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Court : Allahabad

Decided On : Mar-17-1952

Reported in : AIR1953All24

Judge : Agarwala, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 7 and 7(2)

Appeal No. : Criminal Revn. No. 39 of 1951

Appellant : Prag

Respondent : Ram Das and ors.

Advocate for Def. : S.L. Suri, Adv.

Advocate for Pet/Ap. : B.S. Srivastava, Adv.

Disposition : Application allowed

Judgement :

ORDER

Agarwala, J.

1. This is an application in revision against an order rejecting an application that the Magistrate trying a case pending before him had no jurisdiction to try it.

2. The dispute relates to certain agricultural plots, which according to the applicants are part of village Angraura in the district of Sitapur and according to the complainants opposite-parties are part of village Bhonri Kaundor situated in district Bahraich. These two districts of Sitapur and Bahruich are divided by river Ghogra, which often changes its course. The dispute was about possession over these plots and the complaint was filed in the Court of Sub-Divisional Officer of Qaisergunj, district Bahraich. The applicants' case was that the Sub-Divisional Officer of Qaisergunj had no jurisdiction to try the case because the plots in dispute were situated on the other side of the river Ghogra, the side on which the district of Sitapur was situated.

3. In the Revenue Manual (Volume II) paragraph 1631, the limits of the two districts are thus specified :

'The deep stream of the following rivers is for purposes of criminal jurisdiction the boundary between the districts noted in Columns 2 and 3.'

The river mentioned is Ghogra and the districts mentioned are Bahraich and Bara-Banki and Bahraich and Sitapur. The question is what is the meaning of this paragraph. Does it mean the stream of the river Ghogra as it existed when the notification was issued or the deep stream as it exists at a particular moment when a dispute is raised? The matter is not free from difficulty. In one case decided by the Calcutta High Court on a similar notification the view was taken that the language means the deep stream as it existed at the date of the notification. This case is reported in *Punardeo Narain Singh v. Ram Sarup Roy*, 25 Cal. 858. The notification was

'That the deep stream of the Ghogra is the boundary between the Balia District in the North-Western Provinces and the Sarun District in Bengal, up to the point where the boundary line between mouzah Ibrahimabad Nanhara in Balia, and mouzah Shitab Diara in Bengal, meets that river.'

Maclean C. J. observed :

'I think the 'deep stream' spoken of in the notification of December 1888 must be the deep stream as it then existed, that is ten years ago. It is a matter of notoriety that the channels of Indian rivers change very materially, and often in a very short time. What was the deep stream in 1888 may not be the deep stream of 1897, and it is consequently difficult for us to say what really is the deep stream which forms the boundary between the two districts.'

Banerjee J. was not so definite. He stated :

'It is at any rate open to doubt whether the notification of 5-12-1888, referred to above should bear the construction sought to put upon it by the learned Vakil for the petitioner, namely, that the deep stream of the Ghogra, the position of which may shift from time to time, is the boundary between Balia and Sarun. The notification may well be understood to mean that the boundary between Balia and Sarun would be the deep stream as it existed at the date of the notification, and that this would continue to be the boundary until the Government thought fit to alter it by a further notification.'

4. In my opinion the matter has to be decided upon the correct interpretation of the language used in the U. P. Revenue Manual. Paragraph 1631 contains a note which is based upon a Government notification. The note is :

'Whatever may be the course of the deep stream of the Ghogra, the following villages will, for the purposes of criminal jurisdiction, always be a part of the Azamgarh district;'

Azamgarh is one of the districts which is touched by the river Ghogra. This note on the face of it appears to be an exception to the main paragraph and suggests that the main paragraph means that the boundaries of the districts crossed by the river Ghogra will be determined according to the deep stream as it exists from time to time. Paragraph 1632 which follows puts the matter beyond doubt, It deals with the jurisdiction for the purposes of revenue Courts and civil Courts, and it runs :

'Where the Ganges or the Ghogra forms the boundary for purposes of criminal jurisdiction between districts in Agra and districts in Oudh the deep stream of the

river is also the boundary between such districts for all other purposes. In other cases, civil and revenue jurisdiction within the United Provinces does not in the absence of express notification alter with a change in the deep stream.'

This shows quite clearly that although civil and revenue jurisdiction does not change with the change in the deep stream unless there is an express notification, the criminal jurisdiction may change. I think para. 1631 does imply that the limits of the districts change with the shift in the deep stream and must be determined according to the deep stream as it exists at the time of the dispute.

5. The Magistrate in the present case assumed that the plots were on the other side of the river Ghogra, that is on the side of Sitapur district, but he stated that the boundaries of the district would not change by the change in the course of the river, and he cited certain examples in which although upon a change of the course of the river a village fell from the side of one district to another district, yet the jurisdiction of the criminal Courts of the former district was still continued over the village. This is not a sound argument. If the jurisdiction of one criminal Court had ceased by the change in the course of the river it did not become legal because it continued to be exercised even after it had ceased to exist. Practice contrary to law is no warrant for its validity. It is the practice which is vitiated and not the law that is submerged by a wrong practice. It is, however, not agreed between the parties as to whether the plots in dispute are on the other side of the deep stream of the river Ghogra. . The Magistrate assumed that it was so, but admittedly no evidence has been led by the parties and the learned counsel for the complainants urges that he does not admit the fact. The Magistrate will have therefore, to decide the question of jurisdiction afresh in view of the law stated by me above.

6. I, therefore, allow this application, set aside the orders of the Courts below and direct that the question of jurisdiction shall be determined by the Magistrate de novo in the light of the observations made by me.

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