

The State Vs. Bhabesh Chandra Das

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Court : Guwahati

Decided On : Mar-28-1962

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

Appellant : The State

Respondent : Bhabesh Chandra Das

Judgement :

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

1. This revision arises out of an order passed by the Sessions Judge on 31-1-1962 against Shri Bhabesh Chandra Das, a clerk of the Court of the Judicial commissioner under Section 480 Cr. P. C. by which the said clerk, after an apology given by him was let off with a warning for contempt of the Court of the Sessions Judge. A copy of the order was sent by the Sessions Judge to this Court on 1-2-1962 to bring to my notice the highly objectionable conduct of the clerk. At that time, I was away at Imphal. On my arrival at Agartala on 28-2-1962, the order of the Sessions Judge was perused by me and I had serious doubts about the correctness and legality of the action taken and of the procedure adopted by the Sessions Judge. Hence, the papers were called for to this Court under Section 439 Cr. P. C. and notices were issued to the Government Advocate and to the clerk concerned. When the matter came on for hearing, the Government Advocate pleaded his inability to appear in this case, as he was one of the Advocates who were present in the Court of the Sessions Judge at the time when the incident took

place and had pleaded with the Sessions Judge to accept the apology of the clerk. Mr. H. C. Nath, Advocate, therefore, appeared on behalf of the Government Advocate. Sri Bhabesh Chandra Das, the clerk concerned was represented by 10 of the senior most Advocates of this Court and both sides were heard at great length.

2. For the purpose of this case, we shall accept the facts as stated in the order of the Sessions Judge. He was engaged in the hearing of Sessions trial No. 34 of 1961 on 31-1-1962. Just behind the Sessions Court hall is the office room where most of the clerks of the office of the Judicial Commissioner including Shri Bhabesh Chandra Das have their office. At about 3 P.M. there was a great row in the said office room and the Sessions Judge sent his orderly to the room to prevent further noise as it disturbed his Court work. For about 5 to 7 minutes there was a lull. Then again a great row started. It became impossible for the Sessions Judge to follow the witness who was being examined and to record his evidence. He then sent his Bench clerk to look into the matter. The sessions Judge then heard Shri Bhabesh Chandra Das telling his Bench clerk loudly in a very insolent manner that there was no 'halla' there.

3. Then the Sessions Judge sent for Shri Bhabesh Das to come to his Court and when Shri Bhabesh Das appeared in his Court, he was questioned by the Sessions Judge and Shri Bhabesh Das repeated that there was no 'halla' in the room and further added that the Sessions court had no jurisdiction to call him and question him. The Sessions Judge has stated in his order that Shri Bhabesh Das made the statement 'in a very insulting manner'. Then he left the Court room, although the Sessions Judge asked him to wait and Intimated to him that he was going to draw up a preceeding against him under Section 480, Cr. P. C. But Shri Bhabesh Das did not heed to it and left the Court room. After he reached the Verandah, the Sessions Judge heard him saying that he had seen many District Judges and would like to see this District Judge also.

4. The Sessions Judge then issued a warrant of arrest under Section 228 I.P.C. to the Court Inspector to arrest and produce Shri Bhabesh Das before 4-30 P.M. and accordingly the arrest was made and he was brought to Court at 4.10 P.M.

5. At that stage, 4 Advocates who were present in Court intervened and told the Sessions Judge that Shri Bhabesh Das was sorry for all that he had done and that he would apologise. Shri Bhabesh Das also told the Court that he was sorry for all that he had done and tendered apology to the Court.

6. Then the Sessions Judge passed the order that although the conduct of Shri Bhabesh Das was highly re-prehensible inasmuch as he intentionally offered insult to the Court and his conduct held up the progress of the sessions case for about 1 1/2 hours, he would let off Shri Bhabesh Das with a warning as he was sorry for all that he had done and had apologized.

7. After perusing the entire order of the Sessions Judge and after hearing Shri H. C. Nath fully, I am still unable to understand for what particular conduct of Shri Bhabesh Das, the Sessions Judge proceeded against him under Section 480 Cr. P. C. His order has not been drawn up in accordance with the provisions in section 481 Cr. P.C Under Section 481, the record in such cases should contain the facts constituting the offence, with the statement, if any, made by the offender, as well as the finding and sentence. As the offence was said to be under Section 228 I.P.C, the record must also show the nature and stages of the Judicial proceeding in which the Court interrupted or insulted was sitting and the nature of the interruption or insult.

8. The order of the Sessions Judge, no doubt, contains a narration of the facts. But I am sorry to say that he did not record the facts constituting the offence. Nor does his order state the nature of the intentional insult which constituted the offence under Section 228 I.P.C. The narration of facts discloses four instances of conduct on the part of Shri Bhabesh Das. The first is when he told the Sessions Judge's Bench clerk 'in an insolent manner' in the hearing of the Sessions Judge that there was no 'halla'. As far as this conduct is concerned, it cannot come under Section 480 Cr. P.C. as the insult or the interruption, if any, cannot be said to have been committed in the view or presence of the Sessions Judge. The Sessions Judge himself does not state that it was in his view. Evidently it took place in the office room of the Judicial Commissioner's court, where the Bench clerk had gone and where Shri Bhabesh Das was working. So it cannot also be said to have been in

the presence of the Sessions Judge. Thus the Sessions Judge cannot take any action under Section 480 Cr. P.C. for 'the insolent manner' in which Shri Bhabesh Das was said to have told the Sessions Judge's Bench clerk that there was no 'halla'. At best, action can be thought of if at all only under Section 228 I.P.C. for which the Sessions Judge had to proceed under Section 476 Cr. P. C. The Sessions Judge's order does not at all make it clear whether he intended to take action against Shri Bhabesh Das for this under Section 480 Cr. P. C. If he intended to do so, it would be acting beyond his jurisdiction under that section.

9. What the Sessions Judge did next was to send for Shri Bhabesh Das to appear in his Court and to question him. One is unable to understand under what provision of law or rules the Sessions Judge proceeded to do so. Shri Bhabesh Das was not his subordinate to be called before him and questioned. If the Sessions Judge wanted to proceed under Section 476 Cr. P. C, he should have started a proceeding under that section and he should have issued summons to Shri Bhabesh Das to appear in his Court for holding the enquiry contemplated under the section. The order of the Sessions Judge does not show that he intended to proceed under Section 476 Cr. P. C, In the absence of the initiation of any proceeding under Section 476 Cr.P.C. before he sent for Shri Bhabesh Das to appear in his Court, we have to take it that the sessions Judge sent for Sri Bhabesh Das as if the latter was his subordinate and as if he would chastise him as his superior officer. This was certainly wrong on the part of the Sessions Judge. The proper procedure for him would have been to intimate to the Registrar, the head of the office of the Court of the Judicial Commissioner about the conduct of Shri Bhabesh Das for taking necessary action against him.

10. Any way, the Sessions Judge called Shri Bhabesh Das and questioned him. Shri Bhabesh Das told in reply that there was no 'halla' and that the Sessions Judge had no jurisdiction to call him and question him. Shri Bhabesh Das was entitled to deny the accusation brought against him and he was also entitled to point out to the Sessions Judge that he had no jurisdiction to act in the manner he did. This is the elementary right of any person brought before a Court and no Court can take any offence at it. This is something which happens in every Court in its day to day work and no Court should consider that any intentional insult was

offered by an offence being denied and by it being pointed out that the Court had no jurisdiction. It has also to be stated here that the Sessions Judge was not at that time engaged in any judicial proceeding, as the sessions trial had been suspended and the questioning of Shri Bhabesh Das was going on, which cannot be treated as a Judicial proceeding. The statement made by .Shri Bhabesh Das was in answer to such questioning and not in any Judicial proceeding.

11. The Sessions Judge has stated that Shri Bhabesh Das made the statement 'in an insulting manner. This is too vague a statement. Even if the assertion was made vehemently, the Court should not take offence at it. What exactly was meant by the insulting manner the order of the Sessions Judge does not make clear. It is not enough, as pointed out in the decision 'Dileep Singh v. Emperor 23 Cri. LJ 9 : AIR 1921 Lah 102 that the Court felt insulted. Intentional insult-must have been offered to the Court. I have pointed out that the Sessions Judge sent for Shri Bhabesh Das, as if the latter was his subordinate. It seems quite possible that the Sessions Judge felt that when his subordinate pointed out that there was no 'halla' and that the Sessions Judge had no jurisdiction and that too in the presence of many lawyers and litigants, the Sessions Judge felt insulted by his subordinate and hence he has Stated that Shri Bhabesh Das made the statement 'in an insulting manner'. This was certainly not sufficient to constitute an offence under Section 480 Cr. P.C. An experienced Sessions Judge should never have been so touch or sensitive particularly because his action in sending for Shri Bhabesh Das was itself unjustified.

12. What happened next was that Shri Bhabesh Das started leaving the Court after making his statement. The Sessions Judge then told him that he was going to draw up a proceeding against him under Section 480 Cr, P. C, I have already shown that there was no cause for taking action against Shri Bhabesh Das under Section 480 Cr. P. C. for what had transpired till then. Shri Bhabesh Das then left the room. The Sessions Judge could have detained him In Court and need not have allowed him to leave the Court, if he intended to take action under Section 480 Cr. P. C. His leaving the Court hall under the circumstances will not amount to an insult to the Sessions Judge. It may at best amount to a disobedience of the Court's order and the Court has ample power to prevent it by detaining him in

Court.

13. What happened next was that Shri Bhabesh Das on reaching the Verandah of the Court stated in the hearing of the Sessions Judge that he had seen several District Judges and would like to see this District Judge also. The Sessions Judge's order does not show that this statement of Shri Bhabesh Das was treated as an intentional insult to the Court which would come under Section 480 Cr. P.C. Mr. H. C. Nath argued that the meaning of this statement was that this clerk had taught lessons to several District Judges and that he would teach a lesson to this District Judge also. This interpretation appeared to be too fantastic to be accepted. For Shri Bhabesh Das, it was pointed out that the only interpretation could be that the clerk was sad that though during his period of service, he had seen many District Judges, this particular District Judge should have acted in this manner. Any way, no opportunity was given by the Sessions Judge to Shri Bhabesh Das to explain what he meant by it, as he was not questioned at all about it and the Judge's order did not show that he was taking action against Shri Bhabesh Das for this particular statement.

14. When Shri Bhabesh Das was subsequently arrested and produced before Court, it was the duty of the Sessions Judge to have proceeded under Section 242 Cr. P. C. and have stated to him the particulars of the offence of which he was accused. This was imperative on the part of the Sessions Judge. We have to remember that in a proceeding under Section 480 Cr. P. C. the Court is in the position of the prosecutor as well as the Judge, It is, therefore* necessary that the Court should act strictly in accordance with the provisions of law. The accused cannot know for what conduct of his the Court intended to take action against him under Section 480 Cr. P. C. He does not know that the Court had heard his telling the Bench clerk that there was no 'halla' or that the Court considered his manner of saying it to be insolent. Nor can he know that the Court felt that his manner of saying in the Court room that there was no 'halla' and that the Court had no jurisdiction was considered by the Court to be insulting. In the same way, he cannot know that his leaving the Court was considered as insulting or that his statement that he had seen several District Judges and would see this District Judge also was heard by the Court and was felt to be insulting by the Court, He

can only know generally that the Court was displeased with him. It was therefore necessary for the Court to state to the accused the particulars of the offence of which he was accused and to give an opportunity to him of explaining and correcting any misapprehension as to what had, in fact, been said or meant by him. It is only after affording this opportunity that the Court should make up its mind whether any intentional insult was offered. This opportunity is all the more necessary to be given in a summary proceeding under Section 480 Cr. P. C. as the Court itself is the prosecutor and the prosecution witness and there is to be no trial or examination of witnesses and hence the only opportunity for the accused to make a statement is in reply to the question put to him under Section 242 Cr. P. C. Thus when this clerk was brought arrested to Court, it was the duty of the Sessions Judge to have stated to him the particulars of the offence of which he was accused. The failure to do so would amount to miscarriage of justice and is fatal to the proceedings and it is not a mere irregularity which could be corrected, under Section 537 Cr. P. C.

15. What actually happened was that as soon as the clerk was brought arrested, some of the Advocates present in Court intervened and stated to the Sessions Judge that the clerk would apologise for all that he has done and accordingly the clerk said that he was sorry for all that he has done and tendered apology to the Court. One can very well envisage the situation at the time. The clerk is a public officer and he is hauled up in Court under arrest and he has every reason to be frightened of his whole future career. The Advocates also intervened. Thus any apology given by the clerk 'for all that he has done' without his being intimated as to the particulars of the offence he was accused of did not mean anything at all and in any case will not amount to an admission of the truth of the accusation within the meaning of Section 243, Cr. P. C. The question of any such admission would arise only after he has been told of the particulars of the offence of which he was charged and not by an apology 'for all that he has done' whatever that may mean.

16. The order of the Sessions Judge does not contain the facts constituting the offence. It does not state what words or conduct, in the opinion of the Judge amounted to intentional insult. The order also shows that he did not state the

particulars of the offence to the accused and that he did not give an opportunity to the accused to state what he has got to say. The order also does not contain the finding of the Judge. The last paragraph of the order no doubt says that the conduct of the accused was highly reprehensible inasmuch as he intentionally offered insult to the Court and his conduct held up the proceedings in the sessions case for about 1 1/2 hours. Which conduct of the accused amounted to an intentional insult is not seen from his order. I must also say that it was not the accused who held up the progress of the sessions case for 1 /12 hours. It was the action taken by the Sessions Judge against the accused, which held up the proceedings. The accused cannot be held responsible for the interruption due to the act of the Court.

17. I am also unable to find any sentence passed by the Court. The warning given by the Court is not the sentence provided under Section 480, Cr. P. C. It was pointed out that the Sessions Judge proceeded under Section 562 (1-A), Cr. P. C. The order of the Sessions Judge does not show that he was proceeding under Section 562 (1-A). He has not stated that he was only administering a warning or admonition having regard to the age, character, antecedents or physical or mental condition of the offender and to the trivial nature of the offence or any extenuating circumstances under which the offence was committed. On the other hand, his order shows that he treated the offence as very serious and the conduct of the accused as very reprehensible.

18. On the other hand, in accepting the apology of the clerk, the Sessions Judge appears to have proceeded under Section 484, Cr. P. C. But if he was proceeding under that section, he should have concluded the proceedings under Section 480, Cr. P. C. by stating the particulars of the offence to the accused and by giving him an opportunity to plead and by giving his finding and by adjudging him to punishment. None of this procedure was gone through. Instead, as soon as he was produced under arrest, his apology was accepted 'for all that he had done'. The question of apology would arise only after he was adjudged guilty and was either punished or just before punishment. Thus the procedure adopted by the Sessions Judge was certainly wrong.

I have already pointed out that the apology in this case without telling him the particulars of the offence was no apology at all. Even if the Judge was proceeding under-section 484, Cr. P. C, his order should have been one of discharging the offender or remitting the punishment If he had awarded any punishment. The Sessions Judge's order does not show that he adopted either of these two courses. He cannot therefore issue any warning to the accused, which. In can at best do only under Section 562 (1-A), Cr. P. C.

19. For all the above mentioned reasons, the order of the Sessions Judge cannot stand and it has accordingly to be set aside and it is hereby set aside.

20. Before parting with this case, it is necessary for me to mention that the unhappy incidents in this case could have been avoided, if the Sessions Judge had followed the correct procedure instead of treating Shri Bhabesh Das as his subordinate. When he was dealing with an employee working in another office, the proper procedure for him would have been to intimate to the head of the concerned office to prevent any disturbance in the work of his Court. I am sure that if he had only intimated to the Registrar of this Court, there would have been no trouble. Instead, he acted in a manner which he should not have done and tried to deal with Shri Bhabesh Das as if he was the Sessions Judge's subordinate. All the trouble arose on account of this.

21. At the same time, this Court must take due note of the conduct of Shri Bhabesh Das as disclosed from the order of the Sessions Judge. He has to be proceeded against departmentally. As he has had no opportunity of explaining his conduct, the Registrar will draw up proceedings against him and get his explanation and hold an enquiry into the matter and deal with him suitably.

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