Jaswant And Ors. vs State on 31 July, 1951

Equivalent citations: AIR1951ALL828, AIR 1951 ALLAHABAD 828

ORDER

Desai, J.

1. In proceedings under Section 145, Criminal P. C., between Niranjan Singh on one side and the applicants and others on the other side, it was held by the Court under Section 145 (6) that Niranjan Singh was in possession and the Court passed an order prohibiting the applicants and their companions from interfering with his possession. Inspite of this order, the applicants forcibly took possession of the land. The order was passed by a Sub-divisional Magistrate. When the applicants took forcible possession of the land Niranjan Singh protested, but he was threatened and his witnesses induced him to leave the spot. Niranjan Singh then approached the Additional District Magistrate and asked him to make a complaint against the applicants under Sections 188 and 447, Penal Code. The Additional District Magistrate filed a complaint against the applicants under those sections and they were prosecuted and have been convicted under Section 188, Penal Code. They now come up in revision against their conviction.

2. It was contended that there is no evidence to prove that the act done by the applicants caused annoyance. An offence under Section 188 is committed when an order lawfully promulgated is infringed and the infringement causes, or tends to cause, annoyance or injury. It is not necessary that annoyance is actually caused; it is sufficient if the infringement has a tendency to cause annoyance. It cannot be doubted that in this case the act done by the applicants, i. e., of taking forcible possession inspite of an order under Section 145 (6), passed against them, had a tendency to annoy Niranjan Singh. The evidence shows that it did cause annoyance to him; he made a report of the occurrence and also moved the Additional District Magistrate to file a complaint against the applicants. If he had not been annoyed by their act, he would not have taken these steps. It appears that he was annoyed even at the moment when the applicants were taking forcible possession; it was on account of his annoyance that he was induced by his witnesses to leave the spot so that something serious might not happen. There is no substance in this contention.

3. The next and main contention is that the Additional District Magistrate had no power to file the complaint. Section 195 (1) (a) of the code lays down that no Court shall take cognisance of an offence punishable under Section 188, Penal Code, except on the complaint of the public servant Concerned, or of some other public servant to whom he is subordinate. The public servant concerned in the instant case was the Sub-divisional Magistrate who had passed the order under Section 145 (6) that was disobeyed by the applicants. If he was subordinate to the Additional District Magistrate, the trial Court rightly took cognisance of the offence on the complaint of the Additional District Magistrate. It was contended by Mr. G. Kumar that the Sub-divisional Magistrate was subordinate, not to the Additional District Magistrate, but to the Sessions Judge; he relied upon the provisions of

Sub-section (3) which are to the effect that for the purposes of Section 195 a Court will be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of the former Court.

4. It has been rightly pointed out in the past that Section 195 makes a distinction between complaints that to be filed by public servants and complaints to be filed by Courts. Sub-section (a) deals with complaints to be filed by public servants, while Sub-sections (c) and (b) deal with complaints filed by Courts. This distinction is preserved in Section 476 of the Code, which provides for the proceedings to be taken by Courts prior to the filing of complaints in respect of offences mentioned in Sub-sections (b) and (c) and for appeals from their orders. That section does not at all deal with complaints to be filed by public servants. In the Code no procedure is laid down for the filing of a complaint by a public servant or for any appeal from an order of a public servant filing or refusing to file a complaint. A Magistrate or a Munsif is a public servant, but when he files a complaint of an offence, say of Section 188, Penal Code, he does so as a public servant and not as a Magistrate or Munsif. It is true that when one has to ascertain to which other public servant he is subordinate, one must consider the capacity in which he acted in passing the order disobeyed. If he passed the order as a Magistrate, he would be subordinate to that public servant to whom he would be subordinate as a Magistrate, If, on the other hand, he passed the order as a Munsif, he would be subordinate to that public servant to whom he would be subordinate as a Munsif. But in ascertaining to whom he would be subordinate, one is not required to consider the provisions of Sub-section (3) at all. Those provisions clearly deal with the sub-ordination of Courts and not with the subordination of public servants. They do not refer to public servants at all; they deal exclusively with Courts and their subordination. Even in the case of a public servant who presides over a Court, the question to which other public servant he is subordinate has to be decided without reference to the provisions of Sub-section (3). I, therefore, do not accept the contention of Mr. G. Kumar that the question to whom the Sub-divisional Magistrate was subordinate should be decided on the basis of the provisions of Sub-section (3). Really that question has to be decided on the basis of the provisions contained in Section 17 of the Code. According to that section, a Sub-divisional Magistrate is subordinate to the District Magistrate. The public servant whose order was disobeyed had passed it as a Sub-divisional Magistrate, and in that capacity he was subordinate to the District Magistrate. An Additional District Magistrate has got the powers of the District Magistrate. Even otherwise, a Subdivisional Magistrate, as a public servant, is subordinate also to the Additional District Magistrate. Consequently, the complaint was rightly filed by the Additional District Magistrate.

5. Mr. G. Kumar relied upon Arunachalam v. Ponnuswami, A. I. R. (6) 1919 Mad. 610 and In re Badiuddin Sarfuddin, A. I. R. (9) 1922 Bom. 453. In the Madras case Napier J., with whom Sadasiva Aiyar J. concurred, took the view that the provisions of Sub-section (3) apply also to those public servants who preside over Courts. The Bombay case followed the Madras case and held that a public servant who presides over a Court is subordinate to that other public servant presiding over another Court to which appeals would ordinarily lie from his Court. With respect to the learned Judges, I dissent from the view taken by them. There is no justification for the view that the words "public servant" in Sub-section (a) mean a "Court," when he presides over a Court. Sub-sections (b) and (c) both refer to Courts to which other Courts would be subordinate and it is obvious that the provisions

of Sub-section (3) deal with the subordination of Courts as distinct from the subordination of public servants. All public servants do not preside over Courts and there are no appeals from orders passed by some public servants, especially those who do not preside over Courts. Sub-section (3) is meant to be exhaustive and to deal with the subordination of all authorities mentioned in the section. It follows that it does not deal with the subordination of public servants, because it does not deal with the sub-ordination of all public servants.

6. There is no direct authority of this Court dealing with the question under consideration. But some support to the view taken by me can be had from Brijendra Nath v. Emperor, A.I.R. (14) 1927 ALL. 828, in which Iqbal Ahmed J. decided that no appeal lies against an order of a District Judge, passed as a public servant, complaining under Sub-section (a) of an offence under Section 182, Penal Code. He also observed that as a public servant to whom the District Judge was subordinate, he himself could quash the complaint in exercise of the power conferred by Sub-section (5). It is clear from the judgment that though the complaint in that case was made by a District Judge, the learned Judge treated it as made by a public servant and did not consider himself to be superior to him on the ground that an appeal from the District Judge would lie to him. He did not rely at all on the provisions of Sub-section (3). The judgment of Dawson-Miller C. J. (with whom Foster J. agreed) in Maini Missir v. Emperor, 6 Pat. 39, fully supports the view that the subordination of public servants who preside over criminal Courts is to be ascertained, not with reference to the provisions of Sub-section (3), but with reference to the provisions of Section 17 of the Code. At p. 44 he emphasised the distinction between the cases covered by Sub-section (a) and those covered by Sub-sections (b) and (c). At p. 47 he observed that Sub-section (3) "seems manifestly to refer to the cases mentioned in Clauses (b) and (c) of Section 195 (1) where the complaint must be made by the Court and not to Clause (a) where the complaint is to be made by a public servant,"

> and that "the antithesis between 'public servant' in Clause (a) and 'Court' in Clauses
> (b) and (c) is marked, the Magistrate acting under the former clause is acting, not as a
> Court, but as a public servant."

The Patna case was followed, and the Bombay and Madras cases were dissented from, by Agarwala J. in Chandra Kumar v. Ramesh Chandra, A. I. R. (29) 1942 Oudh 50. He also refused to ascertain the subordination of a public servant who presides over a Court on the basis of the provisions of Sub-section (3) and observed that Sub-section (3) deals with subordination of Courts in respect of matters dealt with in Sub-sections (b) and (c).

7. There was no defect in the complaint filed by the Additional District Magistrate.

8. The convictions and sentences of the applicants are maintained; they, having acted in a highhanded manner, deserve no leniency at all. The application is dismissed.