

Ram Samujh Vs. State and anr.

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Court : Allahabad

Decided On : May-22-1961

Reported in : AIR1962All80

Judge : W. Broome, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 145, 146(1B) and 146(1D)

Appeal No. : Criminal Revn. No. 1513 of 1960

Appellant : Ram Samujh

Respondent : State and anr.

Advocate for Def. : Asstt. Govt., Adv.

Advocate for Pet/Ap. : Sripat Narain Singh, Adv.

Disposition : Revision allowed

Judgement :

ORDER

W. Broome, J.

1. This criminal revision application, is directed against orders passed by a first class Magistrate of Azamgarh under Section 146 (IB) Cr. P. C.

2. Proceedings under Section 145 Cr. P. C. commenced on a report of the Station Officer of Gambhirpur Police Station regarding a dispute likely to give rise to a breach of the peace between Ghulam Rabbani (first party) and Ram Samujh (second party) over the possession of a certain house in the village of Mohammadpur. The learned Magistrate was unable to decide which party was in possession of the disputed property and consequently on 9-8-1958 passed orders under Section 146 Cr. P. C., keeping the property under attachment; and forwarding the case to the civil court for decision. The City Munsif of Azamgarh gave a finding On 19-2-1960 in favour of Ghulam Rabbani and sent the file back to the Magistrate, who thereupon proceeded to pass orders in conformity with that decision, as provided in Clause (1B) of Section 146.

3. The contention of the present applicant Ram Samujh is that on 19-2-1980 the learned munsif had no jurisdiction to give any decision in the case because one day earlier (on 18-2-1960) the High Court had passed orders on a transfer application asking him not to pronounce judgment in the case. From the record, however, it appears that by the time the stay order was brought to the notice of the Munsif on 19-2-1960, by means of an affidavit sworn by Ram Samujh, he had already decided the reference under Section 146 Cr. P. C.

4. The question that calls for determination in this case, therefore, is whether an order passed by a superior court staying proceedings in a subordinate court takes effect from the moment it is passed or only from the time when it is communicated to the court concerned.

5. On general principles it seems to me that a stay order should be deemed to take effect as soon as it is passed, quite irrespective of whether it is communicated or not. Injunctions, which are addressed to individual litigants, require to be communicated to the persons concerned before they can operate, for it would obviously be unfair to expect a person to obey an order of which he is unaware. But stay orders are meant for the court, not for the litigants, and no unfairness is involved in their being treated as immediately effective, without communication to the court concerned. If the court proceeds with the case in ignorance of the stay order, it will not render itself liable to any kind of penalty--the only result will be that

whatever proceedings are taken after the stay has been granted will be deemed to be without jurisdiction and a nullity.

6. When dealing with the case law on the subject, I prefer to exclude from consideration that class of cases which concern the stay of auction sales in execution of decrees, for in such cases complications are likely to arise respecting the rights of third parties who purchase at the auction without notice of the stay--vide *L. Parsotam Saran v. B. Barhma Nand* : AIR1927 All401 . In the present instance we are not concerned with anything of that nature, the sole question being whether a judgment which is pronounced after stay has been granted but before the stay order has been communicated to the court concerned is valid or not

7. Authority is not lacking for the proposition that when once transfer of a case has been ordered, the court concerned ceases to have jurisdiction and any proceedings that take place in that court after the stay order is passed are a mere nullity. In *Mardan v. Rex* : AIR1950 All478 , Agarwala J. held that orders of conviction passed by a subordinate magistrate after the District Magistrate had ordered the case to be transferred to another court were without jurisdiction, despite the fact that the transfer order was not communicated to the magistrate or even to the parties concerned. And in *Pahla v. Makhdoom* : AIR1952 All28 Beg, J. expressed a similar view with regard to orders of conviction passed by a Panchayati Adalat after the S. D. M. had transferred the case to another Magistrate's court for trial.

8. If orders for transfer which permanently deprive a court of jurisdiction to hear a case are held to take effect immediately they are pronounced, even before they are communicated to the court concerned, there seems to be no logical reason why orders for stay which give rise to a temporary suspension of jurisdiction should not also take effect immediately.

9. I hold therefore that as soon as the High Court passed orders in the present case on 18-2-1960 staying pronouncement of judgment, the City munsif of Azamgarh was immediately divested of jurisdiction to pronounce judgment in the case, and when he proceeded to give his decision on 19-2-1960 he acted without

jurisdiction and his decision is a nullity in the eye of the law. And since the judgment was a mere nullity it must be entirely disregarded and the findings given therein cannot be treated as immune to review and revision under Clause (ID) of Section 146 Cr. P. C.

10. I accordingly allow this revision application and set aside the orders passed by the learned magistrate on 28-3-1960, as well as the decision given by the learned City Munsif on 19-2-1960. The case will now be sent back for fresh decision under Section 146 Cr. P. C. by some competent civil court of Azamgarh (other than Sri M. H. Siddiqi) to be selected by the District Judge of that place.

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