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AIR 1934 Bom 185 : (1934) 36 BOMLR 221

Bombay High Court

Case No: Criminal Application For Revision No. 297 of 1933

Emperor	APPELLANT
Vs	
Hasam Ajam Bhakara	RESPONDENT

Date of Decision: Nov. 29, 1933

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 195

Citation: AIR 1934 Bom 185 : (1934) 36 BOMLR 221

Hon'ble Judges: John Beaumont, J; Barlee, J

Bench: Division Bench

Judgement

Beaumont, Kt., C.J.
This is an application in revision in which we are asked to interfere with the order made by the Sessions Judge of Surat, directing a re-trial of the accused for an offence u/s 193 read with Section 511, Indian Penal Code.

2. The material facts are that a prosecution was proceeding under Sections 147, 504 and 506, Indian Penal Code, before the Second Class Magistrate of Chorasi, and on April 9, 1931, the present applicant is alleged to have attempted to fabricate evidence in respect of that prosecution. Subsequently that prosecution was transferred from the Second Class Magistrate to the First Class Magistrate of Surat, Rao Saheb Patel, who tried the case and convicted the accused. Proceedings were then started by the police against the present applicant in respect of his attempt to fabricate evidence. The original complaint was under Sections 201, 186 and 116 of the Indian Penal Code, but a charge was ultimately framed u/s 193, Indian Penal Code. On the framing of that charge it appeared to the trial Court that a complaint would be necessary from the Court in respect of which fabrication was alleged to have taken place u/s 195 of the Criminal Procedure Code. Thereupon, a complaint was filed by the First Class Magistrate, Rao Saheb Patel. The trial then proceeded and resulted in the conviction of the present petitioner. The learned Sessions Judge, on appeal, set aside the conviction because he held that the trial ought

to have proceeded on the complaint filed by the First Class Magistrate, and not on the complaint filed by the police. The trial Court had proceeded on the complaint filed by the police, treating the complaint filed by the First Class Magistrate as being sanction u/s 230, Criminal Procedure Code. The learned Sessions Judge held that that was wrong and that the trial ought to have taken place on the complaint of the First Class Magistrate. He, therefore, set aside the conviction, but as he considered that there was a prima facie case against the accused, he directed that he should be re-tried by the First Class Magistrate or such other Magistrate as the District Magistrate, Surat, might direct by taking cognizance of the complaint filed by Rao Saheb Patel and proceeding according to law by taking the complaint as the starting point. We are asked to interfere with that direction for re-trial.

3. The main contention of the applicant is that the complaint filed u/s 195, Criminal Procedure Code, should be a complaint of the Second Class Magistrate before whom the original proceeding was pending at the date of the alleged fabrication of evidence, and not a complaint of the First Class Magistrate, who ultimately decided that case. Now, Section 195 provides that no Court shall take cognizance of any offence punishable under certain sections of the Indian Penal Code including Section 193 when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, except on the complaint in writing of such Court or of some other Court to which such Court is subordinate. It is argued for the applicant that the offence here was committed in relation to a proceeding in the Court of the Second Class Magistrate at Chorasi and that that Court alone or some other Court to which that Court is subordinate can file the complaint. It is clear that if the attempt to fabricate evidence had succeeded and false evidence had actually been given, the Court in relation to which the offence would have been committed would have been the Court which heard the evidence, that is to say, the Court of the First Class Magistrate. But in this case the attempt to fabricate evidence was unsuccessful, and, therefore, no false evidence was in fact given. No doubt, the attempt to fabricate evidence was made in the course of the proceedings in the Second Class Magistrate"s Court, but, in my opinion, it was made in relation to the proceedings, that is to say, the original prosecution, in whichever Court that prosecution was ultimately tried. In my opinion, in the case of an attempt to fabricate evidence, the Court which must file the complaint u/s 195, Criminal Procedure Code, is the Court which ultimately deals with the case, and in which, the false evidence, if the attempt had succeeded, would have been given. It seems to me that the words "in relation to any proceeding in any Court" are quite wide enough to cover that construction. The object of Section 195 is to ensure that a prosecution will only be launched on the complaint of the Court which is in the best position to judge if a prosecution is desirable. Where no false evidence is actually given, no Court is in a strong position to determine whether there should be a prosecution or not. But the Court which actually hears the case has this advantage that, it knows, at any rate, what the effect would have been if the fabrication of evidence had succeeded, whilst the Court before whom the proceedings happened to be pending at the moment when the attempt was made, and which does not ultimately deal with the case, really is not in a

position to form any opinion at all.

4. We see no reason to interfere with the order made by the Sessions Judge.