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Santokh Singh v. Izhar Hussain And Another

Supreme Court Of India (25 Apr, 1973)

CASE NO.
(Allahabad High Court, Lucknow Bench),Criminal Appeal No. 35 of 1970, decided on April 25, 1973.

ADVOCATES

JUDGES

K.K Mathew

I.D Dua, JJ.

Important Paras

1. 11. The High Court also seems to have committed serious error in ignoring that in the appellant's statement he had clearly stated that he had not seen amongst the assailants the accused Izhar Hussain present in the court. In face of this statement, there was no question of the appellant having made any accusation against Izhar Hussain in his deposition. In any event, considering the entire statement of the appellant it is not understood how it can be considered expedient in the interest of justice to direct the appellant's prosecution. Every incorrect or false statement does not make it incumbent on the court to order prosecution. The Court has to exercise judicial discretion in the light of all the relevant circumstances when it determines the question of expediency. The court orders prosecution in the larger interest of the administration of justice and not to gratify feelings of personal revenge or vindictiveness or to serve the ends of a private party. Too frequent prosecutions for such offences tend to defeat its very

object. It is only in glaring cases of deliberate falsehood where conviction is highly likely that the court should direct prosecution. The High Court seems to have misunderstood the appellant's evidence and has also failed to apply its mind to the question of expediency. Reference by the High Court to identification parade is also somewhat inappropriate. Identification at test parades could by no stretch be considered to amount to a false charge against Izhar Hussain as contemplated by Section 211 IPC. Such identification is not substantive evidence and it can only be used as corroborative of the statement in court. The identification parade thus could not improve the prosecution case.

2. 13. As a result of the foregoing discussion, we have no hesitation in allowing this appeal and setting aside the order of the High Court.

Summary

1. The proceedings under Section 476 CrPC were held incompetent.

2. The Court below was correct in dismissing the application made by the appellant as misconceived."

3. The appeal of Izhar Hussain was dismissed.

4. Pit and thereafter in the identification parade in the jail, he had made a false charge against Izhar Hussain and was liable to be prosecuted for an offence under Section 211 IPC.

5. The bar resulting from non-compliance with that section would be ineffective so far as prosecution for other offences is concerned.

6. According to the proviso, where appeals lie to more than one court, the appellate court of inferior jurisdiction shall be the court to which such Court shall be deemed to be subordinate.

7. The short question posed is, if by giving false evidence as a witness against Izhar Hussain the appellant can be said to have charged him within the contemplation of Section 211 IPC.

8. The false charge must be made initially to a person in authority or to someone who is in a position to get the offender punished by appropriate proceedings.

9. The High Court was in error in thinking that in the present case the appellant's statement as a witness

in the trial court, could be construed as a charge against Izhar Hussain.

10. The High Court seems to have misunderstood the appellant's evidence and has also failed to apply its mind to the question of expediency.

11. It was either the court which tried the original offences or a court to which the trial court was subordinate, that could make such an order.

12. Two courts below having in their judicial discretion declined to direct the prosecution of the appellant, on revision the High Court was, in our view, not at all justified in itself directing the filing of the complaint.

JUDGMENT

I.D Dua, J. In this appeal by special leave, the appellant challenges the order of a learned Single Judge of the Lucknow Bench of the Allahabad High Court, dated May 22, 1969, allowing the revision of Izhar Hussain and after setting aside the order of the Sessions Judge, Barabanki, dated March 15, 1967 as also that of the Additional District Magistrate (Judicial), Barabanki, dated January 11, 1967, directing the Deputy Registrar of the High Court to file a complaint under Section 211 IPC against the appellant for falsely charging Izhar Hussain with offences under Sections 323 and 325, read with Section 149 and under Section 147 IPC in the Court of the Additional District Magistrate (Judicial), Barabanki.

2. It appears that pursuant to the first information report (Ext. Ka-9) lodged by Kartar Singh s/o Shri Lachman Singh at police station Kotwali Sub-District Nawabganj, District Barabanki on February 7, 1966, Izhar Hussain respondent and some others were tried in the Court of the Additional District Magistrate (Judicial), Barabanki for offences under Sections 147, 323/149 and 325/149 IPC. Several witnesses were examined in support of the prosecution case. Santokh Singh appellant appeared as PW 4. In this examination in chief, so far as relevant for our purpose, he had deposed on September 3, 1966 as follows:

I had gone to the jail for identifying the accused persons. By putting his hand on Mohd. Zahir, Usman, Shahanshah, Puttan and Izhar Hussain the witness stated, I had seen them in the Mar Pit and thereafter in the identification parade in the jail.

In cross-examination, he had stated, inter alia:

I did not see among the assailants the accused Izhar Hussain present in Court. I did not happen to see this boy in that night. The men of the Octroi post said to me that Anwar's son Izhar was also present among the assailants. I identified this boy in the jail at the instance of the people of the Octroi post.

3. The Additional District Magistrate trying the case acquitted all the accused of the offences charged on November 30, 1966. In the course of his judgment, the learned Magistrate observed, inter alia:

> One of the accused Izhar Hussain is a boy aged about 13 years. It has been stated by Kartar Singh and Santok Singh that actually they had not seen him at the place of occurrence. Still Santok Singh identified him before Shri A.P Singh, Magistrate. He explains that this he did because the Octroi personnel told him so. Obviously on their mere telling it could not have been possible to identify this boy.
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> Earlier the learned Magistrate had observed that Kartar Singh and Santok Singh were obviously the victims of the assault. It is noteworthy that the Additional District Magistrate while acquitting the accused persons did not hold that Santok Singh had falsely charged Izhar Hussain or any other accused persons, nor did the learned Magistrate consider it to be expedient in the interest of justice to prosecute Santok Singh for an offence under Section 211 IPC.

4. In January 1967 Izhar Hussain presented an application in the Court of the Additional District Magistrate (Judicial), Barabanki under Sections 476/ 479-A CrPC (in the application as printed in the paper book apparently these sections have wrongly been described to be of IPC) praying that Kartar Singh, Santok Singh and R.D Chowdhry, S.I, police station Kotwali, be prosecuted for the offence under Sections 211/193 IPC because Shri R.D Chowdhary in collusion with Shri Kartar Singh had submitted a wrong charge-sheet whereas Kartar Singh had lodged a false report at the instance of one Karnail Singh and also that these three persons had intentionally given false evidence during the petitioner's trial and had also intentionally fabricated false evidence for the purpose of being used as evidence in the case.

5. The Additional District Magistrate observed that after considering the evidence in the main case he had disbelieved the witnesses for the prosecution and had held Izhar Hussain's prosecution to be false but in spite of this conclusion he had not directed any proceedings to be taken under Section 479-A CrPC nor had he ordered criminal prosecution of the three aforementioned witnesses. The proceedings under Section 476 CrPC were accordingly held incompetent. This view was taken on the basis of the decision of this Court in Kuppa Goundan v. M.S.P Rajesh AIR 1966 SC 1863 and two other decisions of the Madras

High Court. In his order, however, the learned Magistrate also made a reference to Shabir Hussain Bholu v. State Of Maharashtra AIR 1963 SC 316. Izhar Hussain's application was considered by the Magistrate to be misconceived in view of the decision in Shabir Hussain case and rejected.

6. Izhar Hussain took the matter on appeal to the Court of the Sessions Judge but with no better fate. The Sessions Judge also referred to the aforesaid two decisions of this Court and observed as follows:

> Applying the said principle of law as laid down by Their Lordships, it is obvious that the entire material was before the Court below and in spite of the fact that it arrived at the finding that the witness had perjured, it did not decide to proceed under Section 479-A, Code of Criminal Procedure. In these circumstances, it was not open to the Court below to have proceeded for perjury under Section 479-A of the Code of Criminal Procedure, as prayed by the learned counsel appearing on behalf of the appellant, because upon the facts of the present case, out of which this appeal has arisen, the bar of clause (6) of section 479-a clearly came into play. Thus, the Court below was correct in dismissing the application made by the appellant as misconceived.
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> The appeal of Izhar Hussain was accordingly dismissed.

7. Izhar Hussain thereupon took the matter to the Lucknow Bench of the Allahabad High Court on revisions under Sections 435/439 Cr PC. The learned Single Judge observed that even accepting the view of the courts below that no complaint under Section 193 IPC could be filed because of the technical defect, the applicant's prayer for filing a complaint under Section 211 IPC should have been considered. It was then observed that Izhar Hussain a boy of 13 years had been falsely prosecuted in the case and that his participation in the crime was highly improbable, if not impossible. He further observed that Kartar Singh had not named Izhar Hussain as one of the assailants in the FIR lodged by him, nor did Kartar Singh identify Izhar Hussain as a culprit in the test identification parade or in the trial court. Santokh Singh appellant, however, did identify Izhar Hussain as one of the participants in the crime in the test identification parade and also picked him up in the trial court stating that he had also taken part in the crime. In the cross-examination, as the High Court itself noticed, Santokh Singh expressly admitted that he had not seen Izhar Hussain amongst the assailants and indeed he had not seen Izhar Hussain that night. On this material, the High Court felt that it had been established beyond doubt that Izhar Hussain had been implicated falsely. On this premise, the High Court recorded its opinion that it was a fit case in which the complaint under Section 211 IPC should be filed against the persons responsible for Izhar

Hussain's false prosecution. After so observing, the High Court felt that since Kartar Singh had frankly stated that he had not seen Izhar Hussain at the spot on the night in question at all, there was no cogent ground for prosecuting him. The cases of Santokh Singh appellant and of R.D Chowdhary were considered to be different. Izhar Hussain's father who carried on transport business through trucks and lorries had, according to the High Court, trade rivalry with Santok Singh and his master. There was thus a foul attempt to wreak vengeance against Izhar Hussain's father by falsely implicating the minor boy and for this revision it was directed that the complaint under Section 211 IPC be filed against the appellant for falsely charging Izhar Hussain for the offences already mentioned.

8. In this Court, Shri Gupta has very forcefully contended that on the material on the record this direction is wholly unjustified, if not positively illegal, being based on misreading of evidence and on erroneous view of law. According to the submission, the appellant had neither lodged the FIR nor otherwise instituted any criminal proceeding or falsely charged Izhar Hussain within the contemplation of Section 211 IPC. Besides, there is absolutely no material on the record on which the High Court could have formed an opinion that it is expedient in the interest of justice that a complaint under Section 211 IPC should be filed against the appellant.

9. Shri Kohli on behalf of the respondents has tried to support the order of the High Court and has submitted that, as observed by Madholkar, J., in Haridas v. State of West Bengal AIR 1964 SC 1773 the words or falsely charges in Section 211 IPC are not restricted by the words institutes or causes to be instituted any criminal proceeding. The Legislature according to the submission has provided in this section for two kinds of acts: (i) the institution of proceeding and (ii) making a false charge. This section in the words of Madholkar, J., added Shri Kohli, is not limited to the institution of a complaint upon a false charge as such an interpretation would completely shut out criminal proceedings in which no charge of an offence has been made. It is on this observation that the learned counsel has tried to build and develop the contention that when the appellant stated in the witness box as PW 4 that he had seen Mohd. Zahir, Usman, Shahanshah, Puttan and Izhar Hussain in the Mar Pit and thereafter in the identification parade in the jail, he had made a false charge against Izhar Hussain and was, therefore, liable to be prosecuted for an offence under Section 211 IPC. The counsel has in this connection expressly stated that he does not want to prosecute the appellant for any offence mentioned in Section 479-A CrPC. The bar resulting from non-compliance with that section would, therefore, be ineffective so far as prosecution for other offences

is concerned. In support of his case he has relied on Sections 195(1)(b) and 476 IPC. Section 195 so far as relevant reads:

Prosecution for contempt of lawful authority of public servants.(1) No court shall take cognizance

(a) * * *

(b) Prosecution for certain offences against public justice.Of any offence punishable under any of the following sections of the same Code, namely, Sections 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211 and 228, when such offence is alleged to have been committed in, or in relation to, any proceedings in any Court, except on the complaint in writing of such Court or of some other Court to which such Court is subordinate; or

(c) * * *

Sub-section (3) of this section lays down that for the purposes of this section, a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court. According to the proviso, where appeals lie to more than one court, the appellate court of inferior jurisdiction shall be the court to which such Court shall be deemed to be subordinate. Section 476 which provides for procedure in cases mentioned in Section 195 so far as relevant for our purpose lays down:

476. Procedure in cases mentioned in Section 195. (1) When any Civil, Revenue or criminal court is, whether on application made to it in this behalf or otherwise, of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in Section 195, sub-section (1), clause (b) or clause (c), which appears to have been committed in or in relation to a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary, record a finding to that effect and make a complaint thereof in writing signed by the presiding officer of the Court, and shall forward the same to a Magistrate of the first class having jurisdiction, and may take sufficient security for the appearance of the accused before sued Magistrate or if the alleged offence is non-bailable may, if it thinks necessary so to do, send the accused in custody to such Magistrate, and may bind over any person to appear and give evidence before such Magistrate:

Provided that, where the Court making the complaint is a High Court, the complaint may be signed by

such officer of the Court as the Court may appoint.

For the purposes of this sub-section, a Presidency Magistrate shall be deemed to be a Magistrate of the first class.

10. Now, in the present case, the Additional District Magistrate had on November 30, 1966, acquitted all the accused of the offences charged. He did not hold that the appellant had falsely charged Izhar Hussain with any offence, nor did he consider it expedient in the interest of justice to prosecute him for an offence under Section 211 IPC. As already noticed when in January, 1967, Izhar Husain applied to that court under Sections 476/479-A CrPG for the prosecution of the appellant and two others, the court felt that in view of the decision in Kuppa Goundan case the proceedings under Section 476 CrPC were incompetent. Section 479-A has not been relied upon by Shri Kohli and in our opinion rightly because on the admitted facts in this case that section has not been complied with. In Kuppa Goundan case it was observed that the scheme of Section 479-A CrPC is to enact a special procedure for more expeditious and defective manner of dealing with certain cases of perjury and fabrication of false evidence of witness in the course of judicial proceedings. But the necessary condition for applying this section is that the court must form an opinion that a particular witness or witnesses is or are giving false evidence and at the time of delivering its judgment record a finding to that effect. This was not done in this case. Now, by virtue of section 479-a(6) no proceeding can be taken against Santokh Singh under Sections 476 to 479 for giving false evidence. Shri Kohli's argument as already noticed, is that the appellant is not being prosecuted for giving false evidence as indeed that is not permissible now, but only for falsely charging Izhar Hussain in his evidence in court. The short question posed, therefore, is, if by giving false evidence as a witness against Izhar Hussain the appellant can be said to have charged him within the contemplation of Section 211 IPC. If this question is answered in the affirmative, then it will have to be determined whether there is in fact a false accusation and finally whether it is expedient in the interest of justice on the facts and circumstances of the present case to direct a complaint to be filed under Section 211 IPC. This section as its marginal note indicates renders punishable false charge of offence with intent to injure. The essential ingredient of an offence under Section 211 IPC is to institute or cause to be instituted any criminal proceeding against a person with intent to cause him injury or with similar intent to falsely charge any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge. Instituting or causing to institute false criminal proceedings assume false charge but false charge may be

preferred even when no criminal proceedings result. It is frankly conceded by Shri Kohli that the appellant cannot be said to have instituted any criminal proceeding against any person. So that part of Section 211 IPC is eliminated. Now, the expression falsely charges in this section, in our opinion, cannot mean giving false evidence as a prosecution witness against an accused person during the course of a criminal trial. To falsely charge must refer to the original or initial accusation putting or seeking to put in motion the machinery of criminal investigation and not when speaking to prove the false charge by making deposition in support of the charge framed in that trial. The words falsely charges have to be read along with the expression institution of criminal proceeding. Both these expressions, being susceptible of analogous meaning should be understood to have been used in their cognate sense. They get as it were their colour and content from each other. They seem to have been used in a technical sense as commonly understood in our criminal law. The false charge must, therefore, be made initially to a person in authority or to someone who is in a position to get the offender punished by appropriate proceedings. In other words, it must be embodied either in a complaint or in a report of a cognizable offence to the police officer or an officer having authority over the person against whom the allegations are made. The statement in order to constitute the charge should be made with the intention and object of setting criminal law in motion. Statement on oath falsely supporting the prosecution case against an accused person more appropriately amounts to an offence under Sections 193 and 195 IPC and not under Section 211 IPC. We do not think that the offences contemplated by Sections 193/195 IPC on the one hand and Section 211 IPC on the other were intended by the legislature in this context, to overlap so as to make it optional whether to proceed under one or the other. The High Court was, therefore, in error in thinking that in the present case the appellant's statement as a witness in the trial court, could be construed as a charge against Izhar Hussain. Once it is held that no offence under Section 211 IPC can be considered to have been committed, then no other question arises, for as conceded by Shri Kohli, Section 479-A would bar prosecution for giving false evidence.

11. The High Court also seems to have committed serious error in ignoring that in the appellant's statement he had clearly stated that he had not seen amongst the assailants the accused Izhar Hussain present in the court. In face of this statement, there was no question of the appellant having made any accusation against Izhar Hussain in his deposition. In any event, considering the entire statement of the appellant it is not understood how it can be considered expedient in the interest of justice to direct the appellant's prosecution. Every incorrect or false statement does not make it incumbent on the court to

order prosecution. The Court has to exercise judicial discretion in the light of all the relevant circumstances when it determines the question of expediency. The court orders prosecution in the larger interest of the administration of justice and not to gratify feelings of personal revenge or vindictiveness or to serve the ends of a private party. Too frequent prosecutions for such offences tend to defeat its very object. It is only in glaring cases of deliberate falsehood where conviction is highly likely that the court should direct prosecution. The High Court seems to have misunderstood the appellant's evidence and has also failed to apply its mind to the question of expediency. Reference by the High Court to identification parade is also somewhat inappropriate. Identification at test parades could by no stretch be considered to amount to a false charge against Izhar Hussain as contemplated by Section 211 IPC. Such identification is not substantive evidence and it can only be used as corroborative of the statement in court. The identification parade thus could not improve the prosecution case.

12. Besides, we entertain considerable doubt if the High Court had at all jurisdiction to make an order of complaint as it has done. It was either the court which tried the original offences or a court to which the trial court was subordinate, that could make such an order. The Court of the Additional District Magistrate would not seem to be subordinate to the High Court as provided by Section 195(3) CrPC Kuldip Singh v. State of Punjab AIR 1956 SC 391. Two courts below having in their judicial discretion declined to direct the prosecution of the appellant, on revision the High Court was, in our view, not at all justified in itself directing the filing of the complaint. At best, if it considered the orders of the two courts below tainted with a serious legal infirmity or manifest error resulting in grave miscarriage of justice, it could have, after quashing those orders, sent the case back to the trial court for reconsideration of the matter in accordance with law.

13. As a result of the foregoing discussion, we have no hesitation in allowing this appeal and setting aside the order of the High Court.