

In Re: P.D. Shamdasani

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Court : Mumbai

Decided On : Sep-29-1948

Reported in : (1949)51BOMLR106

Judge : M.C. Chagla, C.J. and; Tendolkar, J.

Appeal No. : Criminal Application for Revision No. 983 of 1948

Appellant : In Re: P.D. Shamdasani

Judgement :

M.C. Chagla, C.J.

1. This is an application in revision against three orders made by the Resident Magistrate, First Class, Amalner. The application was made in the first instance to the Sessions Judge, East Khandesh, and he having confirmed these three orders the petitioner has now come to us.

2. The petitioner filed a complaint under Section 282A of the Indian Companies Act, Section 409 of the Indian Penal Code, and Sections 109 and 114 read with Section 34 of the Indian Penal Code against the opponents. Opponents No. 1 are the managing agents and opponents Nos. 2 to 9 are the directors of the Pratap Spinning, Weaving & ., Amalner. The case went on against the opponents, and on January 10, 1947, the petitioner, who is a shareholder of the company, made an application under Section 347 of the Criminal Procedure Code that the case of the opponents should be committed to Sessions. On March 29, 1947, the learned

Magistrate made an order that this application would be argued after the prosecution case had been completed, and on September 30, 1947, the learned Magistrate made an order after the prosecution case was completed and all the evidence had been led that the arguments on the application made by the petitioner on January 10, 1947, would be heard on September 26, 1947, and the learned Magistrate fixed the exact time when the case would be taken up which was from 1 p.m. to 2-30 p.m. for hearing argument by the complainant and from 2-30 p.m. to 4-0 p.m. for hearing argument by the defence. The order further states that no adjournment on any account would be given to either party as the learned Magistrate was going on leave from October 1, 1947, preparatory to retirement and he wanted to deliver judgment before that date. On September 24, 1947, the petitioner sent a letter by express postal delivery to the learned Magistrate requesting him to grant him a fortnight's adjournment as he wanted to File the next day before the High Court a transfer application under Section 526 of the Criminal Procedure Code. On the next day he sent a telegram informing the Magistrate that he had filed such an application. On September 26, 1947, when the case reached before the Magistrate, the petitioner was not present and the learned Magistrate passed an order rejecting the petitioner's application for adjournment. That is the first order against which this revision application is filed, and the contention of the petitioner is that as soon as he gave intimation to the learned Magistrate of his intention to make an application for transfer it was incumbent upon the learned Magistrate to adjourn the case as required by Section 526(8) of the Criminal Procedure Code. Now the first question that we have to consider is whether there was any intimation to the Court as required by that sub-section. In our opinion the proper way to approach the Court is not by sending letters and telegrams to the presiding officer. The party must either appear in person before the Court or he must make such application as he wishes to make by a properly authorised agent. It would be impossible for a Court to carry on its business if it were to accede to applications made by posts or by telegrams. In the first place there would be no guarantee that the letters or telegrams really emanated from the person who purported to send them, and in the second place, a certain amount of formality and solemnity is essential in Courts of law, and in our opinion it is very improper for the parties to send letters or telegrams to presiding officers of the Court. Further in our

opinion Section 526(8) itself contemplates the presence of the party or his advocate when the application for adjournment is made under that sub-section, because that sub-section confers upon the Court a discretion before granting the adjournment to require a bond to be executed by the party making the application in order to ensure that such an application would be made within a reasonable time to be fixed by the Court. Therefore, if the Court was inclined to grant the adjournment on the party executing such a bond, it would have been impossible for the Court to do so if the application was made in the absence of a party or his lawyer. Therefore, in our opinion as there was no proper intimation given to the Court under Section 526(8), the learned Magistrate was not bound to adjourn the case as required by that sub-section. Further the learned Magistrate had given a clear intimation by his order of September 23, 1947, that the case would be heard on September 26, 1947, and in no event would an adjournment be granted. The petitioner had notice of that order and it was his duty to be present in Court on that day.

3. It has been argued by the petitioner that in any event when the Court received the intimation by telegram that the application for transfer had in fact been filed, he should not have proceeded with the case. This argument suffers from the same infirmity as the first one, because here again the Magistrate was not bound to act on information conveyed to him by a telegram purported to have been sent by the petitioner. The position might have been different if the telegram had been sent by the Registrar of this Court or some responsible officer.

4. [After dealing with the merits of the application the judgment concluded :] Under the circumstances we are of the opinion that the learned Magistrate was right in refusing the application for adjournment of the petitioner, and in refusing the application under Section 347 of the Criminal Procedure Code, and also in passing the order of discharge. The petition, therefore, fails and is dismissed. The rule is, therefore, discharged.