DURGACHARAN NAIK AND ORS.

v.

STATE OF ORISSA

February 23, 1966.

[K. SUBBA RAO AND V. RAMASWAMI, JJ.]

Code of Criminal Procedure (Act 5 of 1898), s. 195—Facts disclosing offences under ss. 186 and 353, Indian Penal Code—Prosecution for offence under s. 353 without written complaint of public servant—Maintainability.

The appellants were charged with offences under s. 143/402, 186 and 353, Indian Penal Code for having obstructed and assaulted two public servants in the discharge of their public duty of executing the decree of a Civil Court. They were acquitted by the trial Court, but on appeal, the High Court convicted them under s. 353, acquitted them under ss. 143/402 and held that the prosecution under s. 186 was barred by s. 195, Criminal Procedure Code, which requires a complaint in writing by the public servant before a court could take cognizance of the offence.

In appeal to this Court, it was contended that the prosecution under s. 353, Indian Penal Code, was also barred by s. 195 Criminal Procedure Code.

HELD: Sections 186 and 353, Indian Penal Code, relate to two distinct offences and s. 353 is not referred to in s. 195 Cr.P.C. Section 195, Criminal Procedure Code, does not bar the trial of an accused person for a distinct offence disclosed by the same set of facts, but which is not within the ambit of that section, when there is no camouflage or evasion to circumvent the Section. Therefore the trial of the appellants for the distinct offence under s. 353 was not barred though it was based practically on the same facts as for the prosecution under s. 186, and the High Court was justified, on the evidence, in interfering with the order of acquittal passed by the trial Court in regard to that charge. [640 E, G; 641 E]

Sanwat Singh v. *State of Rajasthan* [1961] 3. S.C.R. 120 and *Agarwal and Kulkarni* v. *State of Maharashtra*, A.I.R. 1963 S.C. 200, followed.

Basir-ul-Huk v. *State of West Bengal* [1953], S.C.R. 836 and *Hori Ram Singh* v. *The Crown*, [1939] F.C.R. 159, referred to.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 67 of 1964.

Appeal by special leave from the judgment and order dated March 2, 1964 of the Orissa High Court in Government Appeal No. 49 of 1963.

R. K. Garg, S. C. Agarwala, M. K. Ramamurthy and *D. P. Singh*, for the appellants.

H. R. Khanna and *R. N. Sachthey*, for the respondent.

A The Judgment of the Court was delivered by

Ramaswami, J. This appeal is brought, by special leave, from the judgment of the Orissa High Court dated March 2, 1964 in Government Appeal No. 49 of 1963 by which the High Court set aside the order of acquittal passed by the Assistant Sessions Judge of Puri and convicted the appellants under s. 353 of the B Indian Penal Code and sentenced them to 4 months' rigorous imprisonment.

The decree-holders Panu Sahu and Naba Sahu levied execution of the decree (Ex. Case No. 125/62) in the Court of the Munsif, Puri against the appellants and a writ of attachment of the moveables of the judgment-debtor was issued for execution through C P.W. 2, Sadhu Charan Mohanty, a peon of the Civil Court, Puri, returnable by August 10, 1962. P.W. 2 reached the village of the judgment-debtors on August 10, 1962 at 10 a.m. with the warrant of attachment and asked the judgment-debtors to pay the decretal dues of Rs. 952·10 nP, and when he was going to seize some of the moveables, the appellants came there with lathis and resisD ted him. P.W. 2 sent a report—Ex. 4—to the Court through Nabaghan requesting the Court to give necessary police help. Accordingly on the same day the Munsif wrote a letter, Ex. 2, requesting the Superintendent of Police, Puri to direct the Officer-in-charge, Sadar Police Station, to give immediate police help to the process server. In pursuance of this letter, P.W. 1, the Assistant Sub-E Inspector, Sadar Police Station, Puri was deputed along with two constables including P.W. 3, Constable no. 613. They went to the village Sanua where the writ of attachment was to be executed. P.W. 6 the Naib Sarpanch and P.W. 8 the Chowkidar of the village Chhaitna also accompanied them. On reaching the spot, they found P.W. 2 sitting in front of the house of Durga Charan Naik—One of the judgment-debtors. The A.S.I. then called out F Fakir Charan Naik, father of Durga Charan Naik one of the judgment-debtors, who opened the door and paid Rs. 952·10 nP to the process server, Sadhu Charan Mohanty and obtained a receipt from him. After the money was paid, all of them left the village and at about 7 p.m. while they were crossing a river nearby in a boat, P.W. 1 saw the appellant Durga Charan with 10 or 12 persons G coming from the opposite direction. On seeing them, P.W. 1 apprehended some trouble and directed P.W. 2 to hand over the money to the chowkidar, P.W. 8. When all of them got down from the boat, appellant Durga Charan forcibly dragged the A.S.I. A number of other persons including the other appellants assembled at the spot. Durga Charan threatened to assault the A.S.I if he did not return the money. Durga Charan also searched hi H pockets and Netrananda threatened the A.S.I. by saying that he would not leave the place until the money was returned. When P.W. 1 wanted to write a report to his police station, Netrananda

obstructed him by holding his right hand. Bipra and Jugal caught hold of the hands of P.W. 2 and took him to the river bank and demanded return of the money. Then at the intervention of some outsiders the appellants left the spot. P.W. 1 lodged the first information report at the police station next morning and after investigation the appellants were chargesheeted and committed to the court of Sessions.

The appellants were charged under ss. 143/402, Indian Penal Code on the allegation that they formed an unlawful assembly with the common object of committing dacoity. Durga Charan, Jugal, Bipra along with three others were further charged under s. 186, Indian Penal Code for having voluntarily obstructed P.Ws 1 and 2 in the discharge of their public duty. Durga Charan and Netranada were also charged under s. 353, Indian Penal Code for having used criminal force against P.W. 1 and Bipra Charan and Jugal were similarly charged under s. 353, Indian Penal Code for having used criminal force against P.W. 2 while both of them were discharging their duty as public servants. The Additional Sessions Judge acquitted the appellants of all the charges. The State Government took the matter in appeal to the Orissa High Court which set aside the order of acquittal with regard to the 4 appellants and convicted them under s. 353, Indian Penal Code. The High Court, however, held that there was no satisfactory evidence to convict the appellants under ss. 143/402, Indian Penal Code. As regards the charge under s. 186, Indian Penal Code, the High Court expressed the view that the prosecution was barred under the provisions of s. 195, Criminal Procedure Code.

In support of this appeal Mr. Garg submitted, in the first place, that the High Court had no justification for interfering with the order of acquittal passed by the Additional Sessions Judge and that it has not applied the correct principle in a matter of this description. Learned Counsel took us through the judgments of the High Court and of the trial court and stressed the argument that there was no evidence upon which the High Court reached the finding that the appellants used criminal force against P.Ws 1 and 2. We are unable to accept the argument of Mr. Garg as correct. The High Court has mainly relied upon the evidence of P.Ws 1, 2 and 3 and P.Ws 9 to 13 for holding that the appellants used criminal force against P.Ws 1 and 2. The High Court has also observed that P.W. 2 was entrusted with the execution of the writ of attachment. He was also entrusted with the official cheque book (Ex. 5) to give the receipt in token of payment of the decretal dues. In the course of his official business P.W. 2 was carrying the money realised from the judgment-debtors for necessary deposit in Court. So far as P.W. 1 was concerned, he was deputed to render assistance to P.W. 2 in executing the writ of attachment. It is manifest that both P.Ws. 1 and 2 were assaulted by the appellants when they

A were discharging their duties as public servants. The High Court has also accepted the evidence of P.W. 1 that Durga Charan caught hold of his hands and demanded money on the threat of assault. P.W. 2, the process server stated that Bipra Charan and Jugal caught hold of his hands and Durga Charan told him that he would not let anybody go unless the money was returned. P.W. 2 added B that Bipra and Jugal also snatched away his bag. The High Court analysed the evidence of P.Ws 9 to 13 and reached the conclusion that the appellants used criminal force against P.Ws 1 and 2 in the course of the performance of their duties. The High Court has also dealt with the reasoning of the trial court and has pointed out that the order of acquittal of the appellants with regard to s. 353, Indian Penal Code was not justified. In *Sanwat Singh &* C *Others* v. *State of Rajasthan*(1) it was pointed out by this Court that an appellate court has full power to review the evidence upon which the order of acquittal is founded and that the principles laid down by the Judicial Committee in *Sheo Swarup's* case (2) afford a correct guide for the appellate court's approach to a case disposing of such an appeal. It was further observed that different phraseology D used in the judgments of this Court, such as "substantial and compelling reasons", "good and sufficiently cogent reasons" and "strong reasons" are not intended to curtail the undoubted power of an appellate Court in an appeal against acquittal to review the entire evidence and to come to its own conclusion, but in doing so should not only consider every matter on record having a bearing E on the questions of fact and the reasons given by the Court below in support of its order of acquittal in arriving at a conclusion on those facts, but should express the reasons in its judgment, which led it to hold that the acquittal was not justified. The same opinion has been expressed by this Court in a later decision in *M. G. Agarwal* and *M. K. Kulkarni v. State of Maharashtra* (3). It was pointed out in that case that there is no doubt that the power conferred by F cl. (a) of s. 423(1) which deals with an appeal against an order of acquittal is as wide as the power conferred by cl. (b) which deals with an appeal against an order of conviction, and so, it is obvious that the High Court's powers in dealing with criminal appeals are equally wide whether the appeal in question is one against acquittal or against conviction. It was observed that the test suggested by the G expression "substantial and compelling reasons" for reversing a judgment of acquittal, should not be construed as a formula which has to be rigidly applied in every case, and so, it is not necessary that before reversing a judgment of acquittal, the High Court must necessarily characterise the findings recorded therein as perverse. Tested in the light of these principles laid down by these authorities, we are satisfied that the High Court was justified, in the H present case, in interfering with the order of acquittal passed by

(1) [1961] 3 S.C.R. 120. (2) 61 I.A. 398.

(3) A.I.R. 1963 S.C. 200.

the Additional Sessions Judge with regard to the charge under s. 353, Indian Penal Code and the judgment of the High Court is not vitiated by any error of law. We accordingly hold that Mr. Garg is unable to make good his argument on this aspect of the case. A

We pass on to consider the next contention of the appellants that the conviction of the appellants under s. 353, Indian Penal Code is illegal because there is a contravention of s. 195(1) of the Criminal Procedure Code which requires a complaint in writing by the process server or the A.S.I. It was submitted that the charge under s. 353, Indian Penal Code is based upon the same facts as the charge under s. 186, Indian Penal Code and no cognizance could be taken of the offence under s. 186, Indian Penal Code unless there was a complaint in writing as required by s. 195(1) of the Criminal Procedure Code. It was argued that the conviction under s. 353, Indian Penal Code is tantamount, in the circumstances of this case, to a circumvention of the requirement of s. 195(1) of the Criminal Procedure Code and the conviction of the appellants under s. 353, Indian Penal Code by the High Court was, therefore, vitiated in law. We are unable to accept this argument as correct. It is true that most of the allegations in this case upon which the charge under s. 353, Indian Penal Code is based are the same as those constituting the charge under s. 186, Indian Penal Code but it cannot be ignored that ss. 186 and 353, Indian Penal Code relate to two distinct offences and while the offence under the latter section is a cognizable offence, the one under the former section is not so. The ingredients of the two offences are also distinct. Section 186, Indian Penal Code is applicable to a case where the accused voluntarily obstructs a public servant in the discharge of his public functions but under s. 353, Indian Penal Code the ingredient of assault or use of criminal force while the public servant is doing his duty as such is necessary. The quality of the two offences is also different. Section 186 occurs in Ch. X of the Indian Penal Code dealing with Contempts of the lawful authority of public servants, while s. 353 occurs in Ch. XVI regarding the offences affecting the human body. It is well-established that s. 195 of the Criminal Procedure Code does not bar the trial of an accused person for a distinct offence disclosed by the same set of facts but which is not within the ambit of that section. In *Satis Chandra Chakravarti* v. *Ram Dayal De*(1) it was held by Full Bench of the Calcutta High Court that where the maker of a single statement is guilty of two distinct offences, one under s. 211, Indian Penal Code, which is an offence against public justice, and the other an offence under s. 499, wherein the personal element largely predominates, the offence under the latter section can be taken cognizance of without the sanction of the court concerned, as the Criminal Procedure Code has not provided for sanction of court B C D E F G H

(1) 24 C.W.N. 982.

A for taking cognizance of that offence. It was said that the two offences being fundamentally distinct in nature, could be separately taken cognizance of. That they are distinct in character is patent from the fact that the former is made non-compoundable, while the latter remains compoundable; in one for the initiation of the proceedings the legislature requires the sanction of the court under B s. 195, Criminal Procedure Code, while in the other, cognizance can be taken of the offence on the complaint of the person defamed. It is pointed out in the Full Bench case that where upon the facts the commission of several offences is disclosed some of which require sanction and others do not, it is open to the complainant to proceed in respect of those only which do not require sanction; because C to hold otherwise would amount to legislating and adding very materially to the provisions of ss. 195 to 199 of the Code of Criminal Procedure. The decision of the Calcutta case has been quoted with approval by this Court in *Basir-ul-Huq and Others* v. *The State of West Bengal* (1) in which it was held that if the allegations made in a false report disclose two distinct offences, one against a public servant and the other against a private individual, the latter is not D debarred by the provisions of s. 195, Criminal Procedure Code, from seeking redress for the offence committed against him.

In the present case, therefore, we are of the opinion that s. 195, Criminal Procedure Code does not bar the trial of the appellants for the distinct offence under s. 353 of the Indian Penal E Code, though it is practically based on the same facts as for the prosecution under s. 186, Indian Penal Code.

Reference may be made, in this connection, to the decision of the Federal Court in *Hori Ram Singh* v. *The Crown* (2). The appellant in that case was charged with offences under ss. 409 and 477-A, Indian Penal Code. The offence under s. 477-A could F not be taken cognizance of without the previous consent of the Governor under s. 270(1) of the Constitution Act, while the consent of the Governor was not required for the institution of the proceedings under s. 409, Inidan Penal Code. The charge was that the accused dishonestly misappropriated or converted to his own use certain medicines entrusted to him in his official capacity as G a sub-assistant surgeon in the Punjab Provincial Subordinate Medical Service. He was further charged that being a public servant, he wilfully and with intent to defraud omitted to record certain entries in a stock book of medicines belonging to the hospital where he was employed and in his possession. The proceedings under s. 477-A were quashed by the Federal Court for want of jurisdiction, the consent of the Governor not having been ob- H tained, but the case was sent back to the sessions judge for hearing on the merits as regards the charge under s. 409, Indian Penal

(1) [1953] S.C.R. 836. (2) [1939] F.C.R. 159.

Code, and the order of acquittal passed by the sessions judge under that charge was set aside. Two distinct offences having been committed in the same transaction, one an offence of misappropriation under s. 409 and the other an offence under s. 477-A which required the sanction of the Governor, the circumstance that cognizance could not be taken of the latter offence without such consent was not considered by the Federal Court as a bar to the trial of the appellant with respect to the offence under s. 409.

We have expressed the view that s. 195, Criminal Procedure Code does not bar the trial of an accused person for a distinct offence disclosed by the same or slightly different set of facts and which is not included within the ambit of the section, but we must point out that the provisions of s. 195 cannot be evaded by resorting to devices or camouflage. For instance, the provisions of the section cannot be evaded by the device of charging a person with an offence to which that section does not apply and then convicting him of an offence to which it does, on the ground that the latter offence is a minor one of the same character, or by describing the offence as one punishable under some other section of the Indian Penal Code, though in truth and substance the offence falls in the category of sections mentioned in s. 195, Criminal Procedure Code. Merely by changing the garb or label of an offence which is essentially an offence covered by the provisions of s. 195 prosecution for such an offence cannot be taken cognizance of by misdescribing it or by putting a wrong label on it. On behalf of the appellants Mr. Garg suggested that the prosecution of the appellants under s. 353, Indian Penal Code was by way of evasion of the requirements of s. 195, Criminal Procedure Code. But we are satisfied that there is no substance in this argument and there is no camouflage or evasion in the present case.

For these reasons we hold that the judgment of the High Court dated March 2, 1964 must be affirmed and this appeal must be dismissed.

Appeal dismissed.