
(1954) 11 PAT CK 0005
In the Patna High Court
Case No : Criminal Revision No. 419 of 1954

K.P. Sinha

APPELLANT

Vs

Aftabuddin

RESPONDENT

Date of Decision : 12-11-1954

Acts Referred:

General Clauses Act, 1897 — Section 26
Penal Code, 1860 (IPC) — Section 161, 384, 504
Prevention of Corruption Act, 1947 — Section 5, 6

Citation : AIR 1955 Patna 453 : (1955) 3 BLJR 183 : (1955) CriLJ 1382

Hon'ble Judges : Sinha, J

Bench : Single Bench

Advocate : Baldeva Sahay and Rashbihari Singh, for the Appellant; K.B. Sanyal and Shamsul Huda, for the Respondent

Judgement

Sinha, J.—The petitioner has been summoned to take his trial under Sections 384 and. 504 of the Penal Code by the District Magistrate, Purnea, by his order dated 23-3-1954.

2. The opposite party, Aftabuddin, son of Ashghar Ali, filed a complaint on 7-2-1952, for offences having been committed by the petitioner on 5-2-1952. From the petition of complaint, which is on record, it appears that a party of police men, including the petitioner, who was at that time a Sub-Inspector of Police of Police Station, Islampur, came to the house of the complainant and enquired about an absconder, Faziruddin, who had been implicated in a dacoity case, and as he had been evading arrest, proceedings under Sections 87 and 88 of the Criminal P.C. appear to have been taken against him; and this party of police men wanted to attach the properties belonging to Faziruddin.

The opposite party, who is brother of Faziruddin, objected to the attachment of the properties; on the ground that the properties did not belong, to the absconder but they belonged to the opposite party. The Sub-Inspector of Police, the petitioner before this Court, did not attach any importance to the objection

raised by the complainant but proceeded to attach the properties and to load them, in a truck for the purpose of being carried to court. According to the complainant, he had to pay Rs. 500/- in cash and to deliver to the Sub-Inspector of Police two big gold ear-rings as security for payment of another five hundred rupees in cash sometime later.

The properties were then released. It is said in the petition of complaint that the complainant was threatened with criminal prosecution and farther that he would be put in "hajat". On the payment being made to the Sub-Inspector of Police, as I have said, the properties which had been seized were released. Whether the properties had been-attached or not docs not appear from the complaint but reading the complaint and the statement of the complainant on solemn affirmation that position appears to be clear that the properties had been attached according to the complainant's allegations.

Two days after, the complaint in question was filed. The Sub-divisional Officer, acting u/s 202 of the Criminal P.C., made over the case for enquiry to a Deputy Magistrate, one Mr. D.P. Singh. On 24-3-1952, the report was received by the learned Sub-divisional Officer and, on 28-4-1952, he dismissed the complaint.

On an application to the learned Sessions Judge by the complainant, the learned Judge ordered further enquiry on 16-8-1952. When the matter went back to the learned Sub-divisional Officer, he again dismissed the complaint on 30-4-1953. The learned Sessions Judge was again moved, and he again ordered further enquiry on 24-9-1953, and by the order of that date he directed that the District Magistrate himself should make the enquiry or have the matter further-enquired into by a Magistrate other than the Sub-divisional Officer.

One Mr. A. L. Shaw, a Magistrate, was entrusted with this enquiry, but before him the complainant refused to produce witnesses and he made, an application to the District Magistrate u/s 528 of the Criminal P.C. Thereupon, the District Magistrate recalled the case to his own file on 23-3-1954, and on that date he issued processes under Sections 384 and 504 of the Penal Code against the petitioner.

The petitioner has now moved this Court for quashing of the proceedings started against him. His main ground is that the offence which the complaint disclosed was an offence also u/s 161 of the Penal Code and, therefore, no cognizance ought to have been taken" in law by the District Magistrate without proper sanction, as required by Section 6 of Act II of 1947 (The Prevention of Corruption Act, 1947).

His other contention is that, as the actual words used have not been mentioned in the complaint, the petitioner could not be prosecuted for an offence u/s 504 of the Penal Code; and further that the allegations contained in the petition of complaint do not amount to an offence u/s 504.

3. The parties have been heard in this Court at some length. Mr. Sahay, appearing on behalf of the petitioner, has relied upon a number of decisions of

the different High Courts and also upon a decision of the Supreme Court in support of the proposition that, if on the same facts offences under two sections of the Indian Penal Code have been committed, one or them requiring sanction and the other not, the law relating to sanction cannot be avoided in law by starting a prosecution for an offence which did not require sanction.

Mr. Sahay concedes that the offence disclosed in the complaint may amount to an offence u/s 384 as also u/s 161 of the Penal Code. The latter section requires sanction under Act II of 1947, aforementioned, and Section 384 does not require any sanction. Upon the authority of those cases, he submits that the only proper section should have been Section 161 and sanction cannot be avoided by issuing processes against the petitioner u/s 384 of the Penal Code.

In -- Ram Nath Vs. Emperor , it has been laid down that where the law clearly says that it is a condition precedent to the prosecution that a sanction shall be obtained from the local Government, it is not open to any subordinate authority to override the provision of the law by saying that the offence falls under another section of the Indian Penal Code and if no sanction is necessary for the prosecution under that section, the offender may be prosecuted without any sanction.

In -- Re Ravanappa Reddi v. Emperor AIR 1932 Mad 253 (B), it was held that a Court cannot evade the provisions of Section 195 of the Criminal P.C. by dealing under Sections 467 109, Penal Code, with what is in effect an offence u/s 193, Penal Code. A prosecution for an offence u/s 193 required complaint in writing by the Court concerned u/s 195; Section 467 did not require any sanction.

In -- Osman Mistry v. Atul Krishna AIR 1949 Cal 632 (C), where the act of a person amounted to an offence both u/s 188 and Section 379 of the Penal Code, Section 188 requiring complaint by the Court concerned u/s 195 of the Code, it was held that it was not possible for the prosecution to ignore the provisions of Section 195 by describing the offence as being punishable u/s 379, and that such a change of garb could not be permitted to defeat the provisions of Section 195.

In -- Basir-ul-huq and Others Vs. The State of West Bengal, , Mahajan J. (as he then was) laid down as follows:

"Though, in our judgment, Section 195 does not bar the trial of an accused person for a distinct offence disclosed by the same facts and which is not included within the ambit of that section, it has also to be borne in mind that the provisions of that section cannot be evaded by resorting to devices or camouflages. The test whether there is evasion of the section or not is whether the facts disclose primarily and essentially an offence for which a complaint of the Court or of the public servant is required.

In other words, the provisions of the section cannot be evaded by the device of charging a person with an offence to which that section does not apply and then convicting him of an offence to which it does, upon the ground that such latter

offence is a minor offence of the same character, or by describing the offence as being one punishable under some other section of the Penal Code, though in truth and substance the offence falls in the category of sections mentioned in Section 195, Criminal P.C.

Merely by changing the garb or label of an offence which is essentially an offence covered by the provisions of Section 195, prosecution for such an offence cannot be taken cognizance of by misdescribing it or by putting a wrong label on it."

4. The last case to which reference was made is the case -- In Re: Dr. P.M. Kamath, . In that case it was laid down that where the facts disclosed two offences; for one of which sanction was necessary and for the other sanction was not necessary or a complaint by the Court was necessary for the one and a complaint by the Court was not necessary for the other, the provisions relating to the sanction could not be evaded.

In my judgment, where the facts mentioned in the complaint give rise to two offences one of which required either a complaint by the Court concerned or a sanction by the prescribed authority, the prosecution could not be started under the section which did not require any complaint by the Court or sanction necessary in law for taking cognizance of the case and thus to evade the provisions of sanction. In the present case, the offence disclosed in the complaint is in truth and substance an offence u/s 161 of the Penal Code or Section 5(1)(d) of Act II of 1947; the offence disclosed might also come u/s 384 of the Penal Code.

The prosecution under the first two sections, require sanction u/s 6 of Act II of 1947 while the offence u/s 384 did not require any such sanction. In my judgment, upon the authorities, it is established that the law relating to sanction cannot be evaded by proceeding against the accused for an offence not requiring sanction. That would be, in my opinion, clear evasion of the law of sanction.

5. Mr. Sanyal, appearing on behalf of the private opposite party, could give me no authority where any of the cases relied upon by Mr. Sahay has been either doubted or reversed. Mr. Sanyal has mainly relied upon Section 26 of the General Clauses Act. That section runs as follows:

"Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence."

Apart from the fact that this section speaks of enactments" and not of "sections of the same enactments", in my opinion, the provisions of this section, have no bearing upon the question whether prosecution should be started for an offence which required no sanction although the facts mentioned in the complaint might eventually disclose an offence which required sanction. It speaks of an offence under two enactments and it says that the offender can be liable to be

prosecuted under either of those, enactments.

If for the sake of argument it is conceded that this section also applies to two offences mentioned in the same enactment, it means this that the offender is liable to be prosecuted for either of those two offences; it has no reference to sanction. According to this section, if it applies at all, the petitioner could be prosecuted either u/s 384 or Section 161 of the Penal Code or u/s 5(1)(d) of Act II of 1947. The question of sanction is not answered by this section. It has been conceded, already by Mr. Sahay that the facts disclosed in the complaint can come under either Section 384 or Section 161 of the Penal Code or Section 5(1)(d) of Act II of 1947.

The question which required answer was whether the law of sanction could be avoided by referring to an offence which did not require sanction although the facts disclosed also an offence which required sanction. I would hold, therefore, that the law of sanction for prosecution u/s 161 or for an offence u/s 5(1)(d) of Act II of 1947, as provided for by Section 6 of Act II of 1947, cannot be evaded.

6. It has been contended by Mr. Sanyal that the facts disclosed in the plaint do not come u/s 161 of the Penal Code but that they come u/s 384 of the Code because it was by reason of threat given by the petitioner that a certain sum of money was paid to the petitioner by the complainant. Section 161 of the Penal Code refers to acceptance or obtaining or agreeing to accept or attempting to obtain any illegal gratification as a motive or reward for doing or for bearing to do any official act or for showing or forbearing to show in the exercise of his official functions, favour or dis-favour to any person etc.

The words "obtaining" or "attempting to obtain" can certainly include threat. The illegal gratification may be obtained by threat, and if that is so done, even then it would come u/s 161 of the Penal Code. In my opinion, the mere fact that the complaint (sic) said that the petitioner by putting the complainant in fear of injury and of threat to implicate him in a criminal case obtained the illegal gratification, does not take the offence outside the scope of Section 161 or Act II of 1947. Section 5 (1) (d) of Act II of 1947 would read as follows:

"A public servant is said to commit the offence of criminal misconduct in the discharge of his duty (d). If he, by corrupt or illegal means or by otherwise abusing his position as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage."

In my opinion, it is difficult to take the case, as made out in the complaint, outside this Section 5(1)(d) of Act II of 1947. Both these sections, Section 5(1)(d) of Act II of 1947 and Section 161 of the Penal Code, require sanction u/s 6 of Act II of 1947, which says that no Court shall take cognizance of an offence punishable u/s 161 or Section 165 of the Penal Code or under Sub-section (2) of Section 5 of this Act, alleged to have been committed by a public servant except with the previous sanction of the proper authority mentioned in the section.

I am, therefore, of the opinion that the facts mentioned in the complaint disclosed an offence either u/s 161 of the Penal Code or Section 5(1)(d) of Act II of 1947 or Section 384 of the Penal Code. As the first two sections required sanction, the Court below had no jurisdiction to take cognizance of the case u/s 384 of the Penal Code and thus evade the provisions of sanction as embodied in Section 6 of Act II of 1947.

7. Cognizance has also been taken u/s 504 of the Penal Code which runs thus:

"Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

In the first place, the words used or supposed, to have been used by the petitioner which the complainant understood to be words of insult have not been mentioned in the complaint. It is necessary in a case like this to give out the actual words used, otherwise the Court would not be in a position to decide whether the words used amounted to intentional insult.

In the second place, the words used which amounted to intentional insult should be such as to give provocation for the commission of a breach of the peace. No allegation has been made in the complaint that the intentional insult was such as to give provocation for any breach of the peace. In my judgment, therefore, Section 504 of the Penal Code has no application at all to the facts given out in the complaint.

8. On a consideration of the facts mentioned above, I am of the opinion that the proceedings started against the petitioner both under Sections 384 and 504 of the Penal Code should be quashed. I would, accordingly, set aside the order of the learned District Magistrate dated 23-3-1954, allow this application and make the rule absolute.