
(1938) 09 AHC CK 0003
In the Allahabad High Court

Khwaja Mohd. Abdul Latif

APPELLANT

Vs

Moulvi Ahmad Abdul Halim

RESPONDENT

Date of Decision : 14-09-1938

Acts Referred:

Penal Code, 1860 (IPC) — Section 500

Citation : AIR 1938 All 632

Hon'ble Judges : Mulla, J

Bench : Division Bench

Judgement

Mulla, J.—This is a reference by the learned Sessions Judge of Cawnpore upon an application in revision made before him by one Khwaja Mohammad Abdul Latif against whom a complaint had been made in the Court of a Magistrate of the First Class at Cawnpore charging him with an offence u/s 500, I.P.C. The relevant facts of the case are as follows : The opposite party, Moulvi Ahmad Abdul Halim, is a businessman of a substantial status at Cawnpore. Some dealings took place between him and Khwaja Mohammad Abdul Latif who is also a leather merchant at Rajshahi in the Province of Bengal. With the details of those dealings we are not concerned in the present case. The fact remains that in consequence of those dealings Khwaja Mohammad Abdul Latif filed a complaint in the Court of a Magistrate at REajshahi charging the opposite party Moulvi Ahmad Abdul Halim with the offence of cheating u/s 420, I.P.C. The Magistrate who had to deal with that complaint directed the local police to make an inquiry u/s 202, Criminal P.C., and after perusing the police report issued a warrant for the arrest of the opposite party at Cawnpore. The warrant was executed by the police at Cawnpore and the opposite party was actually put under arrest. Later on, it appears that the com. plaint made by Khwaja Mohammad Abdul Latif was dismissed by the Magistrate at Rajshahi and the opposite party was ac. quitted.

2. It appears however that even before the case ended in the opposite party's acquittal, he launched a complaint in the Court of a First Class Magistrate at Cawnpore charging Khwaja Mohammad Abdul Latif with an offence u/s 500,

I.P.C., upon the allegation that he had deliberately made a false complaint in order to defame the opposite party. The opposite party laid some stress in that complaint upon the fact that he had been arrested at Cawnpore in the circumstances mentioned above. It was suggested that the fact of his arrest at Cawnpore conferred jurisdiction upon the Cawnpore Court to try the offence u/s 500, I.P.C., with which Khwaja Mohammad Abdul Latif had been charged. The Magistrate at Cawnpore issued a non-bailable warrant for the arrest of Khwaja Mohammad Abdul Latif, and thereupon the latter made an application in revision before the learned Sessions Judge of Cawnpore. The learned Judge arrived at the conclusion that the offence of defamation with which Khwaja Mohammad Abdul Latif had been charged had clearly been committed within the jurisdiction of the Criminal Court at Rajshahi and there was no provision in the Criminal Procedure Code to enable the Cawnpore Court to assume jurisdiction to try the offence. He consequently made a reference to this Court recommending that all proceedings taken by the Court at Cawnpore in relation to the complaint made by the opposite party should be quashed. When the reference came before the learned Acting Chief Justice, he ordered a notice to be issued, after making the following observations:

In view of the provisions of Section 179, Criminal P.C., that an offence may be tried either in the district where something has been done or in the district where some consequence has ensued, the ground of learned Sessions Judge that the Cawnpore Court has no jurisdiction where the complainant was arrested in Cawnpore in consequence of something done by accused in Rajshahi may not be correct. But it appears to me that a question arises whether the Cawnpore Court can take cognizance without a complaint u/s 195, Criminal P.C. It seems that the arrest at Cawnpore was not a consequence of some defamatory statement by the accused in Rajshahi, but was a consequence of either a police report or complaint of accused in Rajshahi. In the case of a report to the police, the proper Section is 182, Penal Code, on the complaint of the S.P. Rajshahi. In the case of the complaint, the proper Section is Section 211, Penal Code, on the complaint of the Magistrate in Rajshahi who is stated to have dismissed the complaint of accused. Accordingly I direct that notice should issue.

3. Now the first question which arises for consideration is whether the reference ought to be accepted upon the ground mentioned by the learned Sessions Judge, namely that there is no provision in the Criminal Procedure Code enabling the Court at Cawnpore to assume jurisdiction in the case. Upon a careful consideration of the question in the light of Section 179, Criminal P.C., I find, in spite of the doubt expressed by the learned Acting Chief Justice, that the view taken by the learned Sessions Judge is right. Section 179 runs as follows:

Where a person is accused of the commission of any offence by reason of anything which has been done and of any consequence which has ensued, such offence may be inquired into or tried by a Court within the local limits of whose jurisdiction any such thing has been done or any consequence has ensued.

4. The meaning of this Section is further explained by the four illustrations attached to it. But for the fact that there has actually been a conflict of authority with respect to the meaning to be attached to the word "consequence" as used in Section 179, I should have thought that the language of the Section was perfectly plain and capable of only one interpretation, and that is that the "consequence" referred to in the Section must be a part of the offence with which the accused person is being charged. It is evident that the Section can apply only to a case where a person is charged with an offence not only by reason of some act committed by him, but also by reason of some consequence which has ensued from the act. In the absence of any one of these two ingredients, the Section would be wholly inapplicable. If the consequence is such that even if it had not taken place the offence would have been complete, Section 179 would have no application. This view of Section 179 which I have taken is fully supported by two Pull Bench cases, one of the Bombay High Court reported in *In Re: Jivandas Savchand*, and the other of this Court reported in *Kashi Ram Mehta Vs. Emperor*. In the Bombay case, Beaumont C.J. after an exhaustive consideration of all the authorities observed as follows:

So that taking Section 179 alone and reading it without the help of any authority, I should have thought that it was plain that the consequence referred to is a consequence which forms part of the offence, and a consequence which does not form part of the offence does not attract jurisdiction u/s 179.

5. In the Pull Bench case of this Court Sulaiman C.J. after analyzing the language of Section 179, made the following observations, which govern the present case:

If therefore the act done and the consequence which has ensued are to be taken as together amounting to the offence the commission of which is complained against, then it necessarily follows that the consequence must be a necessary ingredient of the offence in order that Section 179 be applicable. If the offence is complete in itself by reason of the act having been done and the consequence is a mere result of it which was not essential for the completion of the offence, then Section 179 would not be applicable.

6. Applying the principle laid down in these two oases to the case which is now before me, the question which first arises for consideration is whether the arrest of the opposite party at Cawnpore can be said to be an essential part of the offence of defamation with which the applicant Khwaja Mohammad Abdul Latif is charged. In my view, the answer is clearly in the negative. The arrest of the opposite party at Cawnpore cannot possibly be said to be an imputation or the publication of an imputation within the meaning of Section 499, Penal Code. The statements or imputations upon which the charge against the applicant Khwaja Mohammad Abdul Latif is really based are to be found in the complaint made by him against the opposite party in the Court at Rajshahi. In my view, the offence of defamation, if any, was complete at Rajshahi as soon as the complaint was made. u/s 499, Penal Code, it is not a necessary ingredient of the offence of defamation that the reputation of the person against whom the defamatory

imputation is made should have actually been harmed. The mere intent to harm the reputation of another person or even the knowledge or the reasonable belief that the imputation will harm the reputation of another person is sufficient to constitute a complete offence u/s 499, Penal Code. Let us suppose for a moment that the opposite party had not been arrested at Cawnpore in execution of a warrant, but had only been summoned to Rajshahi to answer a charge of cheating. Can it be reasonably urged that in that event he would have no remedy against the applicant Khwaja Mohammad Abdul Latif, even though the complaint made by the latter in the Court at Rajshahi contained per se defamatory statement? In my view, the answer is clearly in the negative.

7. I am therefore satisfied that the arrest of the opposite party at Cawnpore was not such a consequence as is contemplated by Section 179, Criminal P.C., and it could not give the Cawnpore Court any jurisdiction to try the offence of defamation with which the opposite party has charged the applicant Khwaja Mohammad Abdul Latif. In this view of the case, I think it is unnecessary for me to discuss the other question raised in the observations made by the Hon''ble Acting Chief Justice as to whether the action brought by the opposite party at Cawnpore was or was not barred by Section 195, Criminal P.C., and whether the only proper procedure in the case was a complaint being made by the Superintendent of Police at Rajshahi u/s 182, Criminal P.C., or a complaint by the Court before whom the applicant's complaint u/s 420, Penal Code, was made. For the reasons given by me, I accept the reference made by the learned Sessions Judge of Cawnpore and quash the proceeding taken in the Court of the Magistrate at Cawnpore in consequence of the complaint made by the opposite party Moulvi Ahmad Abdul Halim.