

Laxmi Chand And Anr. vs Asa Ram And Anr. on 10 November, 1953

Equivalent citations: AIR1954ALL384

ORDER

Harish Chandra, J.

1. This is a revision arising out of a complaint which has been instituted against the applicants under section 210 of the Indian Penal Code by order of a Civil Judge of Saharanpur passed on the 1st November, 1947, allowing an appeal from the order of the City Munsif dated the 12th October 1946 on an application made before it praying that a complaint be made against the applicants under section 476 of the Code of Criminal Procedure for their prosecution under Section 210 and other sections of the Indian Penal Code.

2. There was a revision from the order of the Civil Judge before the High Court and it was dismissed on the 4th March, 1949. Thereafter a complaint was made and is now proceeding before a Magistrate. In the Magistrate's court an objection was taken on behalf of the applicants that the proceedings out of which the application under section 476 of the Code of Criminal Procedure arose had taken place before the Haveli Munsif at Saharanpur and that an application under section 476 of the Code of Criminal Procedure did not lie before the City Munsif, Saharanpur, and that, therefore, the Civil Judge of Saharanpur had no jurisdiction to direct that a complaint be made against the applicants for their prosecution under section 210 of the Indian Penal Code. He rejected the objection and the revision to the Sessions Court from the order of the learned Magistrate was dismissed by that court. The applicants have now come in revision to this Court and it is urged that the proceedings that are now going on in the court of the Magistrate are without jurisdiction.

3. It is also said that a previous application under section 476 of the Code of Criminal Procedure having been dismissed by the Munsif a second application with respect to the same facts did not lie and that the further proceedings arising therefrom were without jurisdiction.

4. Lastly, it is urged that having regard to the length of time that has elapsed the present proceedings should not be allowed to go on. It would appear that the suit out of which these proceedings arose was instituted as far back as the year 1938 in the court of the City Munsif at Saharanpur. The number of the suit was 228 of 1938.

5. In regard to the first point it may be mentioned that after the suit had been instituted in the court of the City Munsif at Saharanpur it was transferred to the Additional Munsif for trial. Ultimately it

was tried by the Havali Munsif and he decreed it 'ex parte' on the 30th November, 1940. The argument is that as the case was tried and decided by the Havali Munsif, the city Munsif had no jurisdiction to entertain an application under Section 476 of the code of Criminal Procedure. But the language of section 476 is very wide and according to it a court has jurisdiction to entertain an application under that section with respect to any offence referred to in section 195, Sub-section (1), Clause (b) or Clause (e) of the Code of Criminal Procedure which appears to have been committed in, or in relation to, a proceeding in that court. The words "in that court" are very general & would in my view include in this case the City Munsif of Saharanpur in whose court the suit was instituted although the case was in fact ultimately tried and decided by the Havali Munsif. I am referred to the case of -- 'Tarkeswar Mukhopadhyaya v. Emperor', AIR 1926 Cal 788 (A) in which a contrary view seems to have been taken in relation to a criminal case which was instituted in the court of one Magistrate but was tried by another Magistrate. But having regard to the generality of the language used in section 476 I am not inclined to follow the decision in that case. Moreover, this point could and should have been taken when the revision application was before the High Court and I do not think I can go into that matter now after a lapse of several years from the date on which the revision application was dismissed by the High Court.

6. In regard to the second point it appears from a perusal of the judgment of the High Court dated the 4th March, 1949, in Civil Revision No. 37 of 1948 that the full facts were before that Court. But this point does not seem to have prevailed with the High Court and I do not think it proper to reconsider it at this stage.

7. As regards the last contention I do not think that this is the stage at which it can be taken into consideration. The High Court finally upheld the decision of the Civil Judge directing that a complaint be made against the applicants under Section 210 of the Indian Penal Code and thereafter the present complaint was instituted in the court of a Magistrate in accordance with those directions and is going on in that Court. There is in my view no provision of law under which I can quash the present proceedings merely on the mere ground that the facts upon which it is based relate to something that took place a long time ago and thus nullify the effect of an order previously passed by this Court on a full consideration of the whole matter.

8. The application is accordingly dismissed.