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STATE OF U.P.

v.

MATA BHIKH AND ORS.

MARCH 9, 1994

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[S. RATNAVEL PANDIAN AND P.B. SAWANT, JJ.]

Code of Criminal Procedure, 1973: Section 195(1)(a)—'Public Servant concerned'—Interpretation of—Successor in office—Position of—Whether could file a complaint for non-compliance of his predecessor's orders.

C

Words & Phrases: 'Public servant concerned'—Meaning of—In the context of S.195(1)(a) Cr.P.C.

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By an order u/s. 145 Cr.P.C. the Sub Divisional Magistrate restrained the respondents from interfering with the possession of one "R" in respect of a plot of land. The agent of "R" filed a petition complaining that the respondents had violated the said order and the Sub Divisional Magistrate preferred a petition u/s.188 IPC before the Judicial Magistrate. The respondents were found guilty and were convicted and sentenced to undergo three months' rigorous imprisonment, which was confirmed, on appeal, by the Additional Sessions Judge.

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Respondents preferred a Revision and the High Court allowed it and set aside the conviction and sentence mainly on the ground that the complaint had been filed not by 'the public servant concerned', namely, the Magistrate who passed that order under Section 145 of the Code, but by a successor Magistrate and that any successor Magistrate cannot exercise jurisdiction under Section 195(1)(a) and that the complaint, therefore, was not maintainable in law.

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The State preferred the present appeal against the High Court's judgment.

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Allowing the appeal, this Court

HELD: 1.1. A successor in office of a public servant concerned will also fall within the ambit of the expression 'public servant concerned' appearing in S.195(1)(a) of the Code of Criminal Procedure 1973. Any other view contrary to it will only create difficulties in certain situations.

In a case where a public servant concerned promulgates a preliminary order under Sections 133, 145 or 146 of the Code of Criminal Procedure and is transferred or retires or ceases to be in office on any account before a final order is passed, would it mean that the successor who is, under the law to continue the same proceeding, has no right to file a complaint if the preliminary order is disobeyed. In every such situation, one cannot expect the superior officer to whom the public servant is administratively subordinate to file a complaint against the wrongdoers disobeying either the preliminary order or the final order promulgated by the public servant concerned. [373-G-H, 374-A]

1.2. The successor-in-office of the public servant gets into the same position of the public servant concerned and he is in law eligible to file a complaint against wrongdoers. [374-B-C]

*Ajaib Singh v. Joginder Singh*, AIR (1968) SC 1422, relied on.

*Government Advocate, Bihar v. Kumar Singh*, AIR (1938) Pat 83 and *Manik Lal Bhagat v. State and Another*, (1982) CrI.L.J. 1473, approved.

*Mata Bhikh and Others v. State*, (1980) CrI.L.J. 575, overruled.

*In re. Subramanian Chettier* AIR (1957) Mad. 442; *Public Prosecutor v. Mohamed Ali*, AIR (1969) AP 41; *Daulat Ram v. State of Punjab*, [1962] Supp. 2 SCR 812 and *P.D. Patel v. Emperor*, AIR (1933) Rangoon 292, referred to.

2. However, in the instant case, since the proceedings commenced in the year 1968 and the judgment in revision by the High Court was rendered in August 1979, the respondents were admonished under Section 3 of the Probation of Offenders Act instead of directing them to undergo the sentence passed by the Courts below. [374-D]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 202 of 1981.

From the Judgment and Order dated 3.8.79 of the Allahabad High Court in CrI. Rev. 614/77.

Ms. Kamini Jaiswal for A.S. Pundir for the appellant.

A R.D. Upadhyay (NP) for the respondents.

The Judgment of the Court was delivered by

B S. RATNAVEL PANDIAN, J. The short point involved for determination in this appeal is with regard to the interpretation of the expression '*the public servant concerned*' appearing in Section 195(1)(a) of the Code of Criminal Procedure (hereinafter referred to as '*the Code*'). The brief facts of the case which led to this controversy are as follows:-

C It is the admitted case that on 11.4.1968 a proceeding was initiated before the Sub Divisional Magistrate of Gyanpur under Section 145 of the Code in respect of a dispute over Plot No.338 situated in village Balapur Rohi and it ended in favour of Smt. Ram Piari on whose behalf one Doodnath represented the matter as her agent. By an Order dated 11.4.1968 one Ram Lakhan and his party, who were the respondents in the proceeding were restrained from interfering with the possession of Smt. D D Ram Piari. Ram Lakhan died without leaving any issue. There were six respondents besides Ram Lakhan of whom two were his brothers and the remaining his nephews. It appears that there was a civil litigation between the parties, but we are not concerned in the present appeal about that civil dispute. It is stated that the respondents with the full knowledge that an order under Section 145 had been promulgated by a public servant lawfully empowered disobeyed that direction and disturbed the possession of Smt. Ram Piari. Doodnath, who represented Smt. Ram Piari in the proceeding under Section 145 of the Code before the S.D.M., filed a petition on 10. 3. 1972 complaining that the respondents had violated his order, thereupon the Sub Divisional Magistrate preferred the petition under Section 188 F I.P.C. before the Court of the Judicial Magistrate (1st Class), Gyanpur (Varanasi) against the respondents which was registered as Criminal Case No. 94 of 1973. The trial court, both on the basis of the documentary and oral evidence, produced before it, found the respondents guilty of the offence punishable under Section 188 of the Indian Penal Code and convicted them thereunder and sentenced each of them to undergo three months rigorous imprisonment which conviction was confirmed on appeal G by the Court of Additional Sessions Judge, Gyanpur in Criminal Appeal No.21/1976 on its file.

H The respondents on being dissatisfied by the Judgment of the Appellate Court preferred Criminal Revision No.614/1977 before the High Court

of Allahabad which, for the reasons, assigned in the impugned judgment, allowed the Revision and set aside the conviction and sentence passed on the respondents mainly on the ground that the complaint in this case had been filed not by 'the public servant concerned', namely, the Magistrate who passed that order under Section 145 of the Code, but by a successor Magistrate and that any successor Magistrate cannot exercise jurisdiction under Section 195 (1)(a) and that the complaint, therefore, is not maintainable in law. A B

Being aggrieved by the Order of the High Court the State of U.P. has filed this criminal appeal challenging the correctness of the impugned Judgment in interpreting the expression "the public servant concerned". C

The relevant provisions of Section 195 1(a)(i) of the Code reads thus:—

"No Court shall take cognizance—

(a)(i) of any offence punishable under Sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or D

(ii) .....

(iii) ..... E

except on the complaint in writing of 'the public servant concerned' or of some other public servant to whom he is administratively subordinate."

The object of this Section is to protect persons from being vexatiously prosecuted upon inadequate materials or insufficient grounds by person actuated by malice or illwill or frivolity of disposition at the instance of private individuals for the offences specified therein. The provisions of this Section, no doubt, are mandatory and the Court has no jurisdiction to take cognizance of any of the offence mentioned therein unless there is a complaint in writing of 'the public servant concerned' as required by the Section without which the trial under Section 188 of the Indian Penal Code becomes void *ab initio*. See *Daulat Ram v. State of Punjab*, [1962] Supp. 2 SCR 812. To say in other words a written complaint by a public servant concerned is *sine qua non* to initiate a criminal proceeding under Section 188 of the IPC against those who, with the knowledge that an order has F G H

- A been promulgated by a public servant directing either 'to abstain from a certain act, of to take certain order, with certain property in his possession or under his management' disobey that order. Nonetheless, when the Court in its discretion is disinclined to prosecute the wrongdoers, no private complainant can be allowed to initiate any criminal proceeding in his individual capacity as it would be clear from the reading of the Section itself which is to the effect that no Court can take cognizance of any offence punishable under Sections 172 to 188 of the IPC except on the written complaint of 'the public servant concerned' or of some other public servant to whom he (the public servant who promulgated that order) is administratively subordinate.

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- D A cursory reading of Section 195 (1)(a) makes out that in case a public servant concerned who has promulgate an order which has not been obeyed or which has been disobeyed, does not prefer to give a complaint or refuses to give a complaint then it is open to the superior public servant to whom the officer who initially passed the order is administratively subordinate to prefer a complaint in respect of the disobedience of the order promulgated by his subordinate. The word 'subordinate' means administratively subordinate to some other public servant who is his official superior and under whose administrative control he works.

- E There is a cleavage of opinion among the High Courts as to the proper construction of the words 'public servant concerned' appearing in Section 195(1)(a) of the Code as to whether that expression includes the successor in office of the said public servant.

- F A Division Bench of the High Court of Rangoon in *P.D. Patel v. Emperor*, AIR (1933) Rangoon 292 has held that the 'public servant' concerned in Section 195(1) includes the successor in office also and that he is competent to make a complaint.

- G This Court in *Ajaib Singh v. Joginder Singh*, AIR (1968) SC 1422 while interpreting the provisions of Section 195(1)(b) of the old Code after making reference to the provisions of Section 559(1) of the old Code corresponding to Section 35 (1) of the new Code which reads, "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" held that "A successor in office of a Magistrate can file a complaint under
- H Section 476 of the Code in respect of an offence referred to in Section

195(1)(b) of the Code."

Reference may also be made in *In re. Subramaniam Chettiar* AIR 1957 Mad. 442 and *Public Prosecutor v. Mohammed Ali*, AIR (1969) AP 41.

A Division Bench of the Patna High Court in *Government Advocate, Bihar v. Kumar Singh*, AIR (1938) Pat 83 has held that making the complaint prescribed in Section 195 (1)(a) of the Code is a public duty and responsibility and must not be mistaken for a personal privilege and there is nothing against any successor in office of the public servant to whom information was given making the complaint under Section 182 IPC.

The Calcutta High Court in *Manik Lal Bhagat v. State and Another*, (1982) Crl. L.J. 1473 drawing strength on the dictum laid down in *Ajaib Singh* and after making reference to the *Kumar Singh* observed thus:

".....the expression 'public servant concerned' in S. 195(1)(a) of the Code includes the person holding the office of the public servant for the time being, the holder of which made the order for violation or disobedience whereof a complaint under S. 195(1)(a) is made, and also the successor in office of that public servant."

Contrary to the view in the above decisions, a Single Judge of the Allahabad High Court held in *Mata Bhikh and Others v. State*, (1980) Crl. L.J. 575 that the power to file a complaint must be exercised by the public servant concerned personally and in the event of his non-availability, his senior public servant to whom the public servant concerned may be subordinate has to exercise jurisdiction under Section 195(1)(a) and on the above observation, he concluded that a complaint filed by a successor Magistrate was not maintainable in law.

On a scrutiny of Section 195(1)(a), we are of the view that a successor in office of a public servant concerned will also fall within the ambit of the expression 'public servant concerned'. Any other view contrary to it will only create difficulties in certain situations. For example, in a case where a public servant concerned promulgates a preliminary order under Section 133, 145 or 146 of the Code of Criminal Procedure and is transferred or retires or ceases to be in office on any account before a final order is passed, would it mean that the successor who is under the law to continue

- A the same proceeding has no right to file a complaint if the preliminary order is disobeyed. The answer would be that the successor in office can file a complaint. In every such situation, one cannot expect the superior officer to whom the public servant is administratively subordinate to file a complaint against the wrongdoers disobeying either the preliminary order or the final order promulgated by the public servant concerned.
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- C Therefore, in the light of the dictum laid down in *Ajaib Singh*, we are of the view that the successor in office of the public servant gets into the same position of the public servant concerned and he is in law eligible to file a complaint against wrongdoers. To say in other words, the successor in office falls within the ambit of the expression 'public servant concerned'. The view taken by the High Court in the impugned judgment cannot be sustained and accordingly, the judgment of the High Court is set aside and the appeal is allowed.

- D However, coming to the question of sentence, after taking into consideration the fact that the proceedings commenced in the year 1968 and the judgment in revision by the High Court was rendered in August 1979, we admonish the respondents under Section 3 of the Probation of Offenders Act instead of directing them to undergo the sentence passed by the trial Court and as confirmed by the Lower Appellate Court.

The appeal is accordingly allowed,

G.N.

Appeal allowed.