Purshottam Jethanand vs The State Of Kutch on 5 March, 1954

Equivalent citations: AIR1954SC700, AIR 1954 SUPREME COURT 700

JUDGMENT

Jagannadhas, J.

1. This is an appeal by special leave. The appellant was a Police Jamadar working in the Local Investigation Branch, Mandvi, in the State of Kutch. The prosecution case against him is that he visited a place called Rampur within the Mandvi Taluka on the 16th April, 1950, and checked the pass-ports of a number of persons who had gone to Africa and returned. It is alleged that in the course of the check which he carried out, he collected the pass-port of one Ananda Ratna of the village and demanded a sum of Rs. 800/-for its return which was accordingly paid on the 18th April, 1950, and that thereby he committed an offence of extortion under Section 384, I. P. C. The prosecution against the appellant appears to have been the result of information filed by this very appellant on or about the 18th April, 1950, at the police station Mandvi that he was robbed of a sum of Rs. 870/- by some of the inhabitants of the village Rampur and that in course of the robbery he was assaulted and received injuries. That information was registered as Cr. Case No. 51 of 1950 and P. W. 1, Sub-Inspector of Mandvi Police Station investigated the same. It is said that in the course of that investigation P. W. 1 came to know of the extortion committed by the appellant from the fact that some of the residents of Rampur on that very day produced before the police a sum of Rs. 840/- as having been taken back from the appellant when it was found that it had been collected from the other villagers by means of extortion.

The Sub-Inspector accordingly filed a complaint in the Court of the First Class Magistrate, Mandvi, against the appellant setting out these facts. Eight witnesses were examined to substantiate the prosecution case. The defence of the appellant was that the money was his own and that when he found, during his check, that a number of persons had false pass-ports he took the statements from them and that they, in order to snatch away their statements, beat him and robbed him of his own money which was with him. In support of his case he has examined eight witnesses. All the three courts below have accepted the evidence for the prosecution and disbelieved the defence version. The appellant was accordingly convicted of an offence under Section 384, I. P. C. and sentenced to R. I. for 12 months and a fine of Rs. 100/-. This was confirmed by the Sessions Judge on appeal and upheld on revision by the Judicial Commissioner, Kutch.

2. Learned counsel in addition to making an attempt to canvass the facts found, raised certain legal arguments. So far as the findings of fact based on an appreciation of the evidence were concerned, we could not allow him to reopen them in this appeal on special leave. The legal arguments are as follows : (1) The trial Magistrate had no power to take cognizance of the proceedings and the proceedings are, therefore, void. (2) The statements of the witnesses examined during the course of investigation were not furnished and hence the trial is illegal. (3) The facts proved do not make out

that the money was paid under any fear of injury and therefore, the offence of extortion was not committed.

So far as the first point is concerned, the facts on which the contention is based are set out in the judgment of the Judicial Commissioner as follows :

> "Mr. Kansara (the trial Magistrate) was appointed Magistrate, First Class, during the regime of the Kutch State. The law of Kutch State did not contain provision similar to the provision contained in Section 190, Clauses (a) and (b) of the Cr. P. C. (Act V of 1898). As the Magistrate First Class in Kutch State, Mr. Kansara used to take cognizance of offences. With the application of laws to the Merged States of Kutch, Cr. P. C. was applied and it appears that by a notification issued by the Chief Commissioner on 14-11-49, Taluka Magistrates were appointed Sub-Divisional Magistrates under Section 13 of the Code. Later on, Deputy Collectors with powers of Sub-Divisional Magistrates were appointed with the result that under Section 13 of the Code, the powers of a Sub-Divisional Magistrate conferred on Taluka Magistrates were withdrawn by a notification dated 19-8-50 published in the local Gazetted dated 1-9-50."

It may be recalled that the complaint in this case was in fact filed on the 26th August, 1950. The powers of Shri Kansara to take cognizance as Sub-Divisional Magistrate ceased from' the 19th August, 1950 and it does not appear that in his capacity as an ordinary First Class Magistrate any fresh powers were conferred on him under Section 190(2), Cr. P. C. at any period of time relevant for this case. It follows, therefore, that Shri Kansara had no power to take cognizance of this case under Section 190 (a) and (b). The learned Judicial Commissioner, however, was inclined to think that though Shri Kansara may have lost his powers to take cognizance as a Sub-Divisional Magistrate, he continued to have the power of taking cognizance which he originally had as a First Class Magistrate during the pre-merger regime.

For this view, he relied on the wording of the notification dated the 19th August, 1950. We have been furnished with a copy of that notification and we are unable to agree with this view of the wording therein. We think it clear that without a fresh order under Section 190(2), Cr. P. C. Shri Kansara had no power to take cognizance subsequent to the 19th August, 1950. Notwithstanding this conclusion, we are of the opinion that the defect is cured by Section 529, Cr. P. C. It is admitted that Shri Kansara had no knowledge at all of the notification dated the 19th August, 1950, by the date he took cognizance of the case on the filing of the complaint on the 26th August, 1950. His taking cognizance of this case was therefore 'bona fide' and no prejudice has been shown.

It is pointed out, however, that after Shri Kansara took cognizance and before evidence was recorded, the defect was pointedly urged before him by means of an application and that in spite of it, he continued to try the case and that accordingly the trial was vitiated. It was urged that the taking of cognizance was a continuous act and that though the defect in the initial taking of cognizance may be cured by Section 529, Cr. P. C. the continuance of the cognizance even after the defect was pointed out cannot be said to be 'bona fide' and that, therefore, Section 529, Cr. P. C.

cannot be invoked to cure the defect.

It appears, however, that when the objection was taken, Shri Kansara considered the same and came to a judicial decision that he had the power to take cognizance. Whether this was right or wrong is not relevant. The question is whether that decision was 'bona fide'. But we are not in a position to pronounce about it without seeing the actual decision of Shri Kansara on the objection and this has not been placed before us. We are not able, therefore, to hold that the defect was not cured by a 'bona fide' decision given by Shri Kansara as to the existence of the power when objection thereto was taken, even assuming without deciding that "the taking of cognizance" was then continuing.

3. The second legal objection advanced is that the statements of the prosecution witnesses recorded by the police during investigation were not furnished under Section 162, Cr. P. C. and that, therefore, there was a serious illegality which vitiated the trial. It would appear that on the 15th April, 1951, when the principal prosecution witness was under examination, the defence applied to the trial court to be supplied with a certified copy of his statement during investigation to enable the defence to cross-examine the witness but that it was refused. This was on the ground that the prosecution was in respect of a non-cognisable offence for which there was no investigation and that no witness was examined in respect of this offence under Section 161, Cr. P. C. The learned counsel for the appellant relies upon the fact that admittedly there was investigation of the complaint filed by this very appellant relating to the alleged robbery of his money which was registered as Cr. Case No. 51 of 1950 and that it is, as a result of the information obtained during that investigation, that the present prosecution has been launched. He accordingly puts his argument in two ways. (1) In order to be entitled to the statements under Section 162, Cr. P. C. it is enough if the investigation is under Chapter XIV of the Code and the witnesses gave statements in respect of the matters relevant to the offence under prosecution, though in fact this particular offence was not being then investigated. (2) The investigation in Cr. Case No. 51 of 1950 was in fact and in substance an investigation 'also' for the offence for which the appellant has been prosecuted.

4. We do not think that, having regard to the terms of Section 162, Cr. P. C., the first of these arguments can be sustained. The statutory right of the accused to be furnished with statements appears clearly to relate to a trial in respect of the very offence which was investigated and does not apply to a trial for a non-cognizable offence in respect of which there has been in fact no investigation. The proviso to Section 162(1) which gives the right to obtain copies relates to "'such' inquiry or trial" i.e., to "enquiry or trial of any offence under investigation (under this chapter) at the time when the statement was made".

Learned counsel relied on a Full Bench decision of the Allahabad High Court in -- 'Shyamlal Sharma v. Emperor' . But that was a case where there was in fact an investigation though without the authority of the Magistrate and it may well be, as stated by the learned Judges at page 490, that the illegality committed by the investigator, in not obtaining authority and yet proceeding to investigate, cannot be taken to deprive the accused of his statutory right.

With reference to the alternative argument under this head, the learned counsel for the appellant contends that in the present case and on the facts, such investigation as has taken place on the

complaint of the very appellant himself was in fact and in substance an investigation with reference to the very offence of extortion for which the appellant is under prosecution and that, therefore, on a principle analogous to that recognised in -- 'Shyamlal Sharma v. Emperor' (A), above cited, the appellant was entitled to the protection afforded by Section 162, Cr. P. C There can be no doubt that the right which the accused has got of obtaining copies of the statements made by witnesses during investigation is a very valuable right and that the wholesale refusal to grant the same will be a serious irregularity which would vitiate the entire trial as held by the Privy Council in -- 'Kotayya v. Emperor', AIR 1947 PC 67 at p. 69 (B). We might accordingly have been inclined to examine the validity of the argument advanced as above stated, if in fact and in substance that investigation can be held to be an investigation 'also' for the offence for which the accused is put on trial. It is, however, unnecessary to go into that legal proposition since the necessary foundation of fact is not made out in this case.

What the learned counsel has relied upon as the foundation for this argument is that as a fact, by the time the offence of robbery based on the complaint of this very appellant on or about the 18th April, 1950, was under investigation, the police had also information of the commission of the offence of extortion by this appellant himself as appears from the two Panchanamas, Exs. B and A, dated the 18th and 19th April, 1950, respectively, which related to the recovery of the amount of Rs. 840/- by the villagers of Rampur from this appellant and the handing over thereof to the police with a report. It is urged that these documents taken together and with the report which is indicated therein, constitute information to the police under Section 155, Cr. P. C. and that, therefore, the investigation from that date must be taken to be investigation in respect of both the offences.

There is difficulty in accepting this view on the facts of this case. It is in evidence that the report indicated in Exs. A and B was sent to the Gadhsisa police station, while the report and investigation in respect of the information of robbery given by the appellant relate to the Mandvi police station. It is not made out in the evidence that the information lodged in respect of this case with the Gadhsisa police station was placed before the officer investigating the information relating to the robbery case.

But even apart from this, there is a more substantial difficulty, viz., that the information as contained in Ex. B was not of the offence of extortion as regards any specified individuals and that the report itself does not appear to have made a complaint of the offence of extortion (see P. Ws. 1 and 2) and indeed neither Ex. A nor Ex. B gives any indication that the information was furnished with a view to bring the offender to book. In these circumstances there is no foundation laid in the evidence for the larger question that has been raised in this case, viz., as to whether or not the statutory right under Section 162, Cr. P. C. can be held to apply to a case where there was in fact and in substance an investigation also in respect of a non-cognisable offence though the investigation purported to be confined to the cognisable offence.

5. Learned counsel for the appellant has also relied upon Section 145 of the Indian Evidence Act. But this section does not help him to obtain copies of the statements, though it would enable him to make use of the statements if he happened to be in possession of them.

6. The next and the last argument advanced by the learned counsel for the appellant is that on the evidence in this case no fear of injury has been made out in order to support a conviction for extortion under Section 384, I. P. C. Learned counsel drew our attention to the somewhat apparent inconsistency as regards the statement of facts on which the learned Judicial Commissioner and the learned Sessions Judge came to their respective conclusions negativing this argument. He points out that while the learned Judicial Commissioner held that the injury consisted in the threat of criminal accusation that the pass was a concoction, the learned Sessions Judge appears to have proceeded on the footing that the fear of injury consisted in wrongful withholding of the emergency certificate and in refusing to hand it back.

A careful scrutiny of the evidence, however, does not show that the basic facts upon which the two Courts relied are inconsistent. It would appear from the evidence that the appellant in the course of his check of the passports had suspicion that some of the passports were not genuine. It may, therefore, well be, as the learned Judicial Commissioner thinks, that there was an implied threat for prosecution in respect of the same and a withholding of the pass-port on that threat and a return thereof on payment of money. But whether the withholding and the return of the pass-port was in respect of the pass-port suspected to be a forgery or in respect of a genuine pass-port wrongfully withheld, the fear of injury would equally be there.

Learned counsel sought to make out a distinction between a pass-port and an emergency certificate and tried to argue that in respect of detention of emergency certificate there can be no question of fear of injury. The distinction sought to be made out, however, is not so clear on the evidence and we cannot allow this point to be canvassed before us at this stage.

7. In the result, therefore, all the contentions raised before us by the learned counsel for the appellant fail and we see no reason to interfere either with the conviction or with the sentence. This appeal is accordingly dismissed.