(1932) 12 CAL CK 0026

Calcutta High Court

Case No: Rev. No. 883 of 1932

Nishi Kanta Chatterji		APPELLANT
	Vs	
King-Emperor		RESPONDENT

Date of Decision: Dec. 13, 1932

Judgement

M.C. Ghose, J.

This is a Rule obtained by Nishi Kanta Chatterji who has been convicted by a Presidency Magistrate under sec. 182 of the Indian Penal Code and sentenced to a fine of Rs. 100. The first point taken is that upon a police report that the Petitioner''s case was false, the Magistrate proceeded to try him under sec. 182 of the Indian Penal Code, without giving him an opportunity to substantiate his own case although he had filed a naraji petition. The facts are these: On the 29th April, the Petitioner Nishi Kanta Chatterji Went to the Police Station and made a case that on the previous night, there was a theft from his room at 50, Ramtanu Bose Lane, in respect of a sum of Rs. 480 odd, and that he suspected his servant Behari Kahar who had absconded. The Police Officer questioned Behari Kahar who stated that the case against him was totally false, that he had been a servant of the Petitioner, that he had no wages for five months and when he asked for his wages, the Petitioner refused to pay him and threatened to put him in trouble and that there was a quarrel after which he left the service. The Police Officer, after hearing both sides, came to the conclusion that the Petitioner''s complaint was false. The police report was submitted on the 3rd May, requesting that the Petitioner Nishi Kanta Chatterji might be summoned under sec. 182 of the Indian Penal Code. The summons was issued on the 4th May, calling upon him to appear on the 19th May. He actually appeared on the 1st June, but he did) not file his naraji petition until the 10th June. The Magistrate postponed action on the naraji petition and proceeded with the trial of the case under sec. 182 and on the 22nd August, convicted and sentenced him to a fine of Rs. 100. It is urged on the authority of the cases of Gunamoni Sapui v. Queen-Empress (1899) 3 C. W. N. 768 and Munshi Isser v. The King-Emperor 14 C. W. N, 765 (1910) that the procedure adopted by the trial Magistrate was wrong, that he

should have postponed the trial of the case under sec. 182 of the Indian Penal Code and that he should have first proceeded to hear the naraji petition and given him an opportunity to prove the truth of his complaint. The learned Advocate who has appeared for the Crown argues that it would have been the proper course if the Magistrate had given the Petitioner an opportunity of proving the truth of his complaint in open Court. But the Petitioner''s grievance on account of the omission of the Magistrate to give him the necessary opportunity should have been ventilated in due time and not kept for ventilation after he had been convicted under sec. 182 of the Indian Penal Code. It is pointed out that in all the reported cases where the High Court stated that the Petitioner ought to be given an opportunity to prove his case, the Petitioner had moved the High Court before he was convicted on a charge under sec. 182 of the Indian Penal Code. In my opinion the argument has much) force. It is one thing to postpone a trial while an opportunity is given to the Petitioner to prove the truth of his complaint and quite another thing to quash a conviction on the ground that the opportunity was not given to the Petitioner. As pointed out by Cuming, J. in the case of Emperor v. Babar Ali Biswas 35 C. W. N. 378 (1930)'' there is no provision in the law that before a Magistrate can enquire into a case under sec. 182 of the Indian Penal Code, on the complaint of a Police Officer, he must give the accused party an opportunity of proving the truth of his case and that if the accused person is convicted without any preliminary opportunity being given to prove the truth of his case, the conviction is not illegal on that account. In this case it would have been a better procedure if the Magistrate had given the Petitioner an Opportunity to prove the truth of his case. But the trial cannot be said to have been illegal. The evidence adduced by the Police Officer was taken and all the evidence on the side of the accused person was taken and the Magistrate has given his decision after hearing fully both sides.

2. The next point taken is that the Magistrate came to no finding that the accused gave the information knowingly and believing it to be false, that he overlooked the fact that the Petitioner did not make a charge of theft against Behari Kahar but merely suspected him, that the learned Magistrate wrongly placed the onus upon the accused person, that he ought to have held that the onus lay on the prosecution to prove that the information lodged by the Petitioner was false and that he lodged it knowing and believing it to be false and that the findings of the Magistrate are not sufficient for a conviction under sec. 182 of the Indian Penal Code. The record has been fully placed by the learned Advocates on both sides. The learned Presidency Magistrate has written a judgment in which he has merely discussed the evidence of the defence witnesses. He has not stated the points which it is the duty of the prosecution to prove nor has he stated his findings upon any of these points. After criticising the defence evidence he merely says: " I find the accused guilty under sec. 182, I. P. C." The learned Advocate for the Crown points out sec. 370 of the Code of Criminal Procedure which lays down that instead of recording a judgment in manner provided in the preceding sections, a Presidency Magistrate shall record

only certain particulars and in all cases in which he inflicts imprisonment or fine exceeding two hundred rupees, or both, a brief statement of the reasons for the conviction. It is argued there from that the Presidency Magistrate is absolved from the necessity of writing a judgment but he need only make a brief statement of the reasons for his conviction, and that he need not even do that where it is a case of a fine less than Rs. 200. It is urged that in this case the fine was less than Rs. 200 and the order " I find the accused guilty under sec. 182, I. P. C," was sufficient, and nothing more was necessary under sec. 370. This argument would have been a good argument if the learned Magistrate had written no judgment at all, but merely convicted the accused under the section. But he has chosen to write a judgment of more than 30 typewritten lines in which he has shown how he approached the case. That judgment begins with a statement that the accused is charged under sec. 182 of the Indian Penal Code for bringing a false case against his servant Behari Kahar on the 28th April, 1932, and the accused pleads not guilty. Thereafter he goes on discussing the defence evidence till he comes to his conclusion "I find the accused guilty under sec. 182, I. P. C." Even in discussing the defence evidence he appears to have misdirected himself. He thought that the accused showed an entry Ex. 3 (1) to the effect that the landlord Manmatha Nath Chatterji deposited Rs. 300 with him. As a matter of fact it was the Sub-Inspector who proved the entry and not the accused. The case of the accused is that a sum of Rs. 486 odd was in the balance and except only three notes of Rs. 10 all was stolen away during the night and the account which was exhibited in the case would show how the balance was arrived at. In assuming that the accused relied upon this entry Ext. 3 (1), the trial Magistrate appears to have misdirected him self and, as stated above, he has not said one word about the prosecution evidence nor has he come to any finding on the points sought to be made out by the prosecution. The learned Advocate for the Crown read the prosecution evidence and showed that Behari deposed that he had a quarrel with the Petitioner who refused to pay him the arrears of five months'' wages and threatened to put him in trouble. A Mistry, P. W. No. 1, deposed that he heard Behari quarrelling with his master. Assuming that the evidence of Behari is correct and that the Petitioner wrongly suspected him, the Magistrate has not come to any finding that the complaint of theft made by the Petitioner was false or that he knew the case to be false. The mere fact that the Police Officer found the case to be false is not a sufficient reason for saying that the Petitioner is guilty under sec. 182 of the Indian Penal Code. In every criminal case the onus lies on the prosecution to prove the guilt of the accused. The onus does not lie on the accused person to establish his innocence. In this case the learned Presidency Magistrate appears to have approached the case altogether from a wrong point of view. The judgment recorded by him is not in accordance with law. It is accordingly reversed. The question then is whether an order should be made directing a fresh trial of the Petitioner. Having regard to the circumstances of the case, it does not appear necessary to pass such an order. The result is that this Rule is made absolute and the conviction of the accused is set aside. The fine, if paid, will be refunded to the accused.