

DIn Dayal Vs. Emperor

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Court : Allahabad

Decided On : Feb-01-1925

Reported in : AIR1925All443; 87Ind.Cas.517

Appellant : DIn Dayal

Respondent : Emperor

Judgement :

Walsh, J.

1. I am unable to find any justification for this order. It lays itself open to such serious criticism that it is difficult to know where quite to begin. The order of the Deputy Magistrate, by which expression I mean the judgment, is mainly based upon a case which he had heard himself in which some of these persons were involved. I will deal the question of the personnel in a moment. But it is quite plain that although he referred to other matters, he could not leave out of his mind the case of assault which he referred to, and which he had heard the same day. That case of assault in which he convicted has been upset, and, therefore, three-fourths of the judgment of the Deputy Magistrate disappears. I will refer to the judgment in which it was upset in one moment. There would have been no harm, and it would have been only natural for him trying a security case and an assault case on the same day against the same persons, to use his knowledge of the one to govern his judgment in the other, and to make such use appear in his judgment. The

logical result, if the persons were the same, ought to be that if he convicted in the case of assault and thought the persons ought to be bound over, he ought to bind them over as part of the decision in the assault case. Further, the logical result of that would be that when the assault case was upset in appeal, the binding over would be upset too. In the result we have a judgment in a security case based largely, if not entirely, upon an assault case, which no longer exists.

2. It may be said in answer to this criticism that the accused in the assault case and in the security case were not the same. But if that is a just criticism, then the judgment and the decision in the assault case had no bearing upon the security case and were irrelevant and ought not to have been referred to. In fact as regards four of the people who are before me, and who were before the Magistrates in the Courts below in this case, the proceedings and judgment in the assault case were wholly irrelevant, because they were no parties to the assault case, and, therefore, the judgment of the Deputy Magistrate is irregular in using knowledge of another case. Although he cannot forget it and returns to it from time to time in the course of his judgment, he appears to be conscious that it requires support from other directions. The support which it requires can only be described as faint-hearted. The Deputy Magistrate sets them out and says somewhat quaintly:

These events are not proved very strongly so as to make them an offence. They certainly give a fear in the mind of one about the safety of his life.

3. But if they are not proved sufficiently to make out an offence, they are not proved sufficiently to establish in a judicial mind the fact of reasonable apprehension. I am unable to understand the view of the District Magistrate about this acquittal in appeal. He says that the fact of the acquittal did not help the applicants before him. But the acquittal was subsequent to the order of the Deputy Magistrate, which was before him in revision, and if the subsequent acquittal did not help the case of the applicants. I cannot understand why the District Magistrate thought that their conviction helped the case against them which was practically the main ground on which the Deputy Magistrate had proceeded. But as a matter of fact, if the District Magistrate had taken the trouble to study the judgment of the Sessions Judge - I do not complain of his having failed to do so, because I think

he ought to have quashed the order of the Deputy Magistrate at first sight without further examination-he would have found that the Sessions Judge acquitted the accused in that case, and, therefore, two of the applicants in revision before the District Magistrate, upon the ground that it was not made out beyond reasonable doubt that they were present at the occurrence at all. He would also have discovered that his subordinate officer, the Deputy Magistrate, had used in the judgment recording the conviction, an alleged statement as coming from the Civil Surgeon by way of expert medical evidence, which was not to be found. The Sessions Judge said that neither he, nor the prosecution, nor the defence, have been able to discover on the record any evidence justifying the finding with reference to the medical testimony arrived at by the Deputy Magistrate. This of course is a very serious matter, and having regard to the order of the Deputy Magistrate which I now propose to deal with, it ought to have opened the eyes of the District Magistrate to what was going on. The order which has been passed is, I hope, without precedent. I have asked in vain for the production of any precedent to justify it, and it appears to me to be outrageous on the face of it. Reduced to plain language, it looks very much as though the Deputy Magistrate thought that where there were old standing feuds between two parties or two branches of a family, which in the course of events had come to a head by a very serious and heavy litigation, one might always assume a possibility of a breach of the peace, and bind over one party or the other to keep the peace under this section. If that theory became an established practice, a very large proportion of the litigant population of the United Provinces would inevitably have to be bound over, and the scarcity of sureties would become so great, that a considerable number of the litigants would find themselves in jail failing their ability to find anybody left to give security. But if, on the other hand, the Deputy Magistrate came to the conclusion that the servants of the three persons, who allege themselves to be the reversioners and who are the plaintiffs in the suit which has been filed, were really doing the wicked work of their masters, and were acting under their instigation and encouragement in either threatening or compassing the death of this expectant heir under the rule, and there was evidence upon which he could come to such a conclusion, then he ought to have found that fact against the masters and ordered them to give security. But he has discharged them, which makes his order

inconsistent in terms with the main structure of his judgment. If, on the other hand, the masters have been rightly discharged and there is no evidence against them, then the case against the servants for having so conducted themselves as to create an apprehension of the breach of the peace on account of the litigation between their masters and the other branch of the family, entirely breaks down. Yet he has made them provide sureties, which, as regards them and the circumstances of their case, assuming that their masters are innocent, are not only excessive, but which the Deputy Magistrate knew was impossible, and which he intended to be a punishment for the masters whom he was discharging. The objections, legal and otherwise, to such an order are obvious. The Deputy Magistrate went as near as he could to compel the masters to give their surety. He says in his judgment : - 'The amount seems to be appropriate to their masters standing surety for them', Of course he had no jurisdiction to make that order, but he made an order in such a form as to leave the masters no alternative except, on the one hand, to lose their servants by refusing to give sureties so that the men would have to go to jail; or being bound hand and foot by very onerous securities for the conduct of men who might leave their masters the next day and pursue at the instigation of the other side a consistent course of legalized blackmail upon their former masters. The order looks a subtle attempt to procure by indirect means what the Magistrate professes by his former order to be unable to do by law, and I am surprised that the District Magistrate did not see through it. I am surprised also that he did not see through the palpable mala fides of this application. It followed immediately upon the masters and the servants, who are now before me, having applied in the Civil Court for the appointment of a receiver, which resulted in these complainants, being ordered to give security in the amount of Rs. 5,000. It was not founded upon any public report or complaint by the police, but palpably on the allegation of a private individual, who was apparently smarting under a counter-move which had been taken by his opponent in the civil litigation. All this is so transparent, that the failure of the District Magistrate to see through it, can only be explained by his order in which he says that he is not going into the evidence. But it is a fact that the Deputy Magistrate who has made all these curious orders, is the same Deputy Magistrate who has made an order favourable to the same side in mutation proceedings on the revenue side, and although I

have no jurisdiction over him or the District Magistrate except in criminal matters which are brought within the Code, I would suggest to the District Magistrate that as a matter of administrative procedure, it would be well if the Deputy Magistrate were prohibited for all time from adjudicating upon any matter in which these persons are concerned. If I were his superior officer, there are certain matters upon this record which I should call upon him to explain. It is possible that somewhere or another in this case there lurks trustworthy evidence that somebody has done some act indicating that he is contemplating a breach of peace. There is no evidence before me of anything of the kind, and, therefore, I can only quash all the orders which have been made, and suggest to the District Magistrate that if he thinks that further proceedings of any kind are necessary, they should be directed against persons about whom there is some evidence.

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