(1916) 05 CAL CK 0042

Calcutta High Court

Case No: None

Tayabullah		APPELLANT
	Vs	
Emperor		RESPONDENT

Date of Decision: May 31, 1916

Citation: 36 Ind. Cas. 845

Hon'ble Judges: Sheepshanks, J; Asutosh Mookerjee, J

Bench: Division Bench

Judgement

@JUDGMENTTAG-ORDER

1. This is a reference u/s 438, Criminal Procedure Code, by the Additional Sessions Judge of Sylhet. On the 17th January 1916, the petitioner laid a first information, u/s 154, Criminal Procedure Code, at Maulavi Bazar Police Station against Karam Shaikh and others and alleged that they had stolen his paddy and had thereby committed a cognizable offence u/s 379, Indian Penal Code. The Police investigated into the matter and on the 31st January submitted a final report u/s 173, to the effect that the case appeared to be false and that there was no evidence for false prosecution. The Sub-Divisional Officer, on receipt of this report, passed an order on the 12th February in the following terms: complainant to prove his case." It will be observed that the complainant had not applied to the Magistrate to investigate into the matter. On the 18fch March the Magistrate examined four witnesses and ordered the Police "to adduce evidence on the 5th April to prove that the case was malicious." On the day fixed, six more witnesses were examined. The Magistrate then recorded the following order: It is evident from their depositions that there is a party feeling in the village, but the witnesses examined by the complainant had suppressed it. The complainant has totally failed to prove his case. I declare the case to be maliciously false and dismiss it u/s 203. I sanction the prosecution of the complainant Tayabullah u/s 211, Indian Penal Code." The Sessions Judge has on the application of Tayabullah recommended that the order be set aside. It is plain that the order for sanction cannot be supported.

2. No sanction was required in this case u/s 195(1)(b), A sanction is requisite in respect of an offence u/s 2ll, Indian Penal code, only when such offence has been committed in or in relation to any proceeding in any Court; no sanction is necessary when a false charge has been made to the Police and has not been followed by a judicial investigation thereof by a Court: Karim Bukhsh v. Emperor 74 P.L.R. 1905 : 12 P.R. 1905: 2 Cri. L.J. 66; Bhimaraja Venkateswarulu v. Moova Bapulu 15 Ind. Cas. 320 : 13 Cri. L.J. 480; Emperor v. Sheikh Ahmed 15 Ind. Cas. 994 : 13 Cri.L.J. 578 : Bur. L.T. 129 The position is different where, upon the Police report as to the falsity of the complaint, the complainant insists upon a judicial investigation ; if he does so he is deemed to have preferred a complaint to the Magistrate ; if the Magistrate finds his case to be false, a sanction would be requisite u/s 195(1)(b), as the offence may be said to have been committed in a proceeding in a Court: Queen-Empress v. Sham Lall 14 C. 707 : 12 Ind. Jur. 56 : 7 Ind. Dec. (N.S.) 469 (F.B.); Jogendra Lall Muherjee v. Bdbu Ballabh Hor 2 C.L.J. 228 : 33 C. 1 : 10 C.W.N. 158 : 2 Cri. L.J. 615; Queen-Empress v. Sheikh Beari 10 M. 232 : 2 Wei 181 : 3 Ind. Dec. (N.S.) 214 (F.B.) In the case before us, the petitioner never applied to the Magistrate for investigation; he did not impugn the correctness of the Police report nor did he pray that the persons accused by him might be brought to trial. He was never examined on oath by the Magistrate; he cannot by any stretch of language be deemed to have made a complaint u/s 4(h), and it is difficult to understand what the Magistrate meant when he dismissed the case u/s 203. It is thus clear that the order for sanction to prosecute is bad, if it be deemed to have been granted u/s 195. The order is equally bad, if we hold that the Magistrate has inaccurately expressed himself and that what he really intended was to make an order u/s 476(1). IN the first place, as pointed out in Dharmdas Kawar v. Emperor 7 C.L.J. 373 : 12 C.W.N. 575 : 7 Cri. L.J. 340 and Jadunandan Singh v. Emperor 4 Ind. Cas. 710 : 10 C.L.J. 564 : 14 C.W.N. 330 : 37 C. 250 : 11 Cri. L.J. 37 Section 476 must be read with Section 195 and is consequently restricted by the limitations contained in Clause (b) of that section. An order for prosecution u/s 476 cannot thus be made where the alleged offence u/s 211 has been committed, not in Court, but in relation to a Police investigation. In the second place, a Court is competent to take action u/s 476, only when the alleged offence has been committed before it or brought under its notice in the course of a judicial proceeding. Here the alleged offence was not committed in Court; nor was it brought to the notice of the Magistrate in the course of a judicial proceeding. The report by the Police was not u/s 157, so as to entitle the Magistrate to proceed u/s 159; the procedure he adopted is not contemplated by the Code; Mouli Durzi v. Naurangi Lall 4 C.W.N. 351. There was thus no judicial proceeding before him, and he could not consequently have taken action u/s 476. It follows accordingly that his order cannot be sustained, either u/s 195 or u/s 476. We muat, therefore, accept the recommendation of the Sessions Judge and set aside the order of the 5th April 1916.