Kanhya Lal vs Vishwanath Singh And Anr. on 16 May, 1951

Equivalent citations: AIR1952ALL91, AIR 1952 ALLAHABAD 91

ORDER

Malik, C.J.

1. This revision is against an order of discharge. A complaint under Section 420, Penal Code, was filed by the applicant on 14-2-1947, in the Court of the City Magistrate, Allahabad. The complaint was put up for final orders before the Magistrate on 3-4-1947, when the Magistrate passed the following order:

> "Complainant is absent. I waited for him till 1.15 P. M. Accused are present. Dismissed. Accused are discharged. Accused are contending that the case is of a civil nature & that a case has been instituted in proper Court."

A revision was filed against that order in the Court of the learned Ses. J. In the memo of Revision it was mentioned that the complainant was present in the Court-room till 12.35 P. M. when lie left the Court & when he returned at 1. 25 P. M. final orders in the case had already been passed, but it does not appear from the order-sheet that any such representation was made to the Magistrate on 3-4-1947, when the order was passed by him. No affidavit was filed in the Court of the learned Ses, J. & the learned Ses. J. does not appear to have accepted the allegation made, as while dismissing the revision he held that the Court had waited for the complainant till about 1.15 P.M. but the complainant & his counsel were absent. A revision was filed against this order in this Court & two points have been taken by learned counsel for the applicant. It has been argued on his behalf that the learned Magistrate was not entitled under Section 259, Cr. p. C. to dismiss the complaint and discharge the accused as the offence was a cognizable offence & it could not be lawfully compounded. Section 259 provides that when an offence may be lawfully compounded or is not a cognizable offence the Magistrate may, in his discretion, discharge the accused. The question for decision, therefore, is whether this was an offence which, coud be lawfully compounded. Section 345 (1) & (2) of the Cri. p. C. give a list of the offences that can be compounded & the list of offences that can be compounded with the permission of the Court. Section 420, comes under the section heading (sic) & an offence committed under this _section is an offence which may be compounded with the permission of the Courfc. The question, therefore, is whether the words 'may be lawfully compounded refer only to cases which can be compounded without the permission of the Court or they also include offences that can be compounded with the permission of the Court. There does not appear to be any authority on the point but on the plain meaning of the words 'may be lawfully compounded I should think that offences coming under Sections 345 (1) & 345 (2) can be said to be lawfully compoundable. The Magistrate having decided to discharge the accused, it could not be said that he had any objection to the offence being compounded.

2. The other point raised is that on the facts given in the complaint an offence under Section 477, Penal Code, was made out & an offence under that section is not compoundable at all. The complaint, however, purports to be one under Section 420, I.P.C., & neither before the learned Ses. J. nor in this Court any such point was raised. Sri Narain Sahai, on behalf of the opposite-parties, has relied on Section 253 (2), Cri. p. C. but that applies to a case where a Magistrate considers the charge to be groundless. It does not appear from the order of the Magistrate that he expressed any opinion about the merits of the case. He has merely mentioned in his order that the accused had informed him that the case was of a civil nature & a civil suit had already been instituted. The learned Ses. J. was of the opinion that the proceedings instituted by the complainant were in regard to an offence which could have been lawfully compounded & I see no reason to differ from his conclusion. The case is a very old one having been pending since 1947 & I would not like it to drag on further.

3. The result is that this revision is dismissed.