

(1950) 12 P&H CK 0016
In the Punjab And Haryana At Chandigarh
Case No : Criminal Revision No. 187 of 1950

Jitu Mal

APPELLANT

Vs

Kasturi Lal

RESPONDENT

Date of Decision : 05-12-1950

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 200, 202, 203
Government of India Act, 1935 — Section 270, 270(1)
Limitation (Amendment) Act, 1871 — Section 42
Penal Code, 1860 (IPC) — Section 323, 343, 395, 40, 409
Police Act, 1861 — Section 23, 42, 5

Citation : (1950) 12 P&H CK 0016

Hon'ble Judges : Soni, J;Bhandari, J

Bench : Division Bench

Advocate : Bhagirath Dass, General, Faqir Chand Mital, for the Appellant;
Krinhan Lal Kapur, for the Respondent

Judgement

1. The sole point for decision in the present case is whether a complaint filed against Sub-Inspector of Police in respect of certain defamatory statements which are alleged to have been made by the latter is barred by time on the ground that it was filed after the expiry of a period of three months from the date of the said reports.

2. The facts of the case are fairly simple. On the 19th March 1948 one Surju appeared at the Police Station at Kaithal with the object of making a report u/s 395 of the Penal Code. The police declined to record the report. Undeterred by this refusal Surju reduced his grievances into writing, submitted his complaint to the police and asked the police to supply a copy thereof. The police gave him a severe beating and kept him in unlawful confinement for a number of days. Surju decided to seek redress at the hands of a criminal Court and on the 24th March, he lodged a formal complaint under Sections 323/343 of the Indian Penal Code against Sub-Inspector Kasturi Lal and certain other police officers in the Court of the Hub-Divisional Magistrate at Kaithal. Two days later, that is on the 26th

March he submitted a representation to the Chief Minister of the Punjab and asked him to take the necessary action against the police officers concerned. Copies of this representation were sent to the Inspector-General of Police, the Deputy Inspector-General of Police, the Superintendent of Police the Deputy Superintendent of Police and to the Deputy Commissioner. Some of these complaints were sent to Sub-Inspector Kasturi Lal for report and on the 7th April 1948 he submitted a report to the Deputy Superintendent of Police in the course of which he made certain defamatory statements concerning the character and antecedents of one Jitu Mal, Mahajan at Kaithal, who is the Petitioner in the present case. On the 11th February 1949 Jitu Mal filed a complaint u/s 500 of the Penal Code against Sub-Inspector Kasturi Lal in the Court of Mr. Gautarn, a Magistrate of the first class at Karnal. The learned Magistrate came to the conclusion that the representations which were sent to the Inspector-General of Police and the other officers were merely complaints of a departmental and administrative nature against the conduct of a Sub-Inspector of Police, that the report submitted by Sub-Inspector Kasturi Lal in answer to the allegations contained in the said representations was a purely departmental report submitted by a government servant to his official superior, that the said report was submitted under the provisions of the Police Act of 1861, that a prosecution in respect of the Imputations contained in the said reports should have commenced within a period of three months from the date of the said report and that as the complaint was lodged on the 11th February seven months after the expiry of the said period of three months the complaint was clearly barred by time u/s 42 of the Police Act. On these findings the learned Magistrate dismissed the Petitioner's complaint u/s 203 of the Code of Criminal Procedure. The learned Sessions Judge declined to interfere with this order and the Petitioner has accordingly come to this Court in revision.

3. Section 42 of the Police Act provides that all actions and prosecutions against any person which may be lawfully brought for anything done or intended to be done under the provisions of this Act, or under the general police-powers hereby given shall be commenced within three months after the act complained of shall have been committed, and not otherwise. It is contended on behalf of the Petitioner that two of the representations sent by him were addressed to the Inspector-General of Police and the Deputy Commissioner of Karnal, that the Inspector-General of Police exercises powers of a Magistrate under the provisions of Section 5 of the Police Act, that the Deputy Commissioner is obviously a District Magistrate of the District of Karnal, that the representations addressed to these two officers must be deemed to be complaints filed in the Court of two different Magistrates, that the copy of the representations sent to S.I. Kasturi Lal must be deemed to have been sent to him u/s 202 of the Code of Criminal Procedure, that the report of the 7th April submitted by S.I. Kasturi Lal must be deemed to have been submitted under the provisions of the Code of Criminal Procedure and not under the provisions of the Police Act, that the period of limitation prescribed in Section 42 of the Police Act cannot govern the case and

consequently that the view taken by the learned Magistrate that the complaint is barred by time is wholly misconceived.

4. After a careful consideration of the arguments which have been addressed to us, I am clearly of the opinion that the report of the Sub-Inspector can by no stretch of imagination be regarded as a report u/s 202 of the Code of Criminal Procedure. In the first place the complaint was not sent either to the Inspector-General of Police or the Deputy Commissioner of Karnal in his capacity as a Magistrate but in his capacity as an Executive Officer under whom S.I. Kasturi Lal was serving. Secondly, there was no reason why formal complaints under the provisions of the Code of Criminal Procedure should have been reported to the Inspector-General of Police or to the Deputy Commissioner of Karnal when a formal complaint had already been made to the Sub-Divisional Magistrate at Kaithal and when the said Magistrate had already fixed a date for recording the evidence of the complainant. Thirdly, neither the Inspector-General of Police nor the Deputy Commissioner of Karnal appear to have treated these representations as complaints under the Code of Criminal Procedure for neither of these two Officers cared to record the statement of the complainant under the provisions of Section 200 of the said Code. Fourthly, if the representation was addressed to the Deputy Commissioner of Karnal in his capacity as a District Magistrate, I entertain no doubt whatsoever that it would have been addressed to the District Magistrate and not to the Deputy Commissioner. Fifthly, although the complaint presented in the Court of the Sub-Divisional Magistrate at Kaithal bore a Court-fee Stamp of Re. 1/-, no Court-fee stamp whatsoever was affixed to any of the six applications which were submitted on the 26th March 1943. Sixthly, the Inspector-General of Police did not refer the complaint to the Deputy Superintendent of Police under the provisions of Section 202 of the Code of Criminal Procedure for if he had taken the view that his help was being invoked in his capacity as a Magistrate of the 1st class, he would have proceeded to examine the complainant under the provisions of Section 200 of the said Code. Seventhly, the complaints which were forwarded by the Deputy Superintendent of Police were addressed to the Station House Officer in charge of the Police Station and not to Sub-Inspector Kasturi Lal by name. Eighthly, the complaints are not only against Sub-Inspector Kasturi Lal himself but also against certain other persons whose names are mentioned therein and consequently the report that was submitted by him was submitted under the provisions of the Police Act and not under those of the Code of Criminal Procedure. Ninthly, the complaint which was forwarded to S.I. Kasturi Lal could not have been forwarded to him under the provisions of Section 202 of the Code of Criminal Procedure for it is a matter of common knowledge that complaints against an accused person cannot be sent to accused person himself for preliminary investigation. Lastly, the Deputy Superintendent of Police asked the Station House Officer for a full report in regard to the allegations made in the complaint and did not ask Sub-Inspector Kasturi Lal to furnish his own explanation in regard thereto. As Section 23 of the Police Act requires every Police Officer promptly to obey and execute all orders

lawfully issued to him by a competent authority and as it was within the power of the Deputy Superintendent of Police to call for a report from Sub-Inspector Kasturi Lal, it seems to me that in making the report in question Sub-Inspector Kasturi Lal was carrying out the orders which were issued to him by a competent authority. It follows as a consequence that he was acting under the provisions of the Police Act or under the general police-powers conferred by the said Act.

5. Mr. Mital contends that he could not be acting under the provisions of the Police Act for it was no part of the duty of Sub-Inspector Kasturi Lal to make defamatory statements in regard to Petitioner. A decision of the Federal Court has been cited in support of this contention. In AIR 1939 43 (Federal Court) a Medical Officer was prosecuted under Sections 409 and 477-A of the Indian Penal Code, the charge against him being:

(a) that being a public servant and to such capacity entrusted with medicines of the hospital which were the property of the District Board Dera Ghazi Khan, the accused committed criminal breach of trust in respect of certain medicines and thereby committed an offence punishable u/s 409 of the Indian Penal Code, and

(b) that being a public servant, he wilfully and with intent to defraud omitted to record entries in the stock book of medicines for 1937 relating to certain medicines belonging to the District Board and in his possession and thereby committed an offence punishable u/s 477-A of the Indian Penal Code.

A question arose whether the prosecution launched against the accused was in respect of any act done or purporting to be done by him in the execution of his duty as a public servant and whether in view of the provisions of Section 270 of the Government of India Act, 1935, the proceedings could be instituted without the sanction of the Governor. The learned Judges of the Federal Court held that when a public servant simply embezzles some property entrusted to him and thereby commits a criminal breach of trust u/s 409, he is not doing an act, nor even purports to do an act in execution of his duty; for when he commits the act, he does not pretend to act in the official discharge of his duty, and a case like that would not fall within the ambit of Section 270(1) of the Government of India Act. But an offence u/s 477-A, Penal Code is committed if an officer or servant or anyone employed or acting in such capacity, wilfully and with intent to defraud falsified any book of account. Thus, where it is his duty to maintain a register and in maintaining that register he makes some entries which are false to his knowledge, he is certainly purporting to act, though not actually acting in the execution of his duty, because he is making certain entries in the register, knowing them to be false. Hence for a prosecution u/s 409 the consent of the Governor is not necessary but for a prosecution u/s 477-A consent is necessary. The learned Judges held further that having regard to the ordinary and natural meaning of the words "purporting to be done," it is difficult to say that it necessarily implies "purporting to be done in good faith," for a person who ostensibly acts in execution of his duty still purports so to act, although he may have a dishonest intention. The test is not that the offence is capable of being

committed only by a public servant and not by anyone else, but that it is committed by a public servant in an act done or purporting to be done in the execution of duty. The section cannot be confined to only such acts as are done by a public servant directly in pursuance of his public office, though in excess of the duty or under a mistaken belief as to the existence of such duty. The section is not intended to apply to acts done purely in a private capacity by a public servant. It must have been ostensibly done by him in his official capacity in execution of his duty, which would not necessarily be the case merely because it was done at a time when he held such office, nor even necessarily because he was engaged in his official business at the time. Moreover, an act is not less one done or purporting to be done in execution to a duty because the officer concerned does it negligently. This decision appears to support the contention of Sub-Inspector Kasturi Lal that he was acting under the provisions of the Police Act for it was clearly his duty as a police officer to submit a report to the Deputy Superintendent of Police when he was required so to do.

6. For these reasons I am clearly of the opinion that none of the six representations which were forwarded by the Petitioner on the 26th March 1948 could be regarded as complaints under the provisions of Section 200 of the Code of Criminal procedure. On the other hand the report submitted by S.I. Kasturi Lal on the 7th April 1948 must be deemed to be a report submitted by him to the Deputy Superintendent of Police in obedience to an order issued by the said Deputy Superintendent of Police under the provisions of the Police Act of 1861. As the said report is alleged to have contained certain defamatory statements in respect of the Petitioner and as the said report was submitted on the 7th April 1948 the prosecution in respect thereof could have been lodged only within a period of three months from the said date and a complaint filed on the 11th February 1949 was clearly barred by time. It is true that Section 42 of the Police Act was amended in part, by the Indian Limitation Act of 1871, but the first schedule to Act IX of 1871 makes it quite clear that only so much of Section 42 was repealed as relates to the limitation of suits. The portion of the section relating to prosecutions was allowed to remain unaltered.

7. The present petition is clearly barred by the provisions of Section 42 of the Police Act 1861 and must be dismissed.

Soni, J.

8. I agree.