

(1923) 05 BOM CK 0003

Bombay High Court

Case No: None

In Re: Rambharathi Hirabharathi

APPELLANT

Vs

RESPONDENT

Date of Decision: May 30, 1923

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 188
- Penal Code, 1860 (IPC) - Section 193, 211

Citation: (1923) ILR (Bom) 907

Hon'ble Judges: Shah, J; Kajiji, J

Bench: Division Bench

Judgement

Shah, J.

The applicant, who is the original complainant, filed information in the Court of the City Magistrate of Surat against the opponent in each of these three applications charging him with offences punishable under Sections 182, 193 and 211, Indian Penal Code, or some of them. The acts complained of, viz., the giving of false information to a public servant, the giving of false evidence and falsely charging the complainant with an offence, were all committed at Vyara, in the Baroda territory and before a public servant or the Court of the Baroda State at Vyara. The complainant and the accused in these cases are native Indian subjects of His Majesty. They had gone from Surat to a place of pilgrimage called Unai in the Baroda territory in connection with the annual fair held there in April 1921. The accused Nagindas is said to have entrusted his clothes with certain articles including cash to the complainant there. The said accused prosecuted the complainant in the Vyara Court of the Baroda State on a charge of criminal breach of trust punishable under the Penal Code of the Baroda State in connection with the said entrustment, and the accused in the two companion cases gave evidence against the complainant but the complainant was acquitted. It is in connection with these proceedings that these accused persons are said to have given false information and false evidence

and to have made a false charge in the Court of that State.

2. The complainant is stated to have obtained the sanction of that Court as required by the rules of procedure in that State for prosecuting these accused persons in respect of the offences as constituted by the said acts punishable under the Baroda law. The parties are Indian subjects of His Majesty and ordinarily live in British India. The complainant seeks to prosecute the accused in British India in respect of the acts committed outside British India. Though at the date of complaints the necessary certificate of ,the Political Agent u/s 188, Criminal Procedure Code, was; not obtained, the complainant has subsequently obtained it. The learned Magistrate made the following order on December 22, 1922:

Return to the complainant for presenting the complaint before the proper Magistrate, as the offence has been committed completely within Baroda State limits : Section 201, Criminal Procedure Code.

3. It does not appear whether the learned Magistrate made this order simply because no certificate u/s 188, Criminal Procedure Code, was produced or because no offences punishable under the Indian Penal Code were disclosed. We are now informed by the Government Pleader that the order was made as no certificate u/s 188, Criminal Procedure Code, was produced at the time. The complain-ant applied to the Sessions Court for a revision of this order. By this time he had obtained the necessary certificate u/s 188. The Sessions Judge was of opinion that in view of the certificate u/s 188, the complaints could be proceeded with but he declined to interfere as he thought that he had no jurisdiction to revise an order u/s 201, Criminal Procedure Code. Accordingly he dismissed the applications. The complainant has now applied to this Court to have the order of the Magistrate returning the complaint set aside and for a direction that the complaint as originally filed be proceeded with. If the only difficulty in the way of the applicant was the absence of the certificate u/s 188, Criminal Procedure Code, at the date of the complaints we should allow these applications as the certificate has been obtained subsequently. But there is a fundamental difficulty in his way.

4. On the facts as alleged in the complaints the question is whether any offence punishable under the Indian Penal Code is disclosed. If no such offence is disclosed, it is obvious that we cannot properly direct the complaints to be proceeded with. This question was not raised in the lower Co arts and does not appear to have been considered by them. As it arises, however, on the allegations in the complaint we cannot ignore it. We considered it desirable to ask the Government Pleader to appear and we have now heard full arguments on behalf of the Crown, the complainant and the accused on the interesting question whether the acts alleged to have been committed by the accused at Vyara are punishable under the Indian Penal Code. I am of opinion that these acts do not constitute any offence punishable under the Indian Penal Code.

5. Section 4 of the Indian Penal Code is relied upon as showing that the provisions of the Code apply to any offence committed by any Native Indian Subject of His Majesty without and beyond British India and that the word " offence" includes every act committed outside-British India which if committed in British India would be punishable under the Code. This section provides that any Indian subject of His Majesty is liable to be punished for an offence punishable under the Code committed outside British India and that the offence " includes any act committed outside British India which would be punishable under the Code if committed in British India. It gives certain extraterritorial jurisdiction in respect of acts committed outside British India by certain classes of persons including the Indian subjects of His Majesty; but it does not affect the nature of the act. The act alleged must amount to an offence punishable under the Code. There is no provision in the Code which constitutes it-an offence to lodge a false complaint in a foreign Court or to give false evidence before such Court where the oath is not administered under the provisions of law in force in British India, but under the law of that State in relation to proceedings before that Court. All the acts attributed to the accused are said to have been done either before the Police Officer or the Court at Vyara with reference to proceedings which were held " according to the law of the Baroda State. For instance, in this case, no offence u/s 182, Indian Penal Code, can be made out as it is not suggested that false information was given to a "public servant" as defined by the Indian Penal Code, quite apart from the consideration that it was given without and beyond British India. As regards the offence u/s 193,. Indian Penal Code, it is not suggested that the accused were legally bound by oath, i.e., oath administered under the provisions of law in force in British India or by any express provision of law, i.e., law in force in British India, to state the truth before the Vyara Court. The provisions of the Indian Oaths Act cannot apply to the statements in question. We have considered the provisions of Sections 1, 4, 5 and 14 of the Indian Oaths Act as bearing on this question. Though the Act extends to the territories of Native Princes and States in alliance with His Majesty, so far as regards the subjects of His Majesty, the Vyara Court cannot be treated as a Court within the meaning of Sections 4 and 14 of the Act, in relation to proceedings which were held before that Court entirely under the law of that State, and which had nothing to do with any proceedings in British India or under the law in force in British India. The oaths were administered to the accused persons as witnesses by the Vyara Court under the law obtaining in the Baroda territory. While perjury before that Court by an Indian subject of His Majesty would be as objectionable as perjury before a Court in British India, it is not punishable u/s 193 of the Indian Penal Code, when it is committed in a foreign Court in relation to entirely foreign proceedings.

6. As to the charge u/s 211, Indian Penal Code, the accused Nagindas is said to have instituted criminal proceedings at Vyara against the complainant and to have falsely charged him before the Vyara Court. The criminal proceedings and false charges contemplated by Section 211 must mean proceedings instituted and charges made

according to the provisions of criminal law in force in British India. The section occurs in a Chapter relating to offences against public justice which under the Indian Penal Code must mean public justice in British India unless it is expressly otherwise provided.

7. In the course of the argument it was conceded that it would be difficult to make out any offence punishable under Sections 182 and 193 : but it is contended that the expressions "institutes any criminal proceedings" and "falsely charges" in Section 211 are general, and should be interpreted as including criminal proceedings and false charges before a foreign Court like the Vyara Court. No authority is cited in support of this proposition and on general rules of construction it seems to us that the criminal proceedings and false charge within the meaning of Section 211 must mean proceedings and charge in British India, where the Indian Penal Code is in force, though it is conceivable that a person may be able to institute such proceedings or make such a charge while he is actually in foreign territory. The criminal proceedings taken and the false charge made before the Vyara Court are not within the scope of the section.

8. We have not overlooked the fact that the complainant also is an Indian subject of His Majesty, and that the offence of criminal breach of trust charged, against him before the Vyara Court would be an offence punishable under the Indian Penal Code in virtue of the provisions of Section 4 of the Code. But that fact does not alter the nature of the proceedings before the Vyara Court nor does it affect in any way the nature of the acts alleged against the accused in the "present" proceedings.

9. No other provision of law has been referred to as justifying these proceedings before a Magistrate in British India on the allegations in the complaint.

10. We cannot, therefore, order these complaints to be further proceeded with.

11. We discharge the rules.