

Ram Harsh Tewari And Anr. vs Rex, Through Rang Ramanuj Prasad Narain ... on 14 March, 1950

Equivalent citations: AIR1950ALL465

ORDER

Malik, C.J.

1. This is a reference by the learned Sessions Judge of Allahabad that; the complaint against the applicants pending in the Court of the City Magistrate, Allahabad, be quashed.

2. A complaint was filed in the Court of the City Magistrate of Allahabad by Kunwar Rang Ramanuj Prasad Narayan Singh against Madho Prasad Tripathi and Ram Harsh Tewari. It is alleged in this complaint that while inspecting election records in the Court of Mr. V.B. Laghate, Magistrate, on behalf of Gur Prasad, who was the other candidate contesting the election, Madho Prasad Tripathi Vakil added certain plus marks on the ballot paper so that the votes cast in favour of the complainant might become invalid and be rejected by the District Judge and this was done dishonestly with a view to cause loss to the complainant and their intention was to use this fabricated evidence against the complainant during the hearing of the election petition. The opposite parties filed objections that the facts stated in the complaint amounted to an offence under Section 193, Penal Code, for the trial of which a complaint by the Court under Section 196 (b), Criminal P. C. was necessary and no such complaint having been filed the complaint was not maintainable. This reference is opposed on the ground that the applicants were also guilty under Section 465, Penal Code, for which it was not necessary that a complaint should be filed by the Court. Section 463, Penal Code defines forgery as follows :

"Whoever makes any false document or part of a document, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed commits forgery."

Under Section 465, punishment for forgery is two years' rigorous imprisonment or fine or both. Section 193 appears to me to be an offence of the same type but more serious than mere forgery and also includes perjury, and the punishment is more severe. Section 193 is in these words :

"Whoever intentionally gives false evidence, in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine ; and whoever

intentionally gives or fabricates false evidence in any other case, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine."

The offence of forgery, as defined in Section 463, and giving of false evidence or fabricating false evidence in Section 193 are more or less allied offences, one being more serious than the other.

3. In *Ram Nath v. Emperor*, 22 A. L. J. 1106 : (A. I. R. (12) 1925 ALL. 230 : 26 Cr. L. J. 362), where on the facts alleged an offence under Section 171(f), Penal Code, was made out, for which it was necessary that sanction should be obtained, as no sanction was forthcoming, a private complaint under Section 465, Penal Code was held to be not maintainable. The learned Judge, Sir Lal Gopal Mukerji gave two reasons: firstly, that the offence of personation at election has been made punishable by Section 171(f) with imprisonment extending to one year only, while the offence under Section 465 is punishable with imprisonment which may extend to two years, and the Legislature, therefore, did not want that a case of false personation at an election should be treated as an ordinary case of forgery. The second circumstance relied on by him was that where the law clearly says that it is a condition precedent to the prosecution that a sanction should be obtained from the 'Local Government', it was not open to any subordinate authority to override the provision of the law by saying that the offence fell under another section of the Penal Code for which no sanction was needed. In the case before me, so far as I can see, the nature of the offence is the same, one being considered to be more serious than the other, for which a severer punishment has been provided. It is not open, therefore, to the complainant to circumvent the provisions of law, and, though the allegations made in the complaint amount to an offence under Section 193, to say that he would confine his case to an offence for forgery under Section 465.

4. Learned counsel for the opposite parties has relied on certain observations made in a decision of this Court in *Ram Nath v. Emperor*, 22 A. L. J. 497 : (A. I. R. (11) 1924 ALL. 684 : 26 Cr. L. J. 94). The accused in that case had committed certain offences under Chap. IX-A, Penal Code, and it was argued before the learned Judges that a complaint under that chapter could be filed only with the previous sanction of the 'Local Government'. The learned Judges were, however, of the opinion that if the facts alleged amounted to an offence under some other provision of the law, there was no reason why the accused should not be prosecuted for the other offence committed by him, merely because he had also committed an electoral offence under chap. IX-A. If two independent offences have been committed, as was assumed by the Bench, the observation made by the learned Judges is unexceptionable, but if on the facts alleged only one offence is made out, then the complainant cannot ask the Court to ignore some of the allegations made by him and help him to continue the complaint by reducing the offence to a minor offence, for which a complaint by the Court, or sanction of some other authority, was not needed.

5. The case of *Tarsu Beg v. Muhammad Yar Khan*, 21 A. L. J. 915 : (A. I. R. (11) 1924 ALL. 296 : 25 Cr. L. J. 688) is clearly distinguishable. The complaint, in that case, was for dacoity and arson, for which no sanction was needed and that had nothing to do with the other complaint, which was to the effect that the accused had made a false charge.

6. The reference is accepted and the proceedings pending in the Court of the City Magistrate of Allahabad are quashed.