
(1912) 09 AHC CK 0005
In the Allahabad High Court

Emperor	Vs	APPELLANT
Ram Prasad and Another		RESPONDENT

Date of Decision : 03-09-1912

Acts Referred:

Penal Code, 1860 (IPC) — Section 199

Citation : (1913) ILR (All) 58

Hon'ble Judges : Muhammad Rafiq, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Muhammad Rafiq, J.—This is an application in revision, praying that the order of the District Magistrate of Cawnpore, dated the 30th of July, 1912, sanctioning the prosecution of the applicants u/s 199 of the Indian Penal Code be set aside. The circumstances which led to the grant of the sanction are as follows: On the 19th of February, 1912, three complaints were filed in the court of the City Magistrate of Cawnpore, namely, (1) Musammat Rupia v. Ram Dial and Ram Sahai, (2) Ram Dial v. Gauri Shankar, (3) Ram Sahai v. Gauri Shankar. The learned City Magistrate transferred the three complaints to a Bench of Honorary Magistrates, composed of Nawab Khakan Husain and Pandit Kundan Lal, for disposal. There were several postponements during the trial of the three cases, and on the 21st of May, 1912, charge sheets were framed. On the 31st of May, 1912, three applications were filed in the court of District Magistrate of Cawnpore, by Ram Sahai and Ram Dial, for the transfer of the three cases from the Bench of the Honorary Magistrates to some other court. The applicants for transfer made certain allegations against the Honorary Magistrates. The three applications were accompanied by three declarations, the latter being made by Ram Prasad, Puttan Lal and Ala Bakhsh. The three declarations were not sworn to before any officer of a court. The District Magistrate called upon the Honorary Magistrates for an explanation, which was submitted on the 26th of June, 1912. On the 29th of June, 1912, an order for the transfer of the three cases to the court of City Magistrate was made. On the 1st of July, 1912, the opposite party, namely,

Musammat Rupia and Gauri Shankar, objected to the order of transfer on the ground that no notice of the application for transfer had been given to them. The District Magistrate cancelled his order of the 29th of June, 1912, and fixed the 6th of July, 1912, for the hearing and disposal of the transfer applications. On that date some oral evidence was recorded by the District Magistrate and an order of transfer was made. On the 15th of July, 1912, Pandit Kundan Lal and Nawab Khakan Husain, the Honorary Magistrates, addressed a letter to the District Magistrate, denying the allegations contained in the three declarations of Ram Prasad, Puttan Lal and Ala Bakhsh, and submitting their own affidavits contradicting the said declarations. After hearing the parties concerned the learned District Magistrate sanctioned the prosecution of Ram Prasad, Puttan Lal and Ala Bakhsh, u/s 199 of the Indian Penal Code. It is against this order that the applicant, Ram Prasad, has filed the present application. It is contended by his learned Counsel that the order of the learned District Magistrate is ultra vires; that no valid ground for granting the sanction has been made out, and that no offence u/s 199 of the Indian Penal Code has been committed by the applicant. I shall take up the last objection first. It is admitted by the applicant for the purposes of this application that a declaration was filed by him in the court of the District Magistrate with his application for transfer. It is, however, argued that the declaration was not one which the District Magistrate was bound or authorized by law to receive in evidence and to act upon it, and indeed he did not consider it evidence, for he examined some witness on the basis of whose statements an order of transfer was made. Therefore, if the declaration in question contained any false statement, no offence u/s 199 of the Indian Penal Code has been committed. In support of this contention the following cases have been cited: (1) In the matter of the petition of Iswar Chunder Guho and others I.L.R (1887) Cal 653, Abdul Majid v. Krishna Lal Nag I.L.R(1893)Cal 724, Ghandi Fershad v. Abdur Rahman I.L.R (1894) Cal 131. I think that the contention for the applicant must prevail. A declaration, before it can be made the foundation of a prosecution u/s 199 of the Indian Penal Code, must be one which is admissible in evidence, and which the court before which it is filed is bound or authorized by law to receive in evidence. The suggestion that there is no prohibition against the reception of such declaration in evidence does not render it admissible or the declarant amenable to the provision of Section 199 of the Indian Penal Code. It is not pointed out for the opposite party that the declaration filed by Ram Prasad was one which under the Criminal Procedure Code, or any other law, the court before which the proceedings were pending was bound or authorized to receive in evidence. I therefore hold that the sanction granted by the learned District Magistrate for the prosecution of the applicant u/s 199 of Indian Penal Code, cannot be upheld. It is unnecessary to discuss the other objections taken on behalf of the applicant. I, therefore, set aside the order of the learned District Magistrate, dated the 30th July, 1912, as against Ram Prasad.