
(1958) 06 AHC CK 0003
In the Allahabad High Court
Case No : Criminal Ref. No. 27 of 1957

Sheo Bilas and Another

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 18-06-1958

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 195(1)
Penal Code, 1860 (IPC) — Section 193, 194, 196

Citation : AIR 1959 All 14 : (1958) 28 AWR 665 : (1959) CriLJ 2

Hon'ble Judges : A.P. Srivastava, J

Bench : Single Bench

Advocate : D.L. Misra, for the Appellant; Asst. Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

A.P. Srivastava, J.—This is a reference made by the Sessions Judge of Kanpur. Shiv Bilas was the owner of a cycle. He sold it first to Chandramaul and then sold it again to Babu Ram. He executed, a receipt first in favour of Chandramaul and then executed another receipt in favour of Babu Ram, in respect of the same cycle. Armed with his re-ceipt Babu Ram made a report to the police that his cycle had been stolen away.

The cycle was recovered from the possession of Chandramaul. During investigation Chandramaul satisfied the police that he had purchased the cycle from Shiv Bilas and that there was no question of his stealing it. The police therefore submitted a final report. On the basis of what had! been disclosed during investigation the police submitted a charge-sheet against Shiv Bilas and Babit Ram under Sections 426 and 468, read with Section 109, I. P. C.

The Magistrate, found that though no case had been made out under Sections 426 and 468, read with Section 109, I. P. C. Shiv Bilas could be charged u/s 193, I. P. C., and Babu Ham could be charged u/s 196, I. P. C. He therefore framed charges against these persons under these sections. They went up in revision to

the Sessions Judge and contended that cognizance of the offences under Sections 193 and 196 could have been taken only if a complaint had been filed by the court concerned and the learned Magistrate had therefore no jurisdiction to frame a charge against the accused persons under those sections.

They relied in support of this contention on Section 195 (1)(b) of the Code of Criminal Procedure. The learned Sessions Judge accepted this contention and has made a recommendation that the charges against the two accused persons under Sections 193 and 196, I. P. C. must be quashed. He has relied on three cases in support of the view he has taken. They are, Ghulam Rasul v. Emperor 37 Cri LJ 426 : (AIR 1936 Lah 238) (A), (Lahore High Court); J. D. Boywalla v. Sorab Rustomji Engineer 42 Cri LJ 814 : (AIR 1941 Bom 294) (B), (Bombay High Court) and Ranbir Singh Jain v. State 1956 All Cri Rep. 115 (C).

2. I have heard learned counsel who has appeared to support the reference and also the learned counsel for the state and am of opinion that the reference cannot be accepted. From the facts mentioned above which have also been narrated by the Sessions Judge in his order of reference it is clear that the offences punishable under Sections 193 and 196, I. P. C., which had been committed by Shiv Bilas and Babu Ram had been committed during the investigation stage before a final report was submitted by the police u/s 169 of the Code of Criminal Procedure. At that time no proceedings were pending in any court.

The proceedings in court would have started if instead of submitting a final report u/s 169, I. P. C., the police had submitted a re port u/s 173 praying that cognizance be taken. In a case like the present, proceedings in court start only after cognizance has been taken in one of the ways mentioned in Section 190, Cr. P. C. A final report u/s 169 is certainly submitted to a Magistrate for approval, but the Magistrate at that stage is not functioning as a court hut is functioning only as a Magistrate.

3. The question therefore is whether if an offence punishable under Sections 193 and 196, J. P. C., is committed not while any proceedings are pending in a court but while the case is still in the investigation stage any complaint is necessary by a court before cognizance can be taken of the offence.

4. A reference to Section 195 (1) (b) of the Code of Criminal Procedure will show that it prohibits taking of cognizance in respect of certain offences including those punishable under Sections 193 and 196 except on a complaint, only if the offences are alleged to have been committed "in or in relation to, any proceeding in any Court". The prohibition is therefore not an absolute prohibition and does not preclude the Magistrate concerned from taking cognizance of the offences mentioned in the clause without the complaint of the court or a superior court if the offences are not alleged to have been committed "in, or in relation to, any proceedings in any court".

It cannot be denied that such offences can be committed in or in relation to

proceedings in court and also otherwise. If, as has been shown above, no proceedings were pending in any court and the offences under which the accused were charged in this case were committed during the investigation stage no complaint by the court was necessary to enable the Magistrate to take cognizance of the offences.

5. In *Ajaib Singh v. Emperor* AIR 1917 Lah 267 (2) (D), a case decided under the old Section 195 when instead of a complaint the sanction of the court was necessary for taking cognizance it was held that the offence committed during a police enquiry and before any proceedings had been taken in court did not require sanction u/s 195. The same view had been taken earlier by the Calcutta High Court in *Jagat Chandra v. Queen-Empress* ILR Cal 786 (E).

6. Two of the three cases relied upon by the learned Sessions Judge in support of his view appear to be clearly distinguishable. Thus in the Allahabad case of 1956 All Cri R 115 (C), forgery had been committed in respect of certain documents for whose copies an application had been filed after the applications had been made. It was held that because an application for a copy had been filed the forgery committed could be held to have been committed "in relation to a proceeding in court".

It was pointed out that the words used were "proceedings in court" and not "judicial proceedings, in court" and that the filing of an application for a copy could be held to be a proceeding in court. In that case therefore there was a proceeding in court in relation to which the offence could be said to have been committed,

7. In the Bombay case of *J. D. Boywalla v. Sorab Rustomji Engineer* (B) a complaint had been made to a Magistrate who had directed the police to investigate and report. The police found the complainant's case to be false and reported that the complaint be cancelled. Then proceedings u/s 211, I. P. C., were said to be started and it was held that a complaint by the court was necessary. The case is distinguishable on the ground that there too proceedings in the court had been started by complaint.

The Lahore case of *Ghulam Rasul v. Emperor* (A), does appear to support the view taken by the learned Sessions Judge because in that case a report had been made to the police about the theft of a watch from the reporter's car. During investigation it transpires that the reporter had himself removed the watch and that his report about the theft of his watch was false. He was then sought to be prosecuted under Ss, 193 and 211, I. P. C., and the police submitted a challan to that effect.

Cognizance was taken by the Magistrate who framed charges. The High Court set aside the charges as it held that the offence having been committed in relation to a proceeding in a court: cognizance could not have been taken without a complaint of the court. Blacker, J. who decided the case observed :

"I am clear that the words in this sub-section "in relation to any proceedings in any Court" apply to the case of a false report or a false statement made in an investigation by the police with the intention that there shall in consequence of this be a trial in the Criminal Court, and I find support for this view in the case reported as *Chuhar Mal-Nihar Mal v. Emperor* AIR 1929 Sind 132 (F)."

The learned Judge gave no reason of his own in support of the view he was taking. He relied only on the Sind case, and a perusal of that case will show that it does not really support the view of the learned Judge. In that case a person sent two applications in almost identical terms one to the Superintendent of Police and the other to the Sub Divisional Magistrate,

The Superintendent of Police got an investigation made and it was found that the allegations made were false. A complaint was thereupon filed charging the person concerned with an offence punishable u/s 211, I. P. C., and the case was committed to the court of session. The accused objected that cognizance could not have been taken of that offence by the Magistrate without a complaint of the Sub Divisional Magistrate and this contention was accepted.

It was held that because two complaints had been simultaneously sent, one to the Sub Divisional Magistrate and the other to the Superintendent of Police, the complaint to the Sub Divisional Magistrate could be held to have started proceedings in a court and the offence could therefore be held to have been committed in relation to such a proceeding. Section 195 (1) (b) was therefore held to be applicable. Thus in the Sind case there was a proceeding pending in a court when the offence was committed.

It was not a case of the offence being committed during a police investigation alone. With due deference to the learned Judge of the Lahore High Court who decided the case of *Ghulam Rasul (A)*, I find it difficult to share his view that an offence committed during a police investigation can be considered to be one committed in or in relation to a proceeding in court.

8. In the present case the offences under Sections 193 and 196, I. P. C., were alleged to have been committed during the investigation stage of a case before any proceedings in court had been started and in respect of such offences no complaint of the Court was in my opinion required. The charges framed against the accused could not therefore be questioned on the ground that the learned Magistrate had no jurisdiction to take cognizance of the offence. That is the only ground on which the learned Sessions Judge has recommended the quashing of the charges. That ground being untenable, I think the reference cannot be accepted. It is accordingly rejected.