Ram Sewak Lal Vs Maneshwar Singh

Court: Calcutta High Court

Date of Decision: April 15, 1910

Citation: 6 Ind. Cas. 352

Hon'ble Judges: Holmwood, J; Harington, J

Bench: Division Bench

Judgement

Harington, J.
This is a Rule calling upon the District Magistrate to show cause why the case, which has been instituted against the

petitioner, should not be quashed and the proceedings set aside on the ground that under the provisions of Section 403, of the Code of Criminal

Procedure, the petitioner is not liable to be tried for the offence charged against him,

2. The proceeding1 which is now pending against the petitioner is a prosecution for defamation u/s 500 of the Indian Penal Code. The petitioner

contends" hat he is protected u/s 403, because he has been already tried and acquitted of an offence u/s 182 of the Indian Penal Code. The facts

are that the accused gave a certain information to the manager of the Bettiah Raj which was untrue. He was prosecuted u/s 182 but acquitted on

the ground that the person to whom he gave the information was not a public servant within the purview of that section. That information was, as a

matter of fact, defamatory of the person who was aggrieved in the present case and it is in respect of the defamatory statements which were made

to the manager of the Bettiah Raj that the present charge u/s 500 was instituted.

3. In my opinion Section 403 is no bar to the present proceeding. The present petitioner certainly would not be liable to be tried again for the

offence of giving false information to a public servant nor, on the same fact, for any other offence for which a different charge from the one made

against him might have been made u/s 236, Criminal Procedure Code, or for which he might have been convicted u/s 237. Section 236 deals with

a case in which a single act or a series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will

constitute, while Section 237 provides that, in the case mentioned in Section 236, if the accused is charged with one offence, and it appears in

evidence that he committed a different offence for which he might have been charged under the provisions of that section, he may be convicted of

the offence which he is shown to have committed, although he was not charged with it. Neither of these Sections applies in the present case. In my

opinion, u/s 237, it would certainly not have been open to the Court to convict the petitioner, when ho was charged u/s 182 of an offence u/s 500,

Indian Penal Code. The one is an offence committed against a public servant which can only be prosecuted upon the complaint, under sanction of

the public servant injured or of some one to whom he is subordinate. The offence u/s 500 can only be prosecuted on the complaint of the person

aggrieved by the defamation. In one case, the offence is committed against a person ""to whom false information is given; in the other case, it is

committed against a person about whom a defamatory statement is made. The two offences, to my mind, are quite distinct and the charges under

them would have to be prosecuted under the authority of the different persons who are injured by that commission. The result is that, to my mind,

Section 403 is not applicable. There is no reason, therefore, to interfere* with the proceedings and the Rule must be discharged.

Holmwood, J.

4. The question which arises on this Rule is whether an acquittal on a charge of giving false information to a public servant u/s 182, Indian Penal

Code, on the ground that the person to whom the information was given was not a public servant is; a bar within the meaning of Section 403 of the

Code of Criminal Procedure to a trial for defamation u/s 500, on the same statements.

5. It seems to me that the offences u/s 182 and Section 500 are distinct offences within the meaning of Section 233, Criminal Procedure Code,

and unless they come under any of the exceptions referred to in Sections 234 to 236 and 239, the two charges must in law be tried separately. It

appears that on the 13th of October 1909, the petitioner submitted a petition to one Ram Narain Lal head tehsildar of the Sirsea Cutchary under

the Court of Wards which holds charge of the Bettiah Raj, making certain Allegations against a Sub Inspector of Police named Maneswar Singh.

6. These allegations were alleged by the Sub-Inspector to be false and the said Ram Narain Lal was said to be a public servant. The tehsildar

forwarded the petition which contained a statement that the petitioner Ram Shewak Lal had been wrongfully confined by the Sub-Inspector,

Maneswar Singh, and only let off on paying him a bribe of Rs. 65, to the manager of the Bettiah Raj, Mr. Lewis, who sent the petition to the

District Superintendent of Police for enquiry. Inspector Udit Narain Singh of the B Circle after full enquiry found the petition false and malicious

and requested that the petitioner should be prosecuted u/s 182, Indian Penal Code, ""in order to put a stop to the submission of such malicious

petitions which cause an unnecessary trouble, labour, and waste of time of the higher authorities and enquiring officers.

7. By enquiring officers"" is meant the police and the footing upon which the prosecution was suggested was that the petitioner intended by his

petition to cause the police to do something to the injury and annoyance of the Sub-Inspector Maneswar Singh.

8. Mr. Lewis gave sanction u/s 195, Criminal Procedure Code, to the prosecution of the petitioner u/s 182 on the]5th November 1909, on the

written request of the Superintendent of Police and the Court Inspector was ordered on the 16th November, to apply for the prosecution of Ram

Sewak Lal. The District Magistrate''s order on this dated the 16th November 1909, is The S. P. (Superintendent of Police) applies for prosecution

of Ram Shewak Lal u/s 182, Indian Penal Code."" ""Prosecute Ram Sewak, Section 182. Issue summons against him. Fix 25th November. Police

to send up prosecution witnesses on -that date."" It is clear, therefore, that Maneswar Singh who now seeks to prosecute Ram Sewak Lal u/s 500,

Indian Penal Code, did not obtain the sanction to prosecute u/s 182, Indian Penal Code, and was not the Prosecutor but only the principal witness

for the Crown.

9. If the tehsildar had been a public servant, it is obvious that two distinct offences were committed by the accused in one series of acts so

connected together as to form the same transaction and the case falls u/s 235(1) of the Code of Criminal Procedure and under no other of the

exceptions in Sections 234, 235, 236 and 239. That being so, the present prosecution u/s 500, Indian Penal Code, is clearly saved by the express

provisions of Section 403(2), and we are bound to discharge this Rule. It is further doubtful whether a charge u/s 500 could have been added on

the trial u/s 182, held, at the instance of the Deputy Superintendent of Police.

10. To start a case u/s 500 a sworn petition by the person aggrieved on his own initiative would be necessary. Such a petition could hardly be put

in by a subordinate Police officer while he was prosecuting a charge for contempt of the lawful authority of public servants under orders of his

superior the Deputy Superintendent of Police, and in any case there could be no obligation on him to join his personal action under Chapter XXI of

the Indian Penal Code with the Crown prosecution under Chapter X.

11. The Ruling in Sharbekhan Gohain v. The Emperor10 C.W.N. 518 : 3 Cr. L.J. 388, has no application to the present case since there both

offences, were under Chapter X and although section -201 requires no sanction, it covers the minor offence u/s 176 which does require sanction,

and, therefore, falls u/s 235(2). Further there was a finding in the judgment u/s 182 that the statements were absolutely false and the acquittal was

solely on the ground that the telisildar was not a public servant.

12. Although, therefore, the finding of the Magistrate in the 182 case cannot be in any way allowed to prejudice the accused in the 500, Indian

Penal Code, case, it is clear-that the question of malice has not at all been tried and the accused has not been acquitted of any charge involving

malice. That is a question which has to be tried on evidence which would be irrelevant in a trial u/s 182, Indian Penal Code.

13. For all these reasons, I agree with my learned brother that this rule must be discharged and that the case u/s 500 brought by the aggrieved

person Maneswar Singh must be tried on its merits.