the Circle Inspector, Deedwana who submitted a final report to the learned Sub-Divisional Magistrate to the effect that the report was false and that Ram Deo may be ordered to be prosecuted under section 211, I.P.C. The learned Sub-Divisional Magistrate accepted the report but did not file a complaint under section 211, I.P.C. Ram Deo thereafter filed a complaint; before a Magistrate under section 190, Criminal Procedure Code After this report the Circle Inspector Police filed a complaint against Ram Deo under section 211, I.P.C. on 5-6-1958 and the learned Magistrate framed a charge under section 182, I.P.C. instead of S. 211, I.P.C Ram Deo considering that after he had filed a complaint before the Magistrate his prosecution under section 211, I.P.C. or Section 182, I.P.C. was not

competent except on a complaint by the Court, filed a revision in the Court of the Sessions Judge, Merta praying to quash the charge. The learned Sessions Judge accepted the contention of the petitioner and has made a reference for quashing the charge.

3. Mr. S.D. Kalla appearing for Ram Deo supported the reference. Shri N.M. Vyas appearing for the opposite party very strongly opposed the reference and contended that the question formulated above should be answered in the affirmative. He has in the first instance relied upon a decision of this Court. In *The State v. Bala Prasad,* [1] the principles laid down are:

> 1. That section 182, I.P.C. applies to all offences under section 211, I.P.C. though not vice-versa.
> 2. If a case comes under both sections i.e. 211, I.P.C. and 182, I.P.C., it is open to the authorities concerned to proceed under one section or the other.

The facts of the case were that one Bala Prasad sent an application to the Deputy Inspector General of Police, Bikaner in April, 1950 alleging that certain person had murdered an old woman for her money and thrown her into a tank. This report was found false by the Police and the Police prosecuted Bala Prasad under section 182, I.P.C. An objection was raised that as the offence committed by Bala Prasad amounted to one under section 211, I.P.C. prosecution under section 182, I.P.C. was not competent. This objection was overruled by the High Court. It is not clear whether the matter in that case became the subject-matter of proceedings in a court of law. At any rate the informant did not make any complaint before the Magistrate. In the light of the facts of that case the principles laid down in that case cannot be of any assistance to Mr. Vyas. In that case the precise question arising in this case was neither raised nor determined. Mr. Vyas however, urged that the learned Chief Justice quoted with approval some observations from the decision of Allahabad High Court which contained the statement to the following effect:

> "The offence under section 182 is complete when false information is given to a public servant by a person who believes it to be false, but who intends thereby to cause such public servant to institute criminal proceedings against a third Person."

It was suggested that this indicates the learned Chief Justice's preference for the view held by the Allahabad High Court on the question. He proceeded to say that the Allahabad view is that the mere fact that subsequent proceedings in Court are taken either against the person originally charged, or against somebody else, cannot affect what was made, if it was a charge. *Kashiram v. Emperor,* [2] and *Prag Dath Tiwari v. Emperor,* [3] are being relied upon in this connection.

4. The main reason advanced in support of the Allahabad view is found in the referring order of Boys, J. in ILR 46 All 906 (at p.909) : (AIR 1924 Allahabad 779). Boys, J. summed up the position in these words:

> "It appears to me quite impossible to hold that an offence is committed in relation to a proceeding when in fact there has been no proceeding and to hold it to be in relation to the proceeding in a court retrospectively because subsequently some proceedings did go into court."

The opinion of the referring judge was accepted by the division bench which decided the case. In my opinion the learned Judges of the Allahabad High Court have placed too narrow interpretation on the words "in relation to any proceeding in any court" appearing in section 195(1)(b), Criminal Procedure Code and with great respect I feel hesitant to accept that interpretation. Those words came up for interpretation before a division bench of Patna High Court. In *Daroga Gope v. Emperor,* [4] Mullick, J. after referring to the diversity of opinion in connection with the interpretation of these words observed as follows:

> "The tendency seems to be to give the words of Section 195(b) as wide an application as possible. It is clear that some of the offences enumerated in the clause are capable of being committed in relation to a judicial proceeding which did not exist. False evidence, for instance, may be fabricated for a contemplated suit or property may be fraudulently concealed in contemplation of an execution proceeding. The clause applies if the judicial proceeding is in existence at the time when it is sought to prosecute the offender for the offence in question."

5. Somewhat similar observations were made in *Bajaji Appaji v. Emperor,* [5] by Crump, J. -

> "The words 'in relation to' in Section 195(1)(b), Criminal Procedure Code are very general and are wide enough to cover a proceeding in contemplation before

a criminal Court, though it may not have begun at the date when the offence was committed,"

6. I concur in the interpretation adopted in the above case and am unable to subscribe to the view expressed by Boys, J. of the Allahabad High Court. The Allahabad High Court treats offence under Section 211, I.P.C. in respect of false charge made before the police and similarly an offence u/s.182, I.P.C as distinct and quite independent from offences of false charge before Court u/s.211, I.P.C. although on the same facts and allegations, and considers the prosecution for the first mentioned offences as competent on complaint by a police authority even though subsequently the offence is repeated before a Court. An acceptance of this view is bound to lead to unreasonable results as would appear from the following observations of the learned Chief Justice of the Calcutta High Court in *F.A. Brown v. Anandalal Mullick,* [6]

> "To hold otherwise might lead to unreasonable results e.g., assume a case where the information to the police is followed up by a complaint of a similar nature and to the same effect in court, which after investigation by a Magistrate is discharged : the person who had been accused then applies to the Court for sanction to prosecute the person who laid the complaint for making a false charge in Court. The Court refuses such sanction. According to Mr. Gregory's argument the person who had been accused can then proceed without any sanction against the prosecutor alleging that he made a false charge to the police in the thana relying on the same allegations and the same facts which the Magistrate has already investigated as to which he had refused his sanction. Such a construction would be most unreasonable and, in my judgment, is not warranted by the language of the statute."

7. In AIR 1928 Allahabad 765, Dalal, J. refused to concur with these observations and remarked as follows:

> "It may he pointed out with all respect that an such a case, at all events a prosecution u/s.182 would be possible and if such conflict between the Court and the police is permitted there is no reason why further conflict should not be permitted as to prosecution under Section 211".

8. I do not agree with the above remarks. In my opinion on a proper appreciation of the legal position there should not exist any chances of conflict between the police and Courts over prosecutions for offences under Section 182, I.P.C. and nor is it desirable and necessary to extend the conflict to offences under Section 211, I.P.C.

9. In dealing with this aspect Lokur, J. in AIR 1946 Bombay 7, observed as follows:

> "According to the Calcutta High Court the complaint before the police becomes merged in the subsequent complaint in Court. According to Ross, J. in *Muhammad Yasin v. Emperor,* [7] by making a complaint to the Court the informant has withdrawn the information from the: category of mere police proceedings and has raised it to the category of a proceeding in Court. Both these reasons are practically the same and show the necessity of a complaint by the Court if the informant is to be proceeded against."

10. On the above view of the merger of the police proceedings the changes of conflict are eliminated and I must unhesitatingly indicate my preference for this view. The majority of the High Courts in India have not adopted the Allahabad view.

11. The soundness of the view taken by Dalal, J. is open to serious doubt on a consideration of the fundamental principles of the administration of criminal justice. It is necessary to bear in mind the distinction between the information to the police and complaint to the Magistrate. Information is given to the police not with a view to seek determination of facts by police but with a view to the police collecting evidence and reporting the matter to the Magistrate for the determination of facts.

12. The definition of "investigation" suggests that the primary function of the police is to collect evidence and not to determine the truth or falsity of facts. The police further is required to submit reports to the Magistrate at various stages. Under Section 157, Cri.P.C. a police officer is required to submit a report to the Magistrate if be reasonably suspects the commission of offence which he is empowered to investigate. Under Section 173, Cri.P.C., he is required to report to the Magistrate the result of the investigation. These reports are made with a view that the Magistrate may remain informed and may take cognizance of offence if he so desires. A proper appreciation of the above mentioned facts and the relevant provisions of the Criminal Procedure Code warrants an inference that the Code contemplates continuity in the proceedings

before the police for the prosecution of the offender and the subsequent proceedings taken in Court. In fact investigation, inquiry and trial denote three different stages of the prosecution. In this background it will be quite fair and reasonable to treat the lodging of the information by the person to the police and subsequent filing of complaint to the Magistrate as one transaction on account of the proximity of the purpose and to further hold that the offences committed in the transaction should be deemed in relation to the proceedings before a Court. It follows that an offence under Section 211, I.P.C. in connection with a false charge made before the police is an offence committed in relation to proceedings in a court contemplated at the time of lodging information with the police and actually instituted later.

13. Now taking up the question of offence under Section 182, I.P.C. after the actual institution of proceedings in a court I may point out that the oases can be divided in two categories:

1. Cases where the false information lodged with the police may from the very inception be a case of definite charge against a defined person or persons. In these cases the offence from the very beginning will not only be a minor one under Section 182, I.P.C. but will also come with the definition of the graver one under Section 211, I.P.C.

2. Cases where the false information to the police at the initial stage may be vague not amounting to a definite charge against defined person or persons. The offence initially falls under Section 182, I.P.C. only. But as soon as the informant files a complaint in court on the basis of the information lodged with the police amplifying or supplementing it, the entire transaction results in bringing about an offence under section 211, I.P.C. The original offence under section 182, I.P.C. merges into the graver and aggravated offence under section 211, I.P.C. and does nob retain its separate identity. So understood the offence will be clearly one committed in relation to proceedings in court. In either of these cases the ultimate position is identical. The question then which requires to be considered is whether the police should be permitted to emphasize the contempt committed against it and to split the transaction and to claim a right to prosecute the informant irrespective of the facts that a charge was subsequently preferred before a Court and the Court acquired jurisdiction, after judicial investigation, to direct or to omit to direct prosecution in respect of false charge under section 211, I.P.C. In view of the nature and limited scope of the police functions the police officers can hardly be permitted to treat their opinions about

falsity of information as final irrespective of the pendency of proceedings before Courts or finding of the Courts and their opinions regarding the desirability and necessity of such prosecutions. It will be proper to examine the position in this connection in a detailed manner. The police may file a complaint for prosecution under section 182 for giving false information during the pendency of a complaint by the informant on the basis of police information. It will then clearly amount to assertion by the police of a right to prejudge the matter before judicial determination and may on a liberal interpretation amount to contempt of court.

14. If the police files a complaint after a Court has decided the informant's complaint, the following situations are bound to arise -

1. If the Court has found the complaint true, it will be absrud to recognise the right of the police to treat the information given to it false and to launch prosecution.

2. If the Court has found the complaint false and has launched prosecution under section 211, I.P.C. it will be not only unnecessary but incompetent for the police to launch prosecution for an offence under section 182, I.P.C. In my opinion, it will amount to ignoring the continuity of the police proceedings and court proceedings and permitting double prosecutions on the same facts and allegations.

3. If the Court has found the complaint false but has refused or omitted to launch prosecution, a question does arise as to why the police should be prevented to vindicate its position and prosecute a person who committed contempt against its lawful authority. The question does present some difficulty, but in view of the continuity of the police and court proceedings and the merger of the former in the latter and the necessity of due regard and respect for the opinions and actions of courts and finally the object and purpose of section 195, the police cannot be permitted to launch prosecution.

15. Section 195 has been enacted mainly to regulate and control prosecutions in respect of offences against administration of justice and contempt of lawful authority. Necessarily therefore when a matter is being judicially investigated or considered by a Court or after it has been so investigated or considered, it will be an evasion of the provisions of Section 195, Criminal Procedure Code if a prosecution for offences against administration of justice or even contempt of lawful authority arising out of or

connected with such matter can be permitted except on the complaint of the court.

16. I am quite clear that both on the weight of authorities as also on a consideration of the general principles it is not competent to a police officer to prosecute an informant for an offence under section 182, I.P.C. after he has filed a complaint before a Magistrate in pursuance of the information lodged with the police and the question formulated above must be answered in the negative. In the present case the complaint by the police having been filed after the complainant has preferred a complaint before the Magistrate the proceedings for prosecution of the petitioner under section. 211, I.P.C. or 182, I.P.C. on the police complaint are incompetent and deserve to be quashed.

17. I accordingly accept the reference, quash the charge framed against the petitioner Ramdeo and all proceedings taken in the court of the Magistrate.

Reference accepted.

Cases Referred.

1. ILR (1952) 2 Raj 44: (AIR 1952 Raj 142)
2. AIR 1924 Alla 779
3. AIR 1928 AH 765
4. AIR 1925 Pat 717
5. AIR 1946 Bom 7
6. AIR 1917 Cal 596
7. ILR 4 Pat 323: (AIR 1925 Pat 483)