Bholanath Amritlal Puroihit vs State Of Gujarat on 14 August, 1970

Equivalent citations: 1971 AIR 194, 1971 SCR (2) 817, AIR 1971 SUPREME COURT 194, (1971) 2 SC CRI R 44, (1971) 1 SCJ 616, 1970 UJ (SC) 734, 1971 MADLJ(CRI) 265, 1971 MADLW (CRI) 143, 1970 ALLCRIR 462, 1970 SCD 960, (171) 1 SCR 178, 1971 (1) SCR 817

Author: K.S. Hegde

Bench: K.S. Hegde, S.M. Sikri, I.D. Dua

PETITIONER:
BHOLANATH AMRITLAL PUROIHIT

Vs.

RESPONDENT:
STATE OF GUJARAT

DATE OF JUDGMENT:
14/08/1970

BENCH:
HEGDE, K.S.
BENCH:
HEGDE, K.S.
SIKRI, S.M.
DUA, I.D.

CITATION:
1971 AIR 194 1971 SCR (2) 817
1970 SCC (2) 414

ACT:
Indian Post Office Act, 1898 (6 of 1898). s. 72--Section requiring complaint for offence covered by s. 55 to made by order of or under authority from Director-General or Post Master General--Information about offence under s. 55 given by postal authorities to police--Report under s. 173 Cr. P.C. submitted by police after investigation--Magistrate taking cognizance of offence--Trial whether invalid for non compliance with s.72 of Post office Act.

HEADNOTE:
The appellant was tried and convicted by the Judicial

Magistrate 1st Class Broach under s.55 of the Indian Post Office Act, 1898. In appeal the conviction was affirmed by the Sessions Judge. The revision petition in the High Court failed and appeal with certificate was filed in this Court. The conviction was challenged on the ground that the appellant's trial was illegal as the case against him had not proceeded on the basis of a complaint made by order of or under authority from the Director General or Post Master General as required by s. 72 of the Indian Post Office Act, the same having been taken cognizance of on the basis of a police report under s. 173 of the Code of Criminal Procedure after investigation.under Ch. XIV (Part V) of that Code.

HELD : The expression complaints is not defined in the Post Office Act but the complaints contemplated under s.55 is one that initiates a prosecution on the basis of which the accused if found guilty is punishable with imprisonment for a term)Which may extend to two years and also with fine. That being so the expression complaint in s.72 cannot be equated to mere information or accusation. The context in which the expression is used in s. 72 indicates that it is a formal document indicting an officer of the postal department for a criminal offence. The purpose behind s.72 is that officials of the postal department should not be harassed with frivolous prosecutions and that before any of the prosecutions contemplated by s.72 is launched, the authorities mentioned in that section should have examined the appropriateness of launching a prosecution and either file a complaint themselves or authorise the filing of such a complaint. Such a requirement will not be satisfied if the concerned authorities merely ask the police to investigate into the case and take appropriate action. An information laid before the police or even a sanction granted for a prosecution by the police would not meet the requirement of s.72. [819 F-H]

If the legislature contemplated that a mere information to the police by the appropriate authority is sufficient then there was no need to enact s.72. Further if all that was required was to obtain sanction of the concerned authority then the legislature would have enacted a provision similar to s. 197 of the Cr. P.C. The fact that the legislature did not choose to adopt either of the two courses mentioned above is a clear indication of the fact, that the mandate of s. 72 is that there should be a formal complaint as contemplated by s. 4(1) (b) of the Criminal Procedure Code. [820 A-H]

Since there was no such complaint in the present case the magistrate was incompetent to take cognizance of the offence and the appellants trial was invalid The appeal must accordingly be allowed. [820 D]

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Emperor v. Rohini Kumar Sen X Cal. Weekly Notes 1029; Gnana Prakasam Baranahas v. State I.L.R. [1953] T.C. 600;

Narotamdas Bhikabai v. State of Gujarat (1962) 2 Cr. L.J. 165; and Alubhai Mujabhai v. State of Gujarat 7 Gujarat Law Reporter 698; referred to.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION Criminal Appeal No. 43 of 1967.

Appeal from the judgment and order dated August 29, 1966 of the Gujarat High Court in Criminal Revision Application No. 291 of 1966.

H. K. Puri, for the appellant.

K. L. Hathi and R. H. Dhebar for the respondent. The Judgment of the Court was delivered by Hegde, J The appellant was tried and convicted by the Judicial Magistrate 1st Class, 1st Court, Broach under s. 55 of the Indian Post Office Act, 1898 (to be hereinafter referred to as the Act) and sentenced to suffer rigorous imprisonment for one month and to pay a fine of Rs. 100/- in default to suffer rigorous imprisonment for three weeks. In appeal that conviction was affirmed by the learned Sessions Judge, Broach. In his revision petition before the High Court of Gujarat, the principal contention taken by him was that the learned magistrate was not competent to take cognizance of the case against him as there was no complaint as required by s. 72 of the Act. The revision petition was admitted for hearing and notice issued to the respondent' but when the matter came up for hearing before Raju J., the. learned judge rejected the revision petition with these cryptic remarks :

> "Heard the learned Counsel for the petitioner. I do not wish to exercise my revisional jurisdiction in this matter."

Thereafter this appeal was brought after obtaining a certificate from the High Court under Art.134(1) (c) of the Constitution.

The learned Counsel for the appellant, Mr. H. K. Puri chal- lenged the conviction of the appellant on the sole ground that the appellant's trial was illegal as the case against the appellant was not proceeded on the basis of a complaint made by order of, or under authority from the Director General of Post Master General as required by s. 72 of the Act.

The case against the appellant was taken cognizance of on the basis of a report by the police under s. 173 of the Cr.P.C. after making an enquiry under Ch. XIV(Pt.V) of that Code. It is true that the investigation of the case was launched on the basis of the information given by the postal authorities. We shall even assume that the investigation in question was made after obtaining the sanction of the concerned Post Master General as contended by the learned Counsel for the respondent.

Section 55 of the Act reads thus :

> "Whoever, being an officer of the. Post Office entrusted with the preparing or keeping of any document, fraudulently prepares the document incorrectly, or alters or secretes or destroys the document, shall be punishable with imprisonment for a term which may extend to two years, and shall also be punishable with fine.
>
> In brief the accusation against the appellant is that he fraudulently prepared certain documents in the post office where he was serving as a delivery clerk.
>
> Section 72 of the Act prescribes "No Court shall take cognizance of an offence punishable under any of the provisions of sections 51, 53, 54, clauses (a) and, (b), 55, 56, 58, 59, 61, 64, 65, 66 and 67 of this Act, unless upon complaint made by order of, or under authority from, the Director General or a Post Master General."

The question for consideration is whether there is such a "complaint" in this case ? The expression "complaint" is not defined in the Act but the complaint" contemplated under s. 55 is one that initiates a prosecution on the basis of which the accused if found guilty is punishable with imprisonment for a term which may extend to two years and also with a fine. That being so the expression "complaint" in s. 72 cannot be equated to mere information or accusation. The context in which that expression is used in s. 72 indicates that it is a formal document indicting an officer of they postal department for a criminal offence. Ile purpose behind s. 72 is that officials of the postal department should not be harassed with frivolous prosecutions and that before any of the prosecutions contemplated by s. 72 is launched, the authorities mentioned in that section should have examined the appropriateness of launching a prosecution and either Me a complaint themselves or authorise the following of such a complaint. Such a requirement will not be satisfied if the concerned authori- ties merely ask the police to investigate into the case and take appropriate action. An information laid before the police or even a sanction granted for a prosecution by the police would not meet the requirements of s. 72. If the legislature contemplated that a mere information to- the police by the appropriate authority is sufficient then there was no need to enact S.

72. Further if all that was required was to obtain the sanction of the concerned authority then the legislature would have enacted a provision similar to s. 197 of the Cr.P.C. The fact that the legislature did not choose to adopt either of the two courses mentioned above is a clear indication of the fact that the mandate of s. 72 is that there should be a formal complaint as contemplated by s. 4(1) (h) of the Criminal Procedure Code which says :

> "'Complaint' means the allegation made, orally or in writing to a Magistrate with a view to his taking action under this Code, that some person whether known or unknown has committed an offence, but it does not include the report of a police officer."

If we understand the word complaint' in s. 72 of the Act as defined under s. 4(1) (h) of. the Cr.P.C., as we think we should, then there was admittedly no complaint' against the appellant which means that the learned magistrate was incompetent to take cognizance of the case. From that it follows that

the trial of the case was an invalid one and that the appellant was convicted without the authority of law.

The meaning of the word "complaint" in s. 72 of the Act had come up for consideration before several High Courts. The conclusion reached by those High Courts accords with that reached by us. As far back as 1906 the meaning of the word "complaint" in s. 72 of the Act came up before a Division Bench of the Calcutta High Court in Emperor v. Rohini Kumar Sen The Court held that the prosecution therein was vitiated because of the failure to comply with the requirements of s. 72 of the Act. A similar view was taken by the Travancore Cochin High Court in Chanaprakasam Baranabas.v. State(2). Raju J. himself took that view in Narotamdas Bhilkhabai v. State of Gujarat(3). That decision, was rendered by the learned judge on September 2, 1963. The same view was taken by another bench of the Gujarat High Court in Alubhai Mujabhai v. State of Gujarat(4). No contrary decision. was brought to our notice.

For the reasons mentioned above we allow this appeal, set aside the conviction of, the appellant and acquit him. The fine levied if it bad been recovered from the, appellant will be refunded to him.

G.C. Appeal allowed

(1) x Cal. Weekly' Notes 1029.
(2) I.L.R. 1953 T. C. 600.
(3) (1962) 2, Cr. L. J. 165.
(4) 7 Gujarat, Law Reporter 698.