

OMKAR NAMDEO JADHAO AND ORS.

v.

SECOND ADDITIONAL SESSIONS JUDGE BULDANA AND ANR.

JANUARY 4, 1996

[K. RAMASWAMY AND G.B. PATTANAİK, JJ.]

*Code of Criminal Procedure, 1973 :*

*S. 340—Issue of notice under—For prosecution under Ss. 194 and 195—Sessions Judge relying on 3.161 Cr. P.C. Statements which are not evidence—Also physical features of the old and infirm ladies taken into account in arriving at the finding—High Court also not properly considering the matter while going into the question regarding discharge of the accused for other offences—Held, issuance of notice under S. 340 Cr. P.C. unjustified—Hence quashed.*

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 36 of 1996.

From the Judgment and Order dated 10.3.92 of the Bombay High Court in CrI. A No. 20 of 1991.

A.K. Sanghi for the Appellants.

D.M. Nargolkar and S.M. Jadhav for the Respondents.

The following Order of the Court was delivered :

Leave granted.

In this case we are concerned with the notice issued by the Second Additional Sessions Judge, Buldana, on December 3, 1990 to the appellants for prosecution under Sections 194 and 195, I.P.C. for alleged fabrication of the record and setting up a case said to be false against two ladies, Jamman and Laxmi said to be aged about 60 and 80 years respectively. The Additional Sessions Judge had stated that they are infirm persons; unable to walk and stand without the support of others. Consequently, it would be difficult to believe the version of the police that they pelted stones and kicked the police officers while the latter were discharging the official duty in apprehending Latur Hasan. While setting aside the charges framed against them,

notice was issued under section 340, Cr. P.C. for prosecution of the appellants under sections 194 and 195, I.P.C.

It is seen that the observation made by the Session Judge, as confirmed by the Bombay High Court, Nagpur Bench in the impugned Judgment dated 10.3.1992 made in Criminal Application No. 20/91 is based on S.161 statements recorded during the investigation. Admittedly, no evidence has been recorded. The court should not come to the conclusion on the basis of S.161 statements which are not evidence. It can be used at the trial only for contradictions or omissions when the witness was examined. Nor it could be contradicted by looking at the physical features of the accused even before they are examined. The Additional Sessions Judge and discharged them concluding that the police officers had fabricated the record. It would appear that the learned Sessions Judge had overstepped his jurisdiction in recording a finding, while looking at the physical features of the accused, that the police had fabricated the record. The High Court has also not properly considered the matter while going into the question regarding discharge of the accused for other offences. Under these circumstances, we hold that in view of the finding recorded by the Sessions Judge of fabrication of the record and that the case is false one, issuance of notice under Section 340, Cr. P.C. is wholly unjustified. The said order of the Session Judge is accordingly quashed.

The appeal is accordingly allowed.

Appeal allowed.