

The State Vs. Basanta Kumar Singh and ors.

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Court : Guwahati

Decided On : Jul-15-1963

Judge : T.N.R. Tirumalpad, J.C.

Appellant : The State

Respondent : Basanta Kumar Singh and ors.

Judgement :

T.N.R. Tirumalpad, J.C.

1. This is an appeal against the acquittal of the respondents 1 to 4 by the Magistrate, 3rd Class, Dharmanagar in Criminal Case-No. 85 of 1960, of the offences Under Sections 33 and 42 of the Indian Forest Act, 1927.

2. The case against them was that they were-detected extracting firewood illicitly from protected forest on 13-1-60 by one Shri N. N. Dey, Range-Officer, Dharmanagar and that on being challenged they could not produce any permit for sucte-collection of firewood. Though the case was registered on 5-4-60, it is seen that all the respondents appeared before the Magistrate only on 25-10-61. Then the prosecution asked for time to produce their evidence and it was posted to 17-11-61. On 17-11-61, again 3 of the respondents did not appear and the 4th respondent was absent on the-ground of illness and hence it was posted to 20-12-61, on which date all of them appeared and the-Masistrat posted the case to 15il-62, for the-examination of Prosecution witnesses as a last chance. 1 am unable to

understand why it should have been as last chance, when all the 4 accused-persons had appeared before the Magistrate only on 20-12-61. When the case was taken up on-15-1-62, the Forest Officer, conducting the prosecution prayed for further time. It would also appear-that the S. D. F. O. (N), wrote a letter to the Magistrate with a copy to the S. D. O. Dharmana-ear, for favour of information and doing the needful, stating that the Range Officer, Shri N. N. Dey, who was the reporting Officer had gone to Assam-for training and would not be available in Tripura till the 2nd week of March, and that the case may therefore be adjourned till 3rd week of March, 1962.

This letter written by the S. D. F. O. appeared to have irritated the Magistrate, So, the Magistrate passed an order that the S. D. F. O.'s request; for adjournment through a letter to the Court with a copy forwarded to the S. D. O. was improper,, that a request for adjournment should have been-made only by the Officer, conducting the prosecution and that if at all the S. D. F. O. was to send a letter for getting an adjournment, it should have-been forwarded to the District Magistrate or to the-District Judge. The Magistrate directed that & copy of his order would be sent to the S. D. F. O. to withdraw this type of correspondence. Evidently because of the irritation of the Magistrate he did' not give the adjournment prayed for and he dismissed the case for want of evidence and acquitted' the respondents. It is against this order of acquittal that this appeal has been filed.

3. The learned Government Advocate pointed'-it out that though he could not support the conduct of the S. D. F. O. (N) in writing a tatter to the Court with a copy to the S. D. O., Dharmanagar for information and doing the needful, the Magistrate should not have allowed himself to be influenced by such conduct into dismissing the case and refusing the reasonable request for adjournment, as the adjournment was requested on account of the inability of the prosecution to produce the main witness in the case on that date as 5tie was away in Assam on training. I agree with the learned Government Advocate.

4. It was no doubt highly wrong on the part of the S. D. F. O. (N), to have written a letter t0 the Court with a copy to the S. D. O., Dharmana-. gar for information and doing the needful, for getting an adjournment in a case before the Court. If any

adjournment is required by any party in a criminal case in a Criminal Court, the prayer for adjournment should be made in open Court by the . person appearing for the party or by a petition filed in Court, through such person. If it is a Government case and the Government wants adjournment, the Prosecutor must apply to Court for such adjournment or a responsible Officer, in charge of the case on behalf of the Government, must file a petition in Court through the Prosecutor. The S. D. F. O. should never have written a letter direct to the Court, it was again wrong to have sent the letter with a copy to the S. D. O., Dharm-anagar, for information and doing the needful. The Magistrate may be subordinate to the S. D. O.. Dharmanagar. But the S. D. O. can never interfere in the matter of adjournment in a Court sub ordinate to the S. D. O.

When once a case is before a Court, that Court is supreme as far as the trial of the case and other incidental matters like adjournment are concerned and only that Court can deal with the adjournments of the trial and a superior Court has no power to interfere unless the matter comes up in revision or appeal against any order of the Court concerned. It is offending to the dignity of the Court for a Government Officer to write to a Court for adjournment in a Government case and . send a copy of the letter to the superior Court for i information and doing the needful. Perhaps, the S. D. F. O. thought that the Magistrate concerned was an executive officer and could be made to grant the adjournment by sending a copy of the letter to his superior officer. This is highly wrong. It is better that Government Officers understand that they cannot enter into such correspondence with a Court in matters like this. A copy of this -order will be sent to the District Magistrate for bringing this matter to the notice of the Tripura Government.

5. But the Magistrate should not have got irritated on receipt of such a letter and he should not have allowed it to influence him in his conduct of the case before him. He should have seen whether the prayer for adjournment made by the prosecutor was reasonable or not. Evidently, the 'S. D. F. O. (N), did not mean any disrespect t0 the Court, but wrote such a letter out of ignorance. At the same time, the Magistrate's observation that if the S. D. F. O. was to send a letter for getting adjournment it should have been forwarded to the District Magistrate or the District Judge betrays his ignorance. As I said already, in matters of trial and adjournment

of a case before a Criminal Court, the District Magistrate or the District Judge or for that matter even the Court of Judicial Commissioner cannot interfere and hence no prayer for adjournment of a case before a Magistrate can be moved in any of the superior Courts either through letter or through a formal application. It is for the Magistrate to exercise his judicial discretion in such matters.

6. The question is whether the Magistrate exercised that discretion judicially in the present case. I regret to say that he did not. After all, the four respondents appeared before his Court for the hearing finally on. 20-12-61. Until then, the prosecution could not adduce any evidence. I find from the record that the Prosecutor in charge of the case had applied to the Magistrate on that date for issuing of summons to the P. Ws. as the P. Ws. had been transferred to different places outside the District and could not attend without obtaining summons from the Court. It happened that the summons could not be served on the main witness Shri N. N. Dey, for the hearing on 15-1-62, as he was away from Tripura for training. Thus, it was not the fault of the prosecution that the main witness could not be produced for that hearing. This was a fit case where the Magistrate should have granted the adjournment as the ground shown for adjournment was very reasonable. It is clear that the Magistrate refused the adjournment unreasonably, evidently because he was dissatisfied with the letter written by the S. D. F. O. (N) and hence did not exercise his discretion judicially. A Court should make its decisions objectively on the merits and should never allow itself to be influenced by the conduct of a party or his agent. This is a serious case of illicit felling of trees from protected forest and an opportunity should have been given to the prosecution to prove the case. The acquittal of the respondents cannot be allowed to stand. The acquittal is set aside and the case is remanded to the Magistrate for fresh disposal in accordance with law.