Ram Pratap Lal vs State on 23 November, 1950

Equivalent citations: AIR1951ALL502, AIR 1951 ALLAHABAD 502

ORDER

P.L. Bhargava, J.

1. This is an application in revision by Ram Pratap Lal Patwari, who was convicted and sentenced to undergo rigorous imprisonment for two years, under Section 218, Penal Code, by the Assistant Sessions Judge of Faiza-bad. He preferred an appeal to the Sessions Judge of the same place, who upheld his conviction, but reduced the sentence to rigorous imprisonment for one year.

2. The applicant was prosecuted along with two other persons, Mahant Prasad, Supervisor Kanungo, and Bhagwati Din, a Mukhtariam, on a complaint filed by Shri Ram and Mangroo on 27-8-1945. The case for the prosecution as disclosed in the complaint was that Shri Ram was the hereditary tenant of certain plots of land in village Mohiuddinpur. Mangroo and others shared with him in cultivation. Bhagwati Din had obtained a sale-deed in respect of half share of Zamindari in the aforesaid village in favour of his two daughters-in-law and wanted to oust Shri Ram from the tenancy and held by him. On 21-12-1947, Bhagwati Din bribed Ram Pratap Lal Patwari and Mahant Prasad, Supervisor Kanungo, and certain fictitious entries were dishonestly and fraudulently made in the village records with a view to cause loss to Shri Ram.

3. The applicant and Mahant Prasad were charged with offences punishable under Sections 218 and 161, Penal Code, and Bhagwati Din was charged with having abetted those offences. Mahant Prasad was acquitted by the trial Court, and Bhagwati Din by the appellate Court.

4. The applicant denied the allegations made in the complaint and alleged that the entries were neither fictitious, nor had they been fraudulently or dishonestly made in order to cause loss to any one.

5. The trial Judge found the charge under Section 218, Penal Code, proved against the applicant. He, however, found that the charge under Section 161, Penal Code, was not established against the applicant. He also found that the charge under Section 161, Penal Code, must also fail because the required sanction had not been obtained. On appeal, the learned Sessions Judge same to the conclusion that it was established beyond doubt that the applicant had made entries knowing them to be incorrect and also knowing that they were likely to cause loss and injury to Shri Ram and Mangroo.

6. In this revision, learned counsel for the applicant has contended that, in view of the provisions contained in Section 6, Prevention of Corruption Act (II [2] of 1947), the Court could not have taken cognizance of the offence under Section 161, Penal Code, without the previous sanction of the proper

authority; consequently, the joint trial for the offence under Section 161, Penal Code, and for the offence under Section 218, Penal Code, was illegal and as such it was vitiated. But for want of sanction, the joint trial for the two offences was perfectly legal. Now, let as see what is the effect of want of sanction, for one of the offences for which the applicant was being tried, on the trial itself.

7. As the Court was precluded from taking cognizance of the offence under Section 161, Penal Code, without previous sanction of the proper authority, the trial for that offence was illegal; but it is not possible to say the same thing in regard to the trial for the offence under Section 218, Penal Code. On the authority of a decision of the Calcutta High Court in Nibaranchandra v. Emperor, 57 Cal. 99: (A.I.R. (16) 1929 Cal. 754 : 31 Cr. L. J. 995) learned counsel for the applicant has contended that the two offencee were so inter-connected that if the Court was not entitled to take cognizance of the one, the whole trial was vitiated.

8. In the Calcutta case relied upon by the applicant's learned counsel the two accused were tried for conspiring to commit offences under Sections 384 and 384/144, Penal Code, respectively. They were also charged under Section 120B, Penal Code; but no previous sanction had been obtained for the offence of conspiracy. They were, however, convicted of both the offences. The conviction was set aside by the High Court, firstly, on the ground that the object of conspiracy being to commit an offence under Section 384, Penal Code, which was a non-cognizable offence, the Court could not take cognizance of the said offence without the sanction of the local Government or of the District Magistrate empowered in that behalf; and, secondly, because the trial was held on charges, which do not require sanction, along with such as are not cognizable without sanction under Section 196A. In repelling the contentions that the applicant's conviction under Sections 384 and 384/114, Penal Code, should, in any case, be maintained, it was pointed out that that course was likely to result in prejudice to the accused persons as it was possible that a good deal of evidence that was adduced on behalf of the prosecution in the case in order to establish the charge of conspiracy would not be relevant as against the accused persons on the substantive charge under Sections 384 and 384/114, Penal Code.

9. Learned counsel for the applicant has referred to two other cases: one of the Judicial Commissioners, Ajmer, reported in Mt. Sobhag Kunwar v. Jugraj, A. I. R. (36) 1949 Ajmer 37, which does not give any reasons for the view expressed therein. The other case is of the Patna High Court in Hari Charan v. Emperor, A.I.R. (20) 1933 Pat. 273: (34 Cr. L. J. 938). In that case the petitioner was committed for trial on a charge of criminal conspiracy punishable under Sections 467 and 471, Penal Code. By the provisions of Section 196A, Criminal P. C., the sanction of the local Government was necessary to the initiation of the proceedings before the Court could take cognizance of the offence, but this sanction had not been obtained. The trial proceeded to the stage at which the opinions of the assessors were taken, when it was brought to the notice of the trial Judge that he had no power to deal with the case he then held that the trial which had taken place was ab initio void and he passed no sentence of conviction or acquittal. He directed the District Magistrate to proceed according to law. The High Court in revision refused to order the Sessions Judge to record judgment in accordance with the order of procedure; and held that the proper procedure was to obtain the sanction under Section 196, Criminal P. C. and make a fresh complaint. The High Court did not express any opinion on the question whether the trial was void ab initio.

10. Learned counsel for the applicant was unable to refer to any provision in the Code of Criminal Procedure which renders a joint trial for an offence for which previous sanction is necessary and for an offence for which no sanction is necessary. He has referred to Section 230 of the Code, which lays down that if the offence stated in the new, altered or added charge is one for the prosecution of which previous sanction is necessary, the case shall not be proceeded with until such sanction is obtained. There is nothing in the section to show that if the accused is also charged with another offence for which no sanction is necessary, and the trial for that offence proceeds, it will be illegal.

11. I am, therefore, not prepared to lay down that in every case a joint trial of this nature would be illegal. That would really depend upon the question of prejudice to the accused. Even in the Calcutta case the High Court had refused to maintain the conviction for the offences, for which no sanction was necessary on that ground. If the joint trial has caused prejudice to the accused, the trial may be set aside, otherwise not.

12. In the present case, it was alleged, and it has been found by the Courts below, that the applicant had, with a view to cause loss to Shri Ram and Mangroo, fraudulently and dishonestly made fictitious entries in the village records in his possession. The fact that the applicant had accepted illegal gratification for making the fictitious entries was relevant even for the purposes of an offence under Section 218, Penal Code. Consequently, on account of evidence being led at the trial to prove that illegal gratification had actually been demanded or accepted as an inducement for making the fictitious entries could not possibly prejudice the applicant. If the evidence relating to the payment of illegal gratification had not been relevant the position might have been different. In the circumstances of the present case, it must, therefore, be held that the applicant was not in any way prejudiced. The applicant not having been prejudiced in any manner the joint trial for offences, one of which required previous sanction which sanction had not been obtained was not illegal and as such it was not vitiated.

13. There is no force in this revision, which, is, accordingly, rejected. The applicant who is on bail will surrender immediately to serve out the sentence.