Supreme Court of India
Perumal vs Janaki on 20 January, 1947
Author: Chelameswar
Bench: P Sathasivam, J. Chelameswar

Reportable

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.169 OF 2014
(Arising out of Special Leave Petition (Criminal) No.1221 of 2012)

Perumal …Appellant

Versus

Janaki …Respondent

J U D G M E N T

Chelameswar, J.

1. Leave granted.

2. Aggrieved by an order in Crl. R.C. No.1119 of 2011 of the High Court of Madras, the unsuccessful petitioner therein preferred the instant appeal.

3. A petition in C.M.P. No.4561 of 2010 (private complaint) under section 200 of the Code of Criminal Procedure, 1973 (hereinafter for short referred to as "the Cr.P.C.") filed by the appellant herein against the respondent came to be dismissed by the Judicial Magistrate No.2 at Pollachi by his judgment dated 31st August 2010. Challenging the same, the abovementioned Crl. R.C. was filed.

4. The factual background of the case is as follows:

5. The respondent was working as a Sub-Inspector in an All-Women Police Station, Pollachi at the relevant point of time. On 18th May 2008, one Nagal reported to the respondent that the appellant herein had cheated her. The respondent registered Crime No.18/08 under sections 417 and 506(i) of the Indian Penal Code (hereinafter for short referred to as "the IPC"). Eventually, the respondent filed a charge-sheet, the relevant portion of which reads as follows:

> "On 26.12.07, that the accused called upon the de-facto complainant for an outing and while going in the night at around 10.00 via Vadugapalayam Ittori route the accused enticed the de-facto complainant of marrying her and had sexual interaction several times in the nearby jungle and on account of which the complainant became pregnant and when she asked the accused to marry him he threatened the complainant of killing her if she disclosed the above fact to anybody.
>
> Hence the accused committed an offence punishable u/s. 417, 506 (i) of IPC." [emphasis supplied]

6. The appellant was tried for the offences mentioned above by the learned Judicial Magistrate No.1, Pollachi. The learned Judicial Magistrate by his judgment dated 15th March 2010 acquitted the appellant of both the charges.

7. It appears that the said judgment has become final.

8. In the light of the acquittal, the appellant filed a complaint (C.M.P. No.4561 of 2010) under section 190 of the Cr.P.C. on the file of the Judicial Magistrate No.2 at Pollachi praying that the respondent be tried for an offence under section 193 of the IPC. The said complaint came to be dismissed by an order dated 31st August 2010 on the ground that in view of sections 195 and 340 of the Cr.P.C. the complaint of the appellant herein is not maintainable.

9. Aggrieved by the said dismissal, the appellant herein unsuccessfully carried the matter to the High Court. Hence the present appeal.

10. The case of the appellant herein in his complaint is that though Nagal alleged an offence of cheating against the appellant which led to the pregnancy of Nagal, such an offence was not proved against him. Upon the registration of Crime No.18/08, Nagal was subjected to medical examination. She was not found to be pregnant. Dr. Geetha, who examined Nagal, categorically opined that Nagal was not found to be pregnant on the date of examination which took place six days after the registration of the FIR. In spite of the definite medical opinion that Nagal was not pregnant, the respondent chose to file a charge-sheet with an allegation that Nagal became pregnant. Therefore, according to the appellant, the charge-sheet was filed with a deliberate false statement by the respondent herein. The appellant, therefore, prayed in his complaint as follows;

> "It is, therefore, prayed that this Hon'ble Court may be pleased to take this complaint on file, try the accused U/s. 193 IPC for deliberately giving false evidence in the Court as against the complainant, and punish the accused and pass such further or other orders as this Hon'ble court deems fit and proper."

11. The learned Magistrate dismissed the complaint on the ground that section 195 of the Cr.P.C. bars criminal courts to take cognizance of an offence under section 193 of the IPC except on the complaint in writing of that Court or an officer of that Court in relation to any proceeding in the Court where the offence under section 193 is said to have been committed and a private complaint

such as the one on hand is not maintainable.

12. The High Court declined to interfere with the matter in exercise of its revisional jurisdiction. The operative portion of the order under challenge reads as follows:

> "3. ... This court is in agreement with the conclusion of the court below in dismissing the complaint. The complaint provided very little to take action upon, particularly, where this court finds that the respondent had not in any manner tampered with the medical record so as to mulct the petitioner with criminal liability. The wording in the final report informing of the de facto complainant having been pregnant can in the facts and circumstances of the case, be seen only as a mistake.
>
> 4. In the result, the criminal revision stands dismissed."

13. We regret to place on record that at every stage of this matter the inquiry was misdirected.

14. The facts relevant for the issue on hand are that:-

> (1) The appellant was prosecuted for the offences under sections 417 and 506 (i) IPC. (The factual allegations forming the basis of such a prosecution are already noted earlier).
>
> (2) The respondent filed a charge-sheet with an assertion that the appellant was responsible for pregnancy of Nagal.
>
> (3) Even before the filing of the charge-sheet, a definite medical opinion was available to the respondent (secured during the course of the investigation of the offence alleged against the appellant) to the effect that Nagal was not pregnant.
>
> (4) Still the respondent chose to assert in the charge-sheet that Nagal was pregnant.
>
> (5) The prosecution against the appellant ended in acquittal.

15. The abovementioned indisputable facts, in our opinion, prima facie may not constitute an offence under section 193 IPC but may constitute an offence under section 211 IPC. We say prima facie only for the reason this aspect has not been examined at any stage in the case nor any submission is made before us on either side but we cannot help taking notice of the basic facts and the legal position.

16. The offence under section 193[1] IPC is an act of giving false evidence or fabricating false evidence in a judicial proceeding. The act of giving false evidence is defined under section 191 IPC as follows:

> "191. Giving false evidence.— Whoever, being legally bound by an oath or by an express provision of law to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, is said to give false evidence.
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> Explanation 1.—A statement is within the meaning of this section, whether it is made verbally or otherwise.

Explanation 2.—A false statement as to the belief of the person attesting is within the meaning of this section, and a person may be guilty of giving false evidence by stating that he believes a thing which he does not believe, as well as by stating that he knows a thing which he does not know." It can be seen from the definition that to constitute an act of giving false evidence, a person must make a statement which is either false to the knowledge or belief of the maker or which the maker does not believe to be true. Further, it requires that such a statement is made by a person (1) who is legally bound by an oath; (2) by an express provision of law to state the truth; or (3) being bound by law to make a declaration upon any subject.

17. A police officer filing a charge-sheet does not make any statement on oath nor is bound by any express provision of law to state the truth though in our opinion being a public servant is obliged to act in good faith. Whether the statement made by the police officer in a charge-sheet amounts to a declaration upon any subject within the meaning of the clause "being bound by law to make a declaration upon any subject" occurring under section 191 of the IPC is a question which requires further examination.

18. On the other hand, section 211 of the IPC deals with an offence of instituting or causing to be instituted any criminal proceeding or falsely charging any person of having committed an offence even when there is no just or lawful ground for such proceeding to the knowledge of the person instituting or causing the institution of the criminal proceedings.

19. Irrespective of the fact whether the offence disclosed by the complaint of the appellant herein is an offence falling either under section 193 or 211 of the IPC, section 195 of the Cr.P.C. declares that no Court shall take cognizance of either of the abovementioned two offences except in the manner specified under section 195 of the Cr.P.C.:

> "195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.—(1) No Court shall take cognizance— x x x x x
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> (b) (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or except on the complaint in writing of that Court or by such officer of the Court as that Court may authorise in

writing in this behalf, or of some other Court to which that court is subordinate."

20. In the light of the language of section 195 Cr.P.C. we do not find fault with the conclusion of the learned Magistrate in dismissing the complaint of the appellant herein for the reason that the complaint is not filed by the person contemplated under section 195 Cr.P.C. It may be mentioned here that as a matter of fact the Court before which the instant complaint was lodged is not the same Court before which the appellant herein was prosecuted by the respondent.

21. Under section 340(1) of the Cr.P.C., it is stipulated that whenever it appears that any one of the offences mentioned in clause (b) of sub- section (1) of section 195 appears to have been committed in or in relation to a proceeding before a Court, that Court either on an application made to it or otherwise make a complaint thereof in writing to the competent Magistrate after following the procedure mentioned under section 340 of the Cr.P.C.[2]

22. Admittedly, the appellant herein did not make an application to the judicial magistrate No.1, Pollachi under section 340 to 'make a complaint' against the respondent herein nor the said magistrate suo moto made a complaint. Therefore, the learned judicial magistrate No.2 before whom the private complaint is made by the appellant had no option but to dismiss the complaint.

23. But the High Court, in our view, is not justified in confining itself to the examination of the correctness of the order of the magistrate dismissing the said private complaint. Both Section 195(1) and Section 340(2) Cr.P.C. authorise the exercise of the power conferred under Section 195(1) by any other court to which the court in respect of which the offence is committed is subordinate to. (hereinafter referred to for the sake of convenience as 'the original court')

24. It can be seen from the language of Section 195(4), Cr.P.C. that it creates a legal fiction whereby it is declared that the original court is subordinate to that court to which appeals ordinarily lie from the judgments or orders of the original court. (hereinafter referred to as 'the appellate court') In our view, such a fiction must be understood in the context of Article 227[3] of the Constitution of India and Section 10(1) and 15(1) of Cr.P.C[4]. Article 227 confers the power of superintendence on a High Court over all courts and tribunals functioning within the territories in relation to which a High Court exercises jurisdiction. Section 10(1) and 15(1) of Cr.P.C. declare that the Assistant Sessions Judges and Chief Judicial Magistrates are subordinate to the Session Judge and other Judicial Magistrates to be subordinate to the Chief Judicial Magistrate subject to the control of the Session Judge. It may be remembered that Section 195(4) deals with the authority of the superior courts in the context of taking cognizance of various offences mentioned in Section 195(1). Such offences are relatable to civil, criminal and revenue courts etc.[5] Each one of the streams of these courts may have their administrative hierarchy depending upon under the law by which such courts are brought into existence. It is also well known that certain courts have appellate jurisdiction while certain courts only have original jurisdiction. Appellate jurisdiction is the creature of statute and depending upon the scheme of a particular statute, the forum of appeal varies. Generally, the appellate for a are created on the basis of either subject matter of dispute or economic implications or nature of crime etc.

25. Therefore, all that sub-section (4) of Section 195 says is that irrespective of the fact whether a particular court is subordinate to another court in the hierarchy of judicial administration, for the purpose of exercise of powers under Section 195(1), every appellate court competent to entertain the appeals either from decrees or sentence passed by the original court is treated to be a court concurrently competent to exercise the jurisdiction under Section 195(1). High Courts being constitutional courts invested with the powers of superintendence over all courts within the territory over which the High Court exercises its jurisdiction, in our view, is certainly a Court which can exercise the jurisdiction under Section 195(1). In the absence of any specific constitutional limitation of prescription on the exercise of such powers, the High Courts may exercise such power either on an application made to it or suo moto whenever the interests of justice demand.

26. The High Courts not only have the authority to exercise such jurisdiction but also an obligation to exercise such power in appropriate cases. Such obligation, in our opinion, flows from two factors – (1) the embargo created by Section 195 restricting the liberty of aggrieved persons to initiate criminal proceedings with respect to offences prescribed under Section 195; (2) such offences pertain to either the contempt of lawful authorities of public servants or offences against public justice.

27. A constitution Bench of this Court in Iqbal Singh Marwah & Anr. v. Meenakshi Marwah & Anr., (2005) 4 SCC 370, while interpreting Section 195 Cr.P.C., although in a different context, held that any interpretation which leads to a situation where a victim of crime is rendered remediless, has to be discarded[6]. The power of superintendence like any other power impliedly carries an obligation to exercise powers in an appropriate case to maintain the majesty of the judicial process and the purity of the legal system. Such an obligation becomes more profound when these allegations of commission of offences pertain to public justice.

28. In the case on hand, when the appellant alleges that he had been prosecuted on the basis of a palpably false statement coupled with the further allegation in his complaint that the respondent did so for extraneous considerations, we are of the opinion that it is an appropriate case where the High Court ought to have exercised the jurisdiction under Section 195 Cr.P.C.. The allegation such as the one made by the complainant against the respondent is not uncommon. As was pointed earlier by this Court in a different context "there is no rule of law that common sense should be put in cold storage"[7]. Our Constitution is designed on the theory of checks and balances. A theory which is the product of the belief that all power corrupts - such belief is based on experience.

29. The appeal is, therefore, allowed. The matter is remitted to the High Court for further appropriate course of action to initiate proceedings against the respondent on the basis of the complaint of the appellant in accordance with law.

.....CJI (P. Sathasivam) .....J.

(J. Chelameswar) New Delhi;

January 20, 2014.

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[1] Section 193. Punishment for false evidence.—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 extended 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 extended to three years, and shall also be liable to fine.

Explanation 1.—A trial before a Court-martial; is a judicial proceeding.

Explanation 2.—An investigation directed by law preliminary to a proceeding before a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice. [2] Section 340. Procedure in cases mentioned in section 195.—(1) When upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,-

(a) record a finding to that effect;

(b) make a complaint thereof in writing;

(c) send it to a Magi?
