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AJAIB SINGH

v.

JOGINDER SINGH

April 30, 1968

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[S. M. SIKRI AND V. RAMASWAMI, JJ.]

Code of Criminal Procedure (5 of 1898) ss. 195 (1)(b) 479 A(6) and 559—Complaint under ss. 193, 195, 211 and 120B IPC—Filed by successor-in-office of Magistrate—Validity—s. 559, scope of.

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Indian Penal Code (45 of 1860) ss. 193, 195, 211 and 120B—Complaint—Filed by successor-in-office of Magistrate—Validity.

D

Police Act (5 of 1861) s. 42—Applicability.
A magistrate acquitted Bhagwant Rai of the charge under ss. 325/34 I.P.C. and observed that he had been falsely implicated. The magistrate's successor-in-office the respondent filed a complaint under ss. 193, 195, 211 and 120B I.P.C., against the appellants. The appellants contended that (i) prosecution for offences under ss. 193 and 195 I.P.C., was barred under s. 479A(6) Cr. P.C.; (ii) according to s. 195(1)(b) Cr. P.C., only the Magistrate before whom the original proceedings were taken could file the complaint in respect of ss. 193, 195 and 211 IPC; (iii) s. 42 of the Police Act barred the prosecution as it was commenced after the period prescribed; and (iv) the complaint only disclosed two offences under ss. 193 and 195 I.P.C. and no other.

HELD : The appeal must be dismissed.

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(i) In view of the ruling of this Court in *Shabir Husain Bholu v. State of Maharashtra and Baban Singh v. Jagdish Singh*, the prosecution for offences under ss. 193 and 195 IPC was barred under s. 479A(6) Cr. P.C. [148 B]

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(ii) The complaint was properly filed by the successor-in-office of the Magistrate. Section 559 Cr. P.C. enables a successor-in-office of a Magistrate to file a complaint. This section applies to all Magistrates, and there is no reason to limit it to Magistrates whose courts are permanent. Sub-s. (2) has not the effect of limiting s. 559(1). Section 559(2) applies when there is a doubt as to who the successor is, and that doubt can be resolved in the manner laid down in sub-s.(2). The sub-section does not mean that until a successor is determined under sub-s. (2) there is no successor for the purpose of sub-s. (1). [148 F—H: 149 A]

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Behram v. Emperor, 37 Cr. L.J. 776—Lah. 108; *Bara Bapen Manihî v. Gopi Manjhi*, A.I.R. 1927 Pat. 327. (*In re: Subramanian Chettiar*, A.I.R. 1957 Mad. 442, followed.)

(iii) Section 42 of the police Act does not apply to prosecutions under the Indian Penal Code or other Acts. [149 C]

Mulad Ahmad v. State of U.P., [1963] Supp. 2 S.C.R. 38, 44-45 followed.

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(iv) As the complaint on the face of it mentioned ss. 193, 195, 211 and 120B, so there was no force in the contention that the complaint only disclosed two offences under ss. 193 and 195 I.P.C. and no other [149 F]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 157 of 1965.

Appeal by special leave from the judgment and order dated February 1, 1965 of the Punjab High Court in Criminal Misc. No. 8 of 1964 in Cr. Revision No. 1375 of 1963.

Nishat Singh Grewal, Ravindra Bana and O. P. Rana, for the appellants.

R. N. Sachthey, for the respondent No. 2.

The Judgment of the Court was delivered by

Sikri, J. This appeal by special leave is directed against the judgment of the High Court of Punjab dismissing Criminal Miscellaneous Petition No. 8 of 1964. This petition arose out of the following facts. Bhagwant Rai and Chhota Ram were tried under s. 325, I.P.C., read with s. 34, I.P.C., in the Court of Shri Harish Chander Gaur, Magistrate 1st Class, Patiala. Ajaib Singh, Sub Inspector, one of the appellants before us, had investigated the case. The Magistrate, by his order dated April 5, 1957, acquitted both the accused and, *inter alia*, observed that Bhagwant Rai had been falsely implicated in the case as he was not even present on the day of the occurrence at Patiala. On the application of Bhagwant Rai, Shri Joginder Singh 'Karamgarhia', Magistrate 1st Class, Patiala, who succeeded Shri Harish Chander Gaur, filed a complaint under ss. 193, 195, 211 and 120B, I.P.C., on October 31, 1958, against six persons including the appellants, Ajaib Singh and Malkiat Singh. Shri O. P. Gaur, Magistrate First Class, by his order dated June 1, 1959, discharged the accused, holding that the complaint was not competent as it was barred by sub-s. (6) of s. 479A, Cr. P.C., because the complaint had not been filed by or directed to be filed by Shri Harish Chander Gaur, who had disposed of the case ending in the acquittal of Bhagwant Rai. In the revision filed against this order the Additional Sessions Judge upheld this view. The High Court (Capoor, J.), on revision, found it unnecessary to consider the scope of s. 479A, Cr. P.C., *vis-a-vis* s. 476, Cr. P.C., because two of the offences mentioned in the complaint, namely, s. 211 and s. 120B, I.P.C., did not fall within the purview of s. 479A. Capoor, J., further held that s. 42 of the Police Act, 1861, had no application to a case in which a complaint was made by the Court under s. 476, Cr. P.C. Capoor, J., also held that as the order of Shri Joginder Singh, Magistrate, directing the making of the complaint against the respondents was not appealed from and had become final, the competency of the Court to make the complaint under s. 211, I.P.C., against Jaswant Singh, one of the accused, could not be considered at that stage. The High

A Court accordingly set aside the order of the learned Additional Sessions Judge and directed that the respondents be proceeded against according to law.

B On the case going back fresh objections were filed before the Magistrate trying the case but these were overruled. Revision was filed before the Additional Sessions Judge who accepted the prayer of Kirpal Singh and recommended to the High Court that the criminal proceedings pending against him in the Court of Magistrate First Class, Patiala, might be quashed. He, however, declined to interfere with the proceedings pending against the appellants mainly on the ground that the objections now taken by them before the Trial Magistrate had been heard and finally disposed of by Kapoor, J., in his order dated April 4, 1961.

C In the meantime, the appellants put in Criminal Miscellaneous Petition No. 8 of 1964, in criminal revision, in the High Court, praying that along with the recommendation made by the learned Additional Sessions Judge, Patiala, for quashing the criminal proceedings against Kirpal Singh, the grounds urged by them might also be taken into consideration. Kapoor, J., accepted the recommendation made by the learned Additional Sessions Judge, Patiala, and quashed the criminal proceedings against Kirpal Singh. He, however, directed that Criminal Miscellaneous Petition No. 8 of 1964 should be placed before another Bench for disposal. The matter was then placed before Sharma, J., who held that all the points urged in Criminal Miscellaneous Petition had been taken into consideration and repelled by Kapoor, J., in his order dated April 4, 1961. Sharma, J., observed :

F “The learned counsel, however, omitted to take note of the fact that the revision petition finally was accepted in the terms, ‘As the order under revision is not legally sustainable, it must be set aside and the respondents must be proceeded with according to law.’ Therefore, what the order (said) was that the criminal case as a whole was to proceed against all the respondents and so the petitioners could not be heard now to say that the case was remanded to the trial court for trial of the respondents for offences punishable under sections 211 and 120-B of the Indian Penal Code. In the circumstances, the trial Court cannot be said to have misconstrued the order of Kapoor, J., The other grounds urged by them in the Criminal Miscellaneous as already pointed out by me were taken into consideration by Kapoor, J., and findings given against the petitioners and that being so, these cannot be agitated again at this stage.”

He accordingly dismissed the Criminal Miscellaneous Petition. The appellants having obtained special leave, the appeal is now before us.

The learned counsel for the appellants contends that on the facts prosecution for offences under ss. 193 and 195, I.P.C., was barred under s. 479A(6), Cr. P.C. In our opinion, this contention must be accepted in view of the ruling of this Court in *Shabir Hussain Bholu v. State of Maharashtra*⁽¹⁾ and *Baban Singh v. Jagdish Singh*⁽²⁾.

The learned counsel next contends that the complaint could only be filed by the Magistrate before whom the original proceedings were taken. He says that according to s. 195(1)(b), Cr. P.C., a complaint in respect of ss. 193, 195 and 211 I.P.C., can only be made by the Court in which the proceedings out of which the offences arose took place. We see no force in this contention. Section 559 enables a successor-in-office of a Magistrate to file a complaint. The relevant portion of s. 559 reads as follows :

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“559. (1) Subject to the other provisions of this Code, the powers and duties of a Judge or Magistrate may be exercised or performed by his successor in office.

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(2) When there is any doubt as to who is the successor in office of any Magistrate, the Chief Presidency Magistrate in a Presidency town, and the District Magistrate outside such towns, shall determine by order in writing the Magistrate who shall, for the purposes of this Code or of any proceedings or order thereunder, be deemed to be the successor in office of such Magistrate.”

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This section was substituted for the original s. 559 by the Code of Criminal Procedure (Amendment) Act (XVIII of 1923). Since the amendment it has been held, and we think rightly, that a successor in office of a Magistrate can file a complaint under s. 476, Cr. P.C., in respect of an offence under s. 195, I.P.C., committed before his predecessor. (See *Behram v. Emperor*⁽³⁾ *Bara Bapen Manji v. Gopi Manji*⁽⁴⁾ and *In re : Subramaniam Chettiar*⁽⁵⁾). This section applies to all Magistrates and there is no reason why the plain terms of the section should be cut down to limit it, as suggested by the learned counsel for the appellant, to Magistrates whose courts are permanent. It seems to us further clear that sub-s.(2) has not the effect of limiting s. 559(1). Section 559(2) applies when there is a doubt as

(1) [1963] Supp. 1 S.C.R. 501.

(2) A.I.R. 1967 S.C. 68.

(3) 27 Cr. L. J. 776-Lah. 108.

(4) A.I.R. 1927 Pat. 327.

(5) A.I.R. 1957 Mad. 442.

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- A to who the successor is, and that doubt can be resolved in the manner laid down in sub-s. (2). The sub-section does not mean, as contended by the learned counsel, that until a successor is determined under sub-s. (2) there is no successor for the purposes of sub-s. (1). If there is no doubt about who the successor is, then that person can exercise the powers under sub-s. (1). We
- B accordingly hold that the complaint was properly filed by Shri Joginder Singh 'Karamgarhia', Magistrate.

There is equally no force in the third point raised by the learned counsel that s. 42, Police Act, creates a bar and the prosecution is time-barred under this section. This Court held in *Mulud Ahmed v. State of U.P.*⁽¹⁾ that s. 42, Police Act, does not apply to prosecutions under the Indian Penal Code or other Acts. Subba Rao, J., as he then was, observed :

- C "The period of three months prescribed for commencing a prosecution under this section is only with respect to prosecution of a person for something done or intended to be done by him under the provisions of the Police Act or under general Police powers given by the Act. Section 42 does not apply to prosecution against any person for anything done under the provisions of any other Act. . . . A combined reading of these provisions leads to the conclusion that s. 42 only applies to a prosecution against a person for an offence committed under the Police Act. . . . but the prosecution in the present case was for an offence under s. 212 of the Indian Penal Code which is an offence under a different act and for which a much higher punishment is prescribed. By reason of s. 36 of the Police Act, section 42 thereof cannot apply to such a prosecution."
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- F The fourth point which the learned counsel urges is that the complaint only discloses two offences under s. 193 and s. 195, I.P.C., and no other, and it was an abuse of the process of the Court. There is no force in this contention as the complaint on its face mentions ss. 193, 195, 211 and 120B.
- G The learned counsel finally urges that the complaint had been filed because of a private feud and it is not in the interest of justice that the complainant should be allowed to proceed with the complaint. This point was not taken in the High Court at any stage and we do not allow it to be raised at this stage.

In the result the appeal fails and is dismissed.

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Y.P.

Appeal dismissed.

(1) [1963] Supp. 2 S.C.R. 38, 44-45.