

Emperor Vs Hasam Ajam Bhakara

Court: Bombay High Court

Date of Decision: Nov. 29, 1933

Acts Referred: Criminal Procedure Code, 1898 (CrPC) â€” 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.