

(1952) 08 GUJ CK 0003

In the Gujarat High Court

Case No : Criminal Revision Application No. 13 of 1952

Mrs. Shantabai Dharamshi

APPELLANT

Vs

Kadia Trikamji Keshavji and Others

RESPONDENT

Date of Decision : 11-08-1952

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 173, 195, 195(1)
Penal Code, 1860 (IPC) — Section 182, 193, 211, 297, 379

Citation : (1952) 08 GUJ CK 0003

Hon'ble Judges : Shah, C.J.;Baxi, J

Bench : Division Bench

Advocate : V.M. Desai, for the Appellant; P.L. Chokshi, for the Respondent

Final Decision : Allowed

Judgement

Shah, C.J.—This application in revision arises from the following facts. The applicant Mrs. Shantabai Dharamshi is the wife of the owner of a building in Rajkot, and she managed the property and lived on the first floor of the building. Opponents Nos. 1 and 2, who are brOrs. , were the tenants living on the ground floor of the building, and opponent No. 3 also was a tenant on the ground floor. The applicant demanded payment of rent which led to exchange of words upon which opponent No. 2 flourished a shoe at her and opponent No. 1 actually threw a shoe at her. She seized the shoe and kept it in order to serve as evidence and then informed the police. Later she handed over the shoe to one Prahladrai at the request of the opponents. Two days later, viz., on 19-8-1950, opponent No. 1 lodged information with the police charging Mrs. Shantabai with the theft of the shoe u/s 379, Indian Penal Code.

The police investigated the offence and in the course thereof attached the shoe and recorded the statements of several persons, and it appears that the investigation was completed on 22-8-1950; at any rate, no further investigation was made thereafter. However the police did not send any report to the Magistrate as required by Section 173, Code of Criminal Procedure, nor was any

summary obtained. As the police did nothing Shantabai. ultimately filed a complaint against the three opponents on 13-8-1951 in the Court of the First Class Magistrate, Rajkot charging them with, offences under Sections 193 and 500, I.P.C. At the trial of this complaint, the Magistrate recorded the evidence of Shantabai and of Head Constable Gambhirsinh, Pathubha, who produced the papers of the investigation in the complaint of theft and also stated that the police had asked, for a "C" Summary, but the same had not been, received.

The learned Magistrate recorded the statements of the opponents and discharged the accused on the grounds that as the case regarding, the theft had not yet been committed to the Court, there was no scope for an offence u/s 193, I.P.C. and that in any event by reason of Section 195(1)(b), Code of Criminal Procedure, the cognizance of the said offence could not be taken except on the complaint of the Court concerned. He also took the view that as the theft case had not been committed to Court and the police had not obtained the summary it was not possible to say that the said complaint was either true or false, and if that was so, it could not also beheld, that the complainant Mrs. Shantabai had been defamed.

2. The applicant applied to the Sessions Judge, Rajkot, on 11-12-1951 to set aside the order of discharge, and while this application was pending, the Sub-Divisional Magistrate issued a "C" Summary on 31-12-1951. It was contended for the opponents that u/s 195(1)(b), Code of Criminal Procedure a complaint u/s 193, I.P.C. could be filed only by the Magistrate concerned, in this case the Sub-Divisional Magistrate who gave the "C" Summary, and that the applicant Mrs. Shantabai had no right to file such a complaint. The learned Judge upheld this objection and in doing so he relied on a decision of this Court in - "State v. Vipra Khimji AIR 1952 Sau 67 (A) and he dismissed the application on the short ground that the Court cannot take cognizance of the offence except on the complaint of the Magistrate. However in doing so the learned Judge did not at all consider the question whether that part of the complaint which related to an offence u/s 500, I.P.C. can proceed at the instance of the aggrieved party.

3. The decision in AIR 1952 Sau 67(A)" relied upon by the learned Judge too was not quite relevant. The opponent in that case had lodged information with the police of an offence u/s 447, I.P.C., and after investigation this complaint was found to be false and a "B" Summary was obtained. The Head Constable of the Police Station thereafter filed a complaint charging the opponent under Sections 182 and 465, I.P.C. At the trial of the said case it was contended that the offence, if any, fell u/s 211, I.P.C. and not u/s 182, apart from the offence u/s 465, and he could not be prosecuted excepting upon a complaint of the Magistrate. We upheld this objection and ruled that the offence disclosed was covered by Section 211, I.P.C. and that it was not open to the police to charge the opponent with a lesser "offence and thereby to evade the provisions of Section 195(1)(b) which required the Magistrate to file the complaint.

4. In the present case, no such consideration arises, and the simple question is

whether a complaint u/s 193 can at all lie at the instance of the aggrieved party, and, as to this, since the offence complained of is one of the offences stated in Section 195(1)(b), it is the Magistrate alone who can file the complaint and not a private party. This is conceded by Mr. Desai who appears for the applicant and he now says that the applicant does not wish to proceed with the complaint in respect of the offence u/s 193, I.P.C. His grievance, however, is that Section 195(1)(b), Code of Criminal Procedure, does not bar the taking of cognizance by a Court of a complaint of defamation u/s 500, that such a complaint can be filed by the aggrieved party, and that the learned Magistrate was bound to proceed with that part of the complaint. Mr. Chokshi, for the opponents, on the other hand, urged that if on the complainant's own showing the facts alleged also constituted an offence u/s 193, I.P.C. and that as in fact the applicant had filed a complaint under the said Section 193, cognizance of the offence could not be taken except on the complaint of the Sub-Divisional Magistrate.

In effect the contention is that as the Sub-Divisional Magistrate alone could file a complaint in respect of one of the offences a cognizance of the whole of the complaint could not be taken. We are unable to agree with this contention. We may refer to - In Re: Vishwanath M. Hegde, . In that case the question was whether when a particular set of facts constitutes an offence u/s 211 and also one u/s 500, I.P.C., it is open to the complainant to prosecute for an offence u/s 500, I.P.C. without at the same time asking for sanction u/s 195, Code of Criminal Procedure, to prosecute for an offence u/s 211, I.P.C. There the complainant Hegde had filed a complaint on a charge u/s 500, I.P.C. and the learned Magistrate took the view that as the facts disclosed also constituted an offence u/s 211, I.P.C. and as the applicant had not asked for sanction to prosecute the opponent u/s 195, Code of Criminal Procedure, he would not be justified in divorcing the offence u/s 211 from an offence u/s 500 and grant a process under the latter Section alone.

It was held by the learned Judges, relying on - Satis Chandra Chakrabarti Vs. Ram Dayal De, and on - "U Aung Pe v. The King AIR 1938 Rang 232 (FB) (D), that it was open to the complainant to prosecute u/s 500, I.P.C. without at the same time asking for sanction u/s 195, Code of Criminal Procedure, to prosecute for an offence u/s 211, I.P.C. In the Calcutta case an application for sanction u/s 195, Code of Criminal Procedure to prosecute for an offence u/s 211, I.P.C. had been rejected and it was still held that the refusal to give such sanction was not a bar to a prosecution for defamation. In the Rangoon case it was held that a complaint u/s 500, I.P.C. cannot be dismissed even if the same facts constitute also an offence u/s 182 and sanction required by Section 195, Code of Criminal Procedure is not obtained.

5. The above Calcutta decision was also followed in - Dhirendra Nath Bera Vs. Nurul Huda and Others, . There the Petitioner filed a complaint charging the accused opposite parties with offences under Sections 297 and 500, I.P.C., and the trial Magistrate convicted the accused, but in appeal the Sessions Judge took

the view that the accused could not be convicted of either of the offences because the provisions of Section 195, Code of Criminal Procedure, had not been complied with. The learned Judge upheld the contention of the accused, viz., that the complaint disclosed an offence u/s 182 and possibly u/s 211, I.P.C. and that no prosecution could be instituted except on the complaint of the public servant or of the Court concerned. Their Lordships followed the decision in - "Satish Chandra v. Ram Dayal" (SB)(C) and also referred to with approval the other decisions including the Bombay decision in "In re Vishwanath H. Hegde (B)", and ultimately held that the prosecution for defamation based on a false information given to the police officer with the intent that the latter should act on it was not barred for want of complaint by the public officer u/s 195(1)(a), Code of Criminal Procedure, on the ground that a prosecution u/s 182 and Section 500, Penal Code can be said to arise out of the same facts.

6. We agree with respect with these decisions. We also note that there is some difference between the facts of the present case and those of "In re Viswanath H. Hegde (B)" and "Dhirendra Nath v. Nurul Huda" (FB) (E). In both these latter (sic) the complaint had been filed only u/s 500, I.P.C., and the objection was that as the facts also disclosed an offence in respect of which cognizance could be taken on a complaint only of the Court or the public servant concerned, whereas here the applicant had filed a complaint on a charge both u/s 193 and Section 500, I.P.C. Mr. Chokshi, for the opponents, in fact tried to distinguish these rulings on this precise ground and urged that inasmuch as Section 193, I.P.C. was the subject of the present complaint, the complaint must be viewed as a whole and it cannot be separated in two parts, and if one of the offences charged could not be taken cognizance on the complaint of the party itself, then the entire complaint must be thrown out on the ground that the provisions of Section 195(1)(b), Code of Criminal Procedure, had not been complied with.

We are unable to accept this contention. Section 195 bars the taking of cognizance of an offence for which only the Court concerned can file a complaint, but if on the same facts Anr. offence which is not covered by Section 195 and in respect of which the aggrieved party can file a complaint is disclosed, there is no reason why cognizance of such latter offence cannot be taken by the Court. Section 195 does not bar such a course. The joining of an offence covered by Section 195 with Anr. offence not covered by the said Section should not, in our opinion, prevent the Court from taking cognizance of the latter offence. We do not see any difference in principle between the two types of cases. In our opinion, therefore, the view taken by both the Courts below, is wrong. We, therefore, partly allow this application, set aside the order of discharge in so far as it relates to the charge u/s 500, I.P.C. and direct the learned Magistrate to proceed with the complaint regarding Section 500, Indian Penal Code.

Baxi, J.

7. I agree.