

(1980) 07 MP CK 0003

Madhya Pradesh High Court

Case No: Criminal Appeal No. 461 of 1979

Chandra Shekhar

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision: July 1, 1980

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 2(i)
- Penal Code, 1860 (IPC) - Section 182, 193

Citation: (1981) JLJ 122

Hon'ble Judges: Chandra Pal Singh, J

Bench: Single Bench

Advocate: Amarsingh, for the Appellant; Soni for State, for the Respondent

Final Decision: Allowed

Judgement

C.P. Singh, J.

This appeal is directed against the order of 22-8-1979 of the Third Additional Sessions Judge, Dhar in Misc, Criminal case No. 5 of 1979, directing the preparation of a complaint by him with a view to launching a prosecution against the appellant Chandrashekhar before the Chief Judicial Magistrate, Dhar for offences punishable under sections 182 and 193 of the Indian Penal Code.

2. The facts necessary for the decision of this appeal in short are that due to suspected illicit intimacy between the appellant Chandrashekhar and one Radhakrishan's wife, the said Radhakrishan on 7-10-1973 at about 11-30 p. m. dealt a number of blows on the appellant Chandrashekhar by means of a tickle near his temporary house in Dhar town. The matter was reported telephonically to the Local Police. The injured appellant on 8-10-1978 at 1.10 a. m. lodged the first information report. He as well as the other witnesses of the incident were interrogated and ultimately the said Radhakrishan was prosecuted and tried for an offence punishable u/s 307 Indian Penal Code for intentionally causing such injuries under

such circumstances to the appellant Chandrashekhar that had Chandrashekhar died, he (Rdhakrishan) would have been guilty of Chandrashekhar's murder Chandrashekhar during the course of trial resiling from what he had stated in the first information report deposed that he could not identify the assailant The result was that Rdhakrishan was acquitted of the offence charged. The learned Judge however, observed that Chandrashekhar, considering that he had deposed facts contrary to what he had stated in portions B to B, C to C & D to D in the first information report (Ex P-3) and that the tendency to depose falsely was in the increase, he prosecuted for either of the offence punishable u/s 182 and 193 of the Indian Penal Code. The learned Additional Sessions Judge thereafter proceeded to ask Chandrashekhar why he should not be prosecuted under those sections. The appellant Chandrashekhar did raise objection to his being prosecuted but the Additional Sessions Judge overruled his objection, by his order which is being challenged in this appeal.

3. On hearing the learned counsel for the appellant and the State, I find that this appeal deserve to be allowed Section 182 of the Indian Penal Code lays down as follows: --

Whoever gives to any public servant any information which he knows or believes to be false intending thereby to cause or knowing it to be likely that he will thereby cause, such public servant-

- (a) to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, or
- (b) to use the lawful power of such public servant to the injury Or annoyance of any person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

From the narrative of the facts, it is clear that the initial information was a telephonic message contained in the document (Ex. P-13) to the Dhar Police by some one. It was received at 11 35 p. m on 7-10-1978 It was the Information which had set the investigating machinery into motion In any event even assuming that the starting point of the investigation was the information later on given by the injured appellant contained in Ex P-3 at 1.10 a. m. on 8-10-1978, the appellant had given that information to the Police. Hence under the terms of section 182 Indian Penal Code, the complaint only by the concerned police was competent. A complaint by the learned Additional Sessions Judge for the offence punishable u/s 182 Indian Penal Code is therefore, not in accordance with law.

4. As regards the offence punishable u/s 193, Indian Penal Code, that section runs as follows: --

Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

and whoever intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Explanation 1.--A trial before a Court martial is a judicial proceeding.

Explanation 2 --An investigation directed by law preliminary to a proceeding before a Court of Justice, is a stage of judicial proceeding, though that investigation may not take place before 4 Court of justice.

To punish one under this section, among other facts, it has to be proved that one had intentionally given false evidence in any stage of the judicial proceedings. The words "judicial proceeding" are defined in section 2(i) of the Criminal Procedure Code and they include any proceeding in the course of which evidence is or may be legally taken on oath. The test whether a proceeding is judicial besides being recognized in the Constitution of India in the 7th Schedule, list III, entry 12 was considered by the Committee on Ministers' powers 1932. A judicial proceeding pre-supposes an existence of dispute between two or more parties and then requires:

- (1) The presentation of the case by each of the parties to the dispute,
- (2) ascertainment of facts by the evidence adduced by the parties if the question is purely of fact.
- (3) the submission by the parties of legal argument to ascertain a question of law and.
- (4) a decision disposing of the matter.

These characteristics of a judicial proceeding were approved by the Supreme Court in [The Bharat Bank Ltd., Delhi Vs. Employees of the Bharat Bank Ltd., Delhi and The Bharat Bank Employees' Union, Delhi](#), at page 477. From the definition of judicial proceeding it follows that whatever is stated during investigation or even in the first information report does not constitute judicial proceeding. In short whatever is stated either during investigation or in the first information report does not constitute substantive evidence and such a statement could not be made the foundation of judging the correctness or the falsity of the deposition made by a witness during the course of trial, which are judicial proceedings. In these circumstances *prima facie* the appellant could not have been prosecuted also for offence punishable u/s 193 of the Indian Penal Code.

5. In the result, the appeal succeeds and is allowed. The order in question is set aside. The complaint against the appellant shall be withdrawn.