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Gopal Kahar Vs Emperor

Court: Calcutta High Court

Date of Decision: Dec. 14, 1920

Acts Referred: Penal Code, 1860 (IPC) â€" Section 211

Citation: 61 Ind. Cas. 61

Hon'ble Judges: Ghose, J; Beachcroft, J

Bench: Division Bench

Judgement

Beachcroft, J.
The petitioner before us was charged u/s 211, Indian Penal Code, for having instituted criminal proceeding, knowing them

to be false, against one Bonomali, and was convicted by the Fourth Presidency Magistrate and sentenced to rigorous imprisonment for three

months. He obtained this Rule from this Court against the Chief Presidency Magistrate, sailing upon him to show cause why the conviction and

sentence passed on him should not be set aside. It appears that he gave information on 14th December 1919, the effect of which was that there

had been thefts in the houses of an Agarwala of Upper Chitpur Road and of a Marwari living in Atarwala, and that the properties stolen in these

thefts might be found at the house of Bonomali at 17, Protap Ghose Lane, or at that of his mistress, at No. 7, Kaileshwar Lane. He also stated that

one Mahboob was the thief. The Police made an enquiry and, in consequence of certain statements made by one Ram Charan, they got him also to

give an information which was to a similar effect. He stated that there had been thefts in the houses of one Gobordhan Das at Kalakar Street and

of a Marwari at Cross Street, and that the properties might be found at Bonomali"s house, or at No. 7, Kaileshwar Lane. The Police, after

enquiry, were able to do nothing further in connection with the properties that were found. A complaint was then made by Bonomali against these

two persons and they have been tried and convicted.

2. Two grounds have been urged before us; the first, that there was a misjoinder of charges, and, secondly, that on the fasts the case did not come

within Section 211, Indian Penal Code. Although, as I have stated, the charges made by the two men were made on different dates, a joint in

charge has been drawn up against them as follows: ""I.N.C. Ghose, Esq, 4th Presidency Magistrate, hereby charge you Gopal Kahar and Ram

Charan Kurmi that you, on or about the 13th day of December 1919, informed Sub-Inspector Saheb Singh against one Bonomali charging the

said Bonomali with receiving some stolen properties, to wit, ornaments and clothes, knowing at the time that there was no just or lawful ground for

such charge against the said Bonomali and you thereby committed an offence u/s 211, Indian Penal Code, and within my cognizance."" That the

Magistrate has made a mistake of the date is, perhaps, not very material; but in this charge he has charged both the accused as if they had

accomplished the impossible feat of giving one information; whereas, in fact, they gave separate information on different dates. He also ought not to

have tried the two accused together in respect of giving false information, If he was of opinion that one accused had abetted the other in respect of

giving false information he might have tried them together, charging one with giving false information and the other with abetment, but he has not

done that. He has charged the two men jointly with one offence, whereas it is obvious they ought to have been separately tried and there ought to

have been a separate charge against each in respect of the information given by him, This will be sufficient to dispose of the matter so far as the

present Rule is concerned.

3. Then, we have to consider whether it is worthwhile to order any further proceeding in this matter. We have been through the evidence and we

find that there is absolutely no evidence on the record which will justify the inference that the petitioner knew or had reason to believe that the

charge that he was making was false. The Magistrate seems to have dealt with the matter as if he thought that all that was required was that the

petitioner in fact had good grounds for making the charge. That, of course, is looking at the matter from a wrong point of view. For a conviction u/s

211, Indian Penal code it is necessary to establish that the aaaussd knew that there was no just or lawful ground for the charge. But, as I have said,

looking through the evidence was find there is no evidence which will support such a conclusion; on the contrary, we find these fasts that at the

house of Bonomali the Police found one man who had several previous convictions against him, at the house of his mistress they found another old

convicted, and that some of the properties answered to the descriptions of properties which had been stolen in a dacoity at Hoogly although, in

fact, the complainant in that case was not able to identify the properties.

4. It is not necessary to say anything further, except this, that no useful purpose will be served by ordering a re-trial. The conviction and sentence

passed on the petitioner are accordingly set aside and he will be released from bail.

Ghose, J.

5. I agree.