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Amanat Ali Vs Emperor

Court: Calcutta High Court

Date of Decision: May 28, 1929

Acts Referred: Criminal Procedure Code, 1898 (CrPC) â€" Section 203, 476
Penal Code, 1860 (IPC) â€" Section 211, 406

Citation: AIR 1929 Cal 724 : 122 Ind. Cas. 627

Judgement

@JUDGMENTTAG-ORDER

1. The facts which have given rise to the present rule were these. The petitioner Amanat Ali preferred a complaint u/s 406, I.P.C. before Mr. K.L.

Banerji, a Magistrate, 1st Class, Noakhali, charging Moulvi Azizar Rahaman, Sub-Deputy Collector of San-dip, with having misappropriated a

sum of Rs. 400 paid to him by the petitioner as selami for certain khas mahal lands. Mr. Banerji examined Amanat Ali and sent the matter to one

Mr. Ahmed Ali for an enquiry and report. On the next day the District Magistrate withdrew the complaint to his own file and directed Mr. Khan,

Sub-Divisional Magistrate, Sadar, to enquire into the complaint and report. Mr. Khan held an enquiry and submitted a report to the District

Magistrate declaring the complaint of Amanat Ali to be maliciously false. Thereupon the District Magistrate on a consideration of that report

dismissed the complaint u/s 203, Criminal P.C., and under the provisions of Section 476 of the the Code made a complaint against Amanat Ali u/s

211, I.P.C. Against this order of the District Magistrate the petitioner moved the Sessions Judge but without any success. Thereupon the petitioner

came up to this Court and obtained the present rule.

2. The rule was issued on two grounds: namely, (1) that no Court being entitled to take cognizance of Amanat Ali''s complaint against the Sub-

Deputy Collector without sanction of the Local Government the complaint u/s 211, I.P.C., in respect thereof was not sustainable; (2) that the

District Magistrate not having taken part in any judicial proceeding connected with the petitioner''s complaint was not competent to make the

complaint against the petitioner under the provisions of Section 476, Criminal P.C.

3. As regards the first ground it was urged that the charge u/s 211, I.P.C., was not sustainable, the contention being that Section 211 requires that

a false charge must be made to an officer who has power to investigate and send it up for trial and that in the present case Mr. Banerji or any other

Magistrate had no power to send up the matter for trial, Section 197, Criminal P.C., operating as a bar to it, inasmuch as admittedly no sanction

had been obtained from the Local Government. So far as the proposition that a false charge must be made to an officer who has power to

investigate and send it up for trial goes it is perfectly sound finding support as it does from the decision in the case of the Empress v. Jamoona

[1881] Cal. 620. But the contention that Section 197 operates as a bar to taking cognizance in the present case does not appear to be sustainable.

u/s 197 a previous sanction of the Local Government is made necessary in a case where a public servant is accused of an offence, alleged to have

been committed by him "" while acting or purporting to act in the discharge of his official duty."" The present wording has been somewhat altered

from that of the former Code, where the question was whether the person was accused as such Judge or public servant of any offence."" The trend

of the cases was that the section extended only to acts which would have no special signification except as acts done in the capacity of public

servant. Leaving aside authority, however, the proper method of approaching the matter is to take the language of section as it now stands, without

reference to changes in the wording or comparison with corresponding sections in previous Statutes, and thus to see what the application of it

would be in the present case, taking the language in its ordinary and natural meaning. The question is whether in the present case the offence is

alleged to have been committed by the public servant, namely the Sub-Deputy Collector, while acting or purporting to act in the discharge of his

official duty. That would seem to imply that something in the nature of an official character attached to the act itself, that act either being in fact

done or purporting to be done as an official act in pursuance of the public office held by the public servant. In the case of a criminal breach of trust

by a public servant, it would, therefore, be essential to shew, before Section 197 would be applicable that misappropriation had taken place as an

official act or at least under the cloak of what purported to be an official act. In the present case Amanat Ali never alleged that the Sub-Deputy

Collector had misappropriated the money while acting in the capacity of a public servant. All that he said on the point was that when he asked for

settlement the Sub-Deputy Collector made no settlement of the land with him and when he asked for a refund of the money the Sub-Deputy

Collector denied having received any.

4. It is true that to constitute an offence u/s 409, I.P.C., the accused should have been entrusted with the property in his capacity of a public

servant and should have committed criminal breach of trust in respect of that property. He may, therefore, be guilty under that section although the

criminal act itself was not done or did not purport to be done in the discharge of his official duty. But we do not think that any argument can be

based on that as to what is intended by the language of Section 197 with which alone we are here concerned. The fact that the Sub-Deputy

Collector is a public servant may have afforded him the opportunity for the commission of the offence and it may be a necessary part of the proof

to show that the property was entrusted to him as a public servant. But the criminal act which constitutes the offence of criminal breach of trust

must itself be something in the nature of an official act done or purporting to be done in the discharge of his official duty, before the provisions of

Section 197 would become applicable. As was said by Coutts-Trotter. J., In re Abdul Khadir Saheb [1916] 1 M.W.N. 384 (which was a case

under the former Act):

I think on the whole that even if it is a necessary averment to say that he was a public servant and not a mere matter of proof nevertheless the

offence is of criminal breach of trust and that it is not an offence which is committed by him in his capacity of public servant as such, his capacity of

public servant being only that which puts him, so to speak, in a position in which such an offence can be committed.

5. We are, therefore, of opinion that in the present case the facts do not attract the operation of Section 197 so as to make that section a bar to the

proceedings which have taken place. If Section 197, Criminal P.C., is no bar and we have held that it is no bar to the proceeding there was

nothing wrong in Mr. Banerji''s taking cognizance of the offence.

6. In support of the second ground it was contended that the District Magistrate was not competent to make a complaint u/s 476 as he had not

taken cognizance of the case But there is nothing in law to show that a complaint u/s 476 can be made only by the officer tailing cognizance and by

no one else. On the other hand, the words ""in relation to a proceeding in a Court "" which are to be found in Section 476 as well as in Section 195,

Sub-clause (1)(b), Criminal P. C, would indicate that the power to make a complaint u/s 476 is not confined only to the officer who takes

cognizance of the case. In the present case it was the District Magistrate who transferred the case to his own file and sent the case for an enquiry

and report to another Magistrate and it was the District Magistrate who on a consideration of the report of that enquiry dismissed the complaint u/s

203, Criminal P.C. In these circumstances, the District Magistrate had certainly a proceeding before him and it cannot be gainsaid that the false

charge as made in the petition of complaint was a false charge in relation to that proceeding. That the District Magistrate was really more

competent than Mr. Banerji to make a complaint u/s 476 would appear from the decision of this Court in the case of Jeeban Brista Shaw v. Benoy

Kristo Shaw [1902] 6 C.W.N. 35 and in the case of Putiram Ruidas v. Mahomed Kasem [1899] 3 C.W.N. 33 where it has been held that the

Court which tries the case on its merits and not the Court before which proceedings are instituted and even process issued is the proper Court to

grant sanction for prosecution.

7. Then there is another aspect of the matter from which the second ground taken before us would appear to be noticeable. The District

Magistrate withdrew the case to his own file u/s 528, Criminal P.C. and by his order he put himself exactly in the same position in which Mr.

Banerji was. Mr. Banerji when he ordered the preliminary enquiry could certainly offer a consideration of the report of that enquiry, if he thought fit

to proceed u/s 476. If Mr. Banerji could proceed u/s 476 there was no reason why the District Magistrate who by his order of transfer u/s 528 put

himself in the same position as Mr. Banerji should be held debarred from proceeding under the same section. Both the points taken before us fail

and the rule is accordingly discharged.