

(1955) 04 CAL CK 0019
In the Calcutta High Court
Case No : criminal Revision No. 1161 of 1954

Bhujanga Bhusan Majumdar

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 20-04-1955

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 195(1)
Penal Code, 1860 (IPC) — Section 193

Citation : AIR 1956 Cal 63 : (1956) CriLJ 398 : 59 CWN 604

Hon'ble Judges : J.P. Mitter, J; Guha Ray, J

Bench : Division Bench

Advocate : Sib Kumar Das, for the Appellant;

Judgement

Guha Ray, J.—The petitioner Bhujanga Bhusan Majumdar was convicted u/s 193, I. P. C. and sentenced to Rule I. for 3 months and to pay a fine of Rs. 300/- in default to Rule I. for three months more. His appeal was dismissed by the learned. Sessions Judge. The case for the prosecution briefly is that the petitioner while deposing before-Sri A. M. Choudhury, Magistrate, 2nd Class, in the course of a judicial enquiry ordered by Sri B. L. Saha, Magistrate 1st Class, said as follows :

"I have never seen this Shantibala living in adultery with the accused Basanta Mukherjee Sub-Registrar, Khargram."

Before Sri B. L. Saha, Magistrate, 1st Class how-ever, he stated that the statement which he made. before Sri A. M. Chowdhury, viz., that he had never seen Santibala living in adultery with Basanta Mukherjee was not true and that was a false statement. The case against him started on the complaint of Sri B. L. Saha, and the learned Magistrate on evidence found that either the statement which he made before Sri A. M. Chowdhury or the statement which he made before Sri B. L. Saha was false. On this finding he convicted and sentenced the petitioner as already indicated.

2. Section 195(1)(b) of the Criminal P. C. Provides that no Court shall take cognizance of any offence punishable u/s 193, I. P. C. when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, except on the complaint in writing of such Court or of some other Court to whom such Court is Subordinate. Section 195(3) provides that for the purposes of this section, a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court.

In this case when Sri B. L. Saha ordered Sri A. M. Choudhuri to hold a judicial enquiry it is reasonable to infer that at the time when Sri B. L. saha made the order he was acting as the Sub-divisional Magistrate. But even if that be so, Sri A. M. Choudhury could not be treated as Subordinate to the Court of B. L. Saha because appeals from the sentences passed by Sri A. M. Choudhury as second Class Magistrate, would lie not to him but to the Sessions Judge or the District Magistrate so that it was not open to the Magistrate to take cognizance of the offence u/s 193 of the Penal Code on the-complaint of Sri B. L. Saha, unless of course the offence took place in the Court of B. L. Saha, or in other words, unless the alleged false statement was made in the Court of Sri B. L. Saha in the course of a judicial proceeding.

The finding of the learned Magistrate is that either of the two statements is false; in other words, he is not at all certain which of these statements is false. The falsity of either statement is inferred from the fact that the two statements are contradictory. In the second statement the petitioner stated that the first was false so that if his second statement is believed it was the first statement which was false. If on the other hand, the first statement is believed it is the second statement that was false.

There being nothing else apart from the con-tradictory character of these two statements the Court was not in a position to say which of these two statements was false. That being so, it was not open to Sri B. L. Saha who evidently could not be satisfied that the statement made before him was false to make a complaint nor could he make a complaint on behalf of Sri A. M. Choudhury because the Court of Sri A. M. Choudhury was not a Court subordinate to his Court.

In this state of facts the cognizance taken of the offence on the complaint of Sri B. L. Saha must be held to be bad so that the whole trial was bad In law. It appears however that the point was not taken In either the trial Court or the appellate Court and it is difficult to understand why such an obvious point was not taken before either of the Courts.

3. The result is that the conviction of the petitioner and the sentence passed must both be set aside and the petitioner acquitted. The Rule is thus made absolute.

Mitter, J.

4. I agree.