

Prayag Das and anr. Vs. State

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Court : Allahabad

Decided On : Feb-14-1962

Reported in : AIR1963All131; 1963CriLJ279

Judge : J.D. Sharma, J.

Acts : Indian Penal Code (IPC), 1860 Sections 30, 44, 52, 79, 193, 211 and 477

Appeal No. : Criminal Appeal No. 1274 of 1961

Appellant : Prayag Das and anr.

Respondent : State

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : J.N. Agarwala and ;Surya Prakash Gupta, Advs.

Judgement :

J.D. Sharma, J.

1. This is an appeal against an order dated the 31st July 1961 of the learned Second Additional Sessions Judge, Meerut, convicting the appellant Dharampal under section 477 I.P.C. and the appellant Prayag Das under section 477 read with Section 109 I.P.C. and sentencing them to four years' rigorous imprisonment each.

2. On the 9th October 1947 Dharampal filed a complaint against K. N. Bhargava and his son B. N. bhargava charging them with having committed offences under Sections 325, 342 and 392 I.P.C. The accused in that case were discharged on the 23rd July 1949. On the application of K. N. Bhargava the court concerned tiled a case under Sections 193 and 211 I. P. C., against Dharampal and Seth Madan Lal in whose service Dharampal was. K. N. Bhargava and his son also filed suit No. 25 of 1950 for the recovery of Rs. 10,000/- as damages for malicious prosecution against Dharampal and Madan Lal. Madan Lal died during the pendency of the suit. The suit came up for hearing before the Civil Judge, Sri R. C. Saxena on the 16th December 1957. There was some talk of compromise between the parties taut no compromise was arrived at. The suit was adjourned to the 17th December 1957 and the Civil Judge started recording the evidence of the plaintiffs. It was adjourned till the next day, i.e., the 18th December 1957. Some evidence of the plaintiffs was recorded before lunch. When the Presiding Officer returned to the court after lunch Dharampal presented an application the material contents of which as reproduced in the judgment of the learned Sessions Judge were:

'Wan bilkul jhoonta hai. Mujey na mara peeta, na koi zabardasti loota, jo bilkul jhoonta hai. Men gharib admi nun. Mujhey maf kia jaway. Men 500/- panchso rupaye Sri Kedar Nath ko ada karoonga, Muqadma bilkul khatam kardia jaway.'

At that time the plaintiffs and the parties counsel were not present. After reading the application the Civil Judge asked Dharampal if be had understood the contents thereof Dharampal told the court that lie was a poor man and wanted to get rid of litigation. The court took up an appeal for hearing. During the hearing of that appeal the accused Prayag Das who was the counsel for Dnarampal appeared in court. The Civil Judge told him that his client Dharampal had made in his application the admissions to which he was opposed. On reading the application Prayag Das took the Court's permission to take it outside the court room to consult his client. The Civil Judge permitted him to do so. There was some consultation between the two accused outside the court room. Prayag Das told Dharampal that it was not in his interest to make the admissions such as he had done in the application and he handed ever the application to him. Dharampal tore

the application into pieces which were thrown by him under an Ashok tree. It appears that these pieces were collected by B. N. Bhargava (P. W. 3) and passed on to his father. The parties appeared in the court of the Civil Judge and Prayag Das informed the court that Dharampal did not want to enter into a compromise and when asked about the application, he said that it had been torn into pieces by his client Dharampal. The Civil Judge drew up a brief statement of the facts in the order sheet. In spite of the application being torn into pieces, Dharampal agreed to pay Rs. 500/- as damages and the parties compromised the suit and a compromise decree was passed.

3. On the 20th December 1957 K. N. Bhargava made an application to the Civil Judge alleging professional misconduct on the part of Prayag Das in having handed over the application to Dharampal and asking him to tear it off. After certain proceedings the Civil Judge made a report to this Court as Prayag Das happened to be an Advocate. On the 4th March 1958 Prayag Das filed a lengthy rejoinder in this Court denying that he had asked Dharampal to tear the application into pieces or had committed any professional misconduct. A Full Bench of this Court held on the 19th March 1958 that the facts disclosed were insufficient to justify the institution of the proceedings for professional misconduct against the accused.

4. On the 23rd April 1958 K. N. Bhargava filed a complaint in the court of a Judicial Magistrate, Bawal against the two accused on the allegations that the application which Dharampal had filed in court admitting the claim for Rs. 500/- was a valuable security and by tearing it into pieces he committed an offence under Section 477, I. P. C. and Prayag Das who asked Dharampal to tear the application into pieces committed an offence under Section 477 read with Section 109 I. P. C. The two accused were committed to the court of Session. On the application of the accused the case was transferred to Meerut and was heard by the Second Additional Sessions Judge, Meerut.

5. The accused pleaded not guilty. The version of Dharampal was that K. N. Bhargava told him that the court had returned his application and his Vakil had seen it and he should give another application the next day after consulting his lawyer

and that he could do whatever he liked with the application, and thereupon he tore it off in the verandah and left the pieces there. Prayag Das denied having asked Dharampal to tear off the application into pieces.

6. The learned Additional Sessions Judge held that the application was a valuable security and it had been duly presented to the court. Further, relying upon the evidence of Nanak Chand and B. N. Bhargava the learned Sessions. Judge held that Dharampal had torn off the application at the Instance of Prayag Das.

7-8. The contention on behalf of the appellant PrayagDas is that the evidence of Nanak Chand and B. N. Bhargavawas not reliable. (After discussion of evidence on this point His Lordship proceeded:)

9. On a consideration of the evidence and circumstances it is not possible to hold that the application which Dharampal had given to the Civil Judge was torn off by him at the instance of his counsel Prayag Das. No case has, therefore, been made out against Prayag Das.

10. Dharampal on the own admission tore off the application. His statement that he did so at the instance of K. N. Bhargava is manifestly false and no reference has been made to it in the arguments on his behalf. K. n. Bhargava would have been the last person to suggest to Dharampal to tear off the application.

11. It has been urged on behalf of Dharampal that by tearing off the application he did not commit an oriented under Section 477 I. P. C. as the application was not a valuable security and Dharampal tore it off in good faith, without any intention of causing any harm or damage to K. N. Bhargava. 'Valuable security' as defined by Section 30 of the Penal Code denotes a document which is or purports to be a document whereby any legal right is created, extended, transferred, restricted, extinguished or released or whereby any person acknowledges that he lies under legal liability or has not a certain legal right. The application in question can only be governed by the second Clause, namely, a document which is or purports to be a document whereby any person acknowledges that he lies under legal liability. The expression 'legal liability' has a wide import and embraces any legal liability though not directly pecuniary. The application containing as It did an admission

that the criminal case was false and he (applicant) would pay Rs. 500/- to Kedar Nath would have been a valuable security if Kedar Nath had any claim to or dominion over it. Any document whereby a person acknowledges legal liability is not a valuable security unless the person in whose favour the acknowledgment is made has a right to that document.

The learned Sessions Judge was of the opinion that as the application had been duly presented to the court it had become a court property and although it was returned to Prayag Das to give such advice as he considered proper to his client Dharampal, the latter had no right to it and by tearing it into pieces he destroyed a valuable security. It has to be judged from the testimony of Sri R. C. Saxena Civil Judge, whether or not the application had become court property. Dharampal presented the application to the Civil Judge in Court, and there can be no doubt that it was duly presented. Ordinarily an application duly presented does not require any acceptance, but it appears that for reasons disclosed in his evidence Sri R. C. Saxena thought it expedient to keep the application under consideration for his acceptance. He stated that after reading the application he asked Dharampal if he had understood its contents and the reply of Dharampal was that he was a poor man and wanted to get rid of litigation. The Civil Judge then engaged himself in hearing an appeal obviously because parties' counsel were not present, and as soon as Prayag Das came, the Civil Judge told him that the admissions to which he was opposed had been made by his client in his application. There had been a talk of compromise on the previous dates as well. K. N. Bhargava wanted Dharampal to admit that the criminal complaint filed by him was false but his counsel Prayag Das was opposed to his making any such admission.

It is in the evidence of the Civil Judge that Prayag Das read the application in court and then took his permission to take it outside the court to consult his client. Sri R. C. Saxena further stated that he thought it advisable to bring the application to the notice of Prayag Das before taking proceedings to formally verify it as it struck him that Dharampal was a poor man and he should not suffer without fully understanding the import of the admission. Again, he stated that when he gave the application to Prayag Das it did not strike him that it was a part of the record and that he did not demand the application from Prayag Das when he said that his

client would not enter into the compromise as he was then hearing an appeal. It is further in the evidence of the Civil Judge' that he gave the application to Prayag Das so that his client may have the benefit of his advice. The Civil Judge admittedly did not take the pieces of the application into the custody of the court. The application had to be verified before a decree on its basis could be passed. The Civil Judge could satisfy himself whether or not the application had been made by Dharampal voluntarily and without the exercise of undue influence and after fully understanding its contents. Only after he was satisfied could a decree on its basis be passed. There was hardly any need for the Civil judge to suggest to Prayag Das to give advice to his client about the propriety of making an application. Giving the application to Prayag Das for that purpose necessarily carried the implication that the making of an application would depend upon such advice as Prayag Das may give to his client. It is therefore clear from the testimony of Sri R. C. Saxena, Civil Judge that for the reasons stated by him he did not accept the application in the sense that he did not consider it as part of the record and gave it to Prayag Das so that Dharampal may reconsider the position in the light of the advice which his counsel may give him. It was why the application was not indexed nor the necessary particulars entered on it indeed, the application remained at the table of the presiding officer for half an hour until Prayag Das came into the court room. The only conclusion therefore is that the Civil Judge did not accept the application and gave an opportunity to Dharampal to reconsider the position after consultation with his counsel. In other words, the application did not become court property to which K. N. Bhargava could have any right as a plaintiff. In that view of the matter the application was not a valuable security.

12. It has been further urged that Dharampal tore on the application believing in good faith that it was not a part of the court record, in the circumstances in which the application came into the possession' of Dharampal he could really believe that it was not a part of the court records and that he was entitled to tear it off as provided in Section 79 I. P. C., nothing is an offence which is done by any person who by reason of a mistake of fact in good faith believes himself to be justified by law in doing it. The definition of good faith in Section 52 is only negative as it says that

'Nothing is said to be done or believed in good faith which is done or believed without due care and attention.'

Dharampal had been given the application by his lawyer Prayag Das who had also told him that he was liable to conviction on the basis of the admission of guilt by him. And if he had also asked Dharampal to tear off the application then it cannot be said that there was want of due care and attention on his part.

13. To constitute an offence under Section 47/ I. P. C. the destruction etc. must be done fraudulently or dishonestly or with intent to cause damage or injury to the public or to any person. There was nothing fraudulent in tearing off the application, it was also not torn off dishonestly as it cannot be said that Dharampal tore off the application with the intention of causing wrongful gain to himself or wrongful loss to K. N. Bhargava and his son. His sole object in tearing off the application was to save himself from conviction in the criminal case. An act done with intent to save oneself from criminal prosecution or conviction but not with intent to cause wrongful gain to oneself or wrongful loss to another cannot be said to be done dishonestly. Nor is the third element, namely, intent to cause damage or injury, established. Damage here means pecuniary damage. Dharampal had no intention of causing damage to K. N. Bhargava and his son as he admitted the claim for Rs. 500/- before the presiding officer and a compromise decree was passed for it. It was pointed out that he did this on being confronted with a situation in which not only he but his lawyer was also involved. It is not possible to agree with this contention, 'Injury' is wider in import than damage. As defined in Section 44 I. P. C., 'injury' denotes any harm whatever illegally caused to any person in body, mind, reputation or property. Now, if a person wants to save himself from injury, such as conviction in a criminal case, it does not mean that he caused injury to another. Dharampal tore off the application to save himself from conviction in a criminal case but there could be no injury to K. N. Bhargava and his son against whom the criminal case filed by Dharampal had been already dismissed, and Dharampal was further admitting the claim for damages for malicious prosecution to the extent of Rs. 500/-. Therefore even if the application were a valuable security, no offence with respect to it was committed.

14. For the reasons given above the appeal is allowed and the conviction and sentences of the appellants are set aside. They are on bail. They need not surrender. Their bail bonds are discharged.

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