

The State Vs. Kali Charan

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Court : Allahabad

Decided On : Mar-23-1967

Reported in : AIR1968All65; 1968CriLJ225

Judge : S.S. Dhavan, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 195; Indian Penal Code (IPC) - Sections 193

Appeal No. : Criminal Misc. Case No. 2802 of 1966

Appellant : The State

Respondent : Kali Charan

Advocate for Def. : G.N. Kunzru, Adv.

Advocate for Pet/Ap. : Govt. Adv.

Judgement :

ORDER

S.S. Dhavan, J.

1. Kali Charan has been asked by this Court to show cause why a complaint should not be filed against him for perjury. The facts are these. He filed a second appeal in this court from the decree of the Civil and Sessions Judge, Agra,

reversing that of the Munsif, Agra, and dismissing his suit for the ejectment of the respondents. During the hearing of the appeal the respondents filed an application alleging that the parties had come to terms and prayed for a decree in accordance with the terms of the compromise. Subsequently Kali Charan appeared before this Court and denied that he had entered into any compromise. He swore an affidavit in which he alleged that his counsel had acted contrary to his express instructions not to enter into any compromise. On the very day when this application was made T sent for his counsel, Mr. Swami Dayal and informed him that a very serious allegation had been made against him and asked whether he would like to make a statement. Mr. Swami Dayal then and there made a long statement (not on oath) which was recorded He stated that Kali Charan had agreed to the compromise and his allegation that he had instructed him (counsel) not to make any compromise was untrue. I decided to hold an enquiry after warning all the parties that the Court would be inclined to take action against any person found guilty of having made false allegations on oath. A number of witnesses were examined on oath including one of the respondents, Kali Charan himself, his counsel Mr. Swami Dayal, and his clerk. At the conclusion of the enquiry this Court held that Kali Charan's story that he had come to Allahabad in August 1964 and instructed his counsel not to make any compromise and that he had not come to Allahabad in September 1964 for the purpose of making a compromise was false, and that he never came to Allahabad in August 1964 and never instructed Mr. Swami Dayal not to enter into a compromise, and that he came to Allahabad in September 1964 and entered into an agreement for compromise with the respondents, and its terms were incorporated in the application filed by the respondents under Order 23 Rule 3, C. P. C.

2. The Court further observed that Kali Charan appeared to have committed perjury and it was in the interests of justice that an inquiry should be made into the offence which appeared to have been committed by him under Section 193 IPC. But the Court considered it fair that a notice should issue to Kali Charan to show cause why the Court should not make a complaint against him.

3. Today Mr. Gopi Nath Kunzru has appeared for Kali Charan and addressed the Court. Learned counsel stated that it was not possible for him to argue that Kali

Charan's conduct had any redeeming feature or that there was any doubt about his having committed perjury. But he submitted that it would not be in the public interest that this matter should be investigated by a criminal court under Section 193 IPC. Learned counsel gave two reasons for it. First, he pointed out that the prosecution must produce in support of their case Kali Charan's counsel, Mr Swami Dayal, his clerk, and possibly other counsel and clerks too. Counsel appealed to the Court that it was not desirable that Mr. Swami Dayal and other counsel who had only done their duty in the second appeal should be dragged away from their regular work in this Court and made to appear as witnesses in a criminal case and face cross-examination on all kinds of points. Secondly, Mr Kunzru suggested that Kali Charan might not have behaved in the manner in which he did if he had been properly advised when he came to this Court for the purpose of getting out of the compromise Mr. Kunzru made it clear that it was not his purpose to criticise any particular individual but he could only say that in similar circumstances his own advice to such a client would have been that his story was unlikely and he should not file the application which he did Learned counsel stated that on such occasions the advice of counsel is sometimes decisive, and had Kali Charan been given the advice which he should have been might have acted differently

4. I have given this matter my anxious consideration On the one hand, this Court thinks that perjury of a very reprehensible nature appears to have been committed and such conduct should not go unpunished. On the other hand, the Court has to consider whether it will be in the public interest to prosecute this wretched perjurer, who might have been misguided. During his examination by the Court he admitted that on or about October 1964 he got a much more attractive offer for the land than that of the respondents. This means that when he returned to Agra after having made the compromise he was offered a higher price. But the compromise stood in the way of his accepting the offer He is a poor man and he must have succumbed to the temptation of adopting this crooked way out of the compromise. He impressed me as dull-witted (even his lies were stupid) and easily misled by others. He admitted that he took legal advice both in Agra and in Allahabad, but it does not appear from the evidence that any counsel advised him to consider the consequences before making serious allegations against his own counsel. On the

contrary--I want to put this as delicately as possible--it appears from the proceedings that he may have received advice which encouraged him to file the application.

5. If he is prosecuted for perjury, the principal witnesses against him will be his counsel Mr. Swami Dayal and his clerk and very likely the respondent's counsel Mr. S. D. Agarwal and his clerk. They will be subjected to cross-examination which will be directed against their veracity. Furthermore, if they are made to attend the Criminal Court as witnesses, their professional work in this Court will suffer to the detriment of their clients' interests. Proceedings in Criminal cases of this nature are usually protracted and witnesses have to be present in Court on each hearing till their evidence is concluded. Therefore, by making a complaint against Kali Charan the court will start a case which will cause much inconvenience and harassment to respectable counsel and their clerks. In strict theory, the convenience of witnesses is not considered when the State prosecutes a person for a criminal offence. But if the law confers a discretion on the Court to make or not to make a complaint, it should consider, while making up its mind, whether the prosecution will cause harassment to respectable persons who must appear as witnesses. Criminal justice does not operate in a vacuum, and its primary object is to preserve the social order. One of the objects of punishment is to deter others. I think this object has been served to some extent in this case because the respondent has been thoroughly exposed and his case should serve as a warning to others that it is not easy to deceive the Court. Moreover he must have been put to considerable expense by now. Taking all these things into consideration I feel this is not a fit case for filing a complaint.

6. The notice issued to Kali Charan to show cause is discharged.

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