
(1934) 02 CAL CK 0013
In the Calcutta High Court

Bibhuti Bhusan Adhikary

APPELLANT

Vs

Khem Chand Churoria and Others

RESPONDENT

Date of Decision : 20-02-1934

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 193, 195

Citation : AIR 1934 Cal 457

Hon'ble Judges : S. K. Ghose, J; Mukerji, J

Bench : Full Bench

Judgement

Mukerji, J.—In the case of Raghoobuns Sahay v. Kokil Singh (1890) 17 Cal 872, it was pointed out that the word "Court" as used in Section 195, Criminal P. C? has a wider meaning than "Court of Justice" as defined in the Penal Code, and that, as therein used, it would include a tribunal empowered to deal with a particular matter and authorised to receive evidence bearing on that matter. The summary investigation which a Collector holds u/s 14, Putni Regulation (8 of 1819) and in the present case that is the investigation that was held by the Officer concerned, is one in the course of which proofs can be called for and as the result of which an award may be made. The Collector holding the investigation therefore was a tribunal which would come within the meaning of the word "Court" as explained in the aforesaid case. That being the position, we think the ground on which this reference has been made is well founded, and the complaint u/s 193, I. P. C, against the petitioners could not be taken cognizance of except upon the complaint of the said Court or of some Court to which such Court is subordinate: vide Section 195(1)(b), Criminal P. C. To this conclusion Mr. Bose has objected on four grounds.

2. He has argued in the first place that the Judicial Committee in the case of Raja of Pachete v. Kumud Nath AIR 1918 PC 41, have made some observations indicating the position that a Collector acting u/s 14 of the Regulation is not a "Court." We have carefully read these observations and we are of opinion that their Lordships in that case had no occasion to consider the meaning of the word

""Court" as used in Section 195, Criminal P. C., and all that their Lordships laid down was that the Collector acting u/s 14 of the Regulation was not "an ordinary Court" and that he acts thereunder not magisterially but ministerially and that the true view of his functions in such a case is that he has no capacity as regards inquiring into title comparable to the capacity possessed by an ordinary judicial tribunal. The second argument of Mr. Bose is that there is nothing expressly stated anywhere indicating that the Collector can in such circumstances take evidence on oath and that accordingly he is not a "Court." This argument does not help him; for if the proceedings be not judicial proceedings, then no false evidence was given or fabricated within the meaning of the second part of Section 193, I. P. C, nor was any false evidence given in any judicial proceeding or fabricated for the purpose of being used in any judicial proceeding, within the meaning of the first part of Section 193, I. P. C. It is contended that the receipts were fabricated for being used in a regular suit to be brought afterwards. But there was no such suit pending nor does it appear that any such suit was in contemplation at the time: and on that ground no case u/s 193, I. P. C, would be disclosed on the complaint.

3. Thirdly, it has been contended by Mr. Bose that the Deputy Collector who held the investigation u/s 14 of the Regulation had no authority to hold it and so no complaint was necessary. The Deputy Collector was, in our opinion, a Court" all the same, though he may not have been a Court acting with jurisdiction. The argument cannot be countenanced that an offence u/s 193, I. P. C, which is an offence against public justice and so not cognizable without the complaint of the Court concerned or some Court to which it is subordinate, would be cognizable on the complaint of some other person or body when the Court itself was acting without jurisdiction. Lastly, it has been argued by Mr. Bose that the complaint discloses an offence of cheating. The complaint and the examination of the complainant on oath, properly read, show that if any deception was practised it was practised for fabricating the receipts. But if it is intended to proceed against the accused on a charge of cheating that cannot be done on the basis of the present complaint nor at the instance of the present complainant. First hand materials, disclosing all the elements which are requisite to make out such an offence, must be before the Court before any process can issue in respect of it. The present proceedings are u/s 193, I. P. C. only and, in our opinion, they cannot proceed. The Reference is accepted and the processes issued u/s 193, I. P. C, are quashed.

S. K. Ghose, J.

4. I agree.