

Salag Ram Vs. Emperor

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Court : Allahabad

Decided On : Sep-14-1936

Reported in : AIR1937All171

Appellant : Salag Ram

Respondent : Emperor

Judgement :

ORDER

Iqbal Ahmad, J.

1. This is an application for the transfer of a criminal case that is pending, in the Court of Mr. Crofts, Assistant Sessions Judge of Dehra Dun. The hearing of the case commenced in the Court of the learned Judge on the 12th August and continued till 31st August 1936. During this interval 82 witnesses for the prosecution were examined. I am informed that about 70 of these witnesses were formal witnesses. On the 31st August the present application for transfer was filed before me and I ordered notice of the-application to be issued and directed that, the proceedings be stayed meanwhile. The record was also summoned. The application is supported by an affidavit that contains no less than 47 paragraphs. The learned Judge has submitted his explanation as regards the allegations contained in the affidavit. The application has been argued at length by Mr. Ram Mohan Lal, the learned Counsel for the applicant, and by Mr. Kedar Nath who

represents the Crown. There are 11 accused in the case and they are charged with offences punishable under Sections 120(b), 467, 468 and certain other sections of the Penal Code. All the accused in the case except one-named Mohan Lal were on bail during the trial. In the course of the trial the learned Judge passed certain orders that are bad in law and cannot be supported. The accused also were responsible for a number of applications that were either frivolous or were couched in unnecessarily offensive language. The trial was originally to take place in the Court of Mr. P.N. Agha, Assistant Sessions Judge at Saharanpur, and was to commence from 4th August. 1936. But the learned Judge became indisposed and took leave and the case was then, by the order of this Court, transferred to the file of Mr. Crofts. Before the trial commenced on the 12th August. Mr. Ram Mohan Lal, the counsel for Salag, Ram who is the applicant before me, filed an application for the postponement of the case. He prayed that the proceedings be stayed for four days 'to get breathing time for the case.' In this application it was stated that:

Probably as the rumour goes with a view to avoid this big and stiff case for reasons best known to him, the applicants came to know that he. (Mr. P.N. Agha) was reported sick of high blood pressure four days before the case actually started.

2. All that I need observe is that this aspersion on Mr. Agha was wholly unmerited and certainly uncalled for and the learned Counsel would have been better advised to refrain from using these words in the application. The application met with the fate that it deserved. It was dismissed by Mr. Crofts on the same day. He rightly observed in his order that as the case was 'originally fixed for a week or more ago at Saharanpur' the accused must be presumed to have instructed their lawyers and therefore the adjournment prayed for was unnecessary. Within two or three days of the last mentioned order controversy arose in the Court below as to the liability of the accused, who were on bail, to pay the expenses of defence witnesses. This controversy was set at rest by Mr. Crofts by his order dated 15th August 1936. The propriety of this order would be considered if the case comes in appeal to this Court. At any rate I am not called upon at the present stage to express my opinion as regards the correctness or otherwise of this order.

3. On the same date, viz. on 15th August, a witness named Amar Nath was examined. He was cross-examined by the learned counsel for the accused and then certain questions were put to him in re-examination. I have perused his statement and I have no hesitation in observing that new and fresh matter was introduced in the course of re-examination. That being so, Mr. Ram Mohan Lal was perfectly justified in asking the Court to allow him to further cross-examine Amar Nath. But the Court refused to allow him more than three minutes to cross-examine the witness. This order of the learned Judge is indefensible. The learned Judge failed to appreciate that the object of re-examination is to clear the ambiguities in cross-examination and that if new and important matter is allowed to be introduced in re-examination the accused has a right to cross-examine the witness as regards the matters so introduced. On 15th August the application of Mr. Ram Mohan Lal for further cross-examination was rejected and the reasons for rejecting the application were given by the learned Judge in his order dated 18th August. As I have already observed that the learned Judge was wrong in rejecting the prayer for cross-examination, I need not deal with the grounds set forth in the order dated 18th August. There is however one passage in that order that ought to be taken notice of. The learned Judge has observed that:

As I have noticed a tendency in this case to trap witnesses into half truths by cutting them off in the middle of a sentence or an explanation, I give some hints on what seems to me the only fair way of examining witnesses.

4. While it is the duty of every Court to keep the cross-examination of a witness within legitimate bounds it must be careful, in the discharge of that duty, not to exercise too effective a control so as to unduly curtail legitimate cross-examination. Whether the questions put in the cross-examination of the prosecution witnesses were or were not fair is more than I know. But I must observe that too much interruption by the presiding Judge in the course of the cross-examination of witnesses by the counsel for the accused has, more often than not, the result of robbing the cross-examination of its efficacy and therefore undue interference in cross-examination must be avoided by the presiding Judge. As I am satisfied in the present case that the request made by Mr. Ram Mohan Lal to be allowed to further cross-examine Amar Nath was reasonable and ought to

have been granted, I direct the learned Judge to re-summon Amar Nath at the expense of the Crown and to give Mr. Ram Mohan Lal and the other accused in the case an opportunity to further cross-examine the witness.

5. On 18th August 1936, an application was made by Mohan Lal, accused, who was not on bail, that certain documents be sent for the expression of opinion by the handwriting expert at Simla before his evidence was recorded as a witness for the prosecution. This application was in my opinion rightly rejected by the learned Judge. Thereafter some more applications were filed and orders were passed thereon, but those applications and orders have no direct bearing on the decision of the application before me. I must however note that indiscriminate filing of applications during progress of the trial in the Court below appears to have been the order of the day. Similarly the systematic rejection of those applications by the learned Judge was the rule.

6. On or about 24th August Mr. Ram Mohan Lal had to attend a Tribunal of the Bar Council in Allahabad and he therefore was not present in Dehra Dun on that date. Applications were then filed asking for the adjournment of the case on the ground of Mr. Ram Mohan Lal's absence from Dehra Dun. The learned Judge rightly rejected those applications. The case before him was a Sessions case in which a number of witnesses had been summoned and the mere fact that the counsel for one of the accused had for some reason or other to absent himself from Dehra Dun was no ground for the adjournment of the case. Mr. Ram Mohan Lal appeared in the Court of the learned Judge on 25th August 1936, and on that date filed an application praying that all the witnesses who had been examined in his absence be recalled to enable him to cross-examine them. The learned Judge rejected the application with the following remarks. 'The accused seem quite capable of cross-examining on their own account.' It is needless to say that the learned Judge was perfectly right in rejecting the application for recalling the witnesses for further cross-examination.

7. In the meantime certain incidents happened that have been mainly relied upon in support of the present application for transfer. On 20th August the Crown counsel filed an application for the cancellation of the bail bonds of all the accused

on the ground that the accused were tampering with the prosecution witnesses. The learned Judge rejected the application on 21st August, but gave a warning to the accused that if it was found that they in any way attempted to influence the witnesses for the Crown their bail bonds will be cancelled. Then on 24th August a witness named Amar Singh was examined on behalf of the Crown and, in the course of cross-examination by Salag Ram, he produced a postcard that purported to have been written by the investigating officer to a relation of the witness. The Crown counsel then filed an application for the cancellation of the bail bonds of all the accused. He suggested that the witness had been won over by Salag Ram and had produced the postcard at his instance. This suggestion could not be characterized as baseless or without foundation. But Mr. Ram Mohan Lal has argued that there was very plausible explanation for the incident. Possibly there was. But the explanation that he attempted to lay before me was not the explanation that was put before the learned Judge and the only fact before him was that a witness for the prosecution in the course of cross-examination produced a document that, according to the counsel for the defence, was of paramount importance to the defence. No orders were passed by the learned Judge on the application filed by the Crown counsel on 24th August, but on 25th August he allowed that application, to this extent: that he cancelled the bail bond of Salag Ram accused and ordered that he be taken into custody. The reason why he allowed the application only as regards Salag Ram appears to be that the postcard was produced by Amar Singh during the course of cross-examination by Salag Ram. The same day, viz. on 25th August, Salag Sam filed, an application under Section 526(8), Criminal. P.C. He prayed that the hearing of the case be adjourned to enable him to file an application in the High Court for the transfer of the case. The application was, signed by Salag Ram and Mr. Ram Mohan Lal, though present in Court, did not append his signature to the same. Indeed he stated that he had nothing to do with the application. In this application it was averred, that:

The applicant notices with regret that the Court, is completely in the hands of the prosecution and is unable to show any mercy, favour or kindness to the innocent accused persons. The applicants has lost completely all faith. The applicant apprehends that the Hon'ble Court is unable to administer justice in this case

impartially.

8. The learned Judge rejected the application with the following remarks:

There is one sentence here which is insolent apart from anything else. I am not postponing-this case unless the High Court orders me to. Rejected.

9. In my judgment the learned Judge was wrong in rejecting this application. He was no doubt authorized by Sub-section (9), Section 526, Criminal P.C., not to adjourn the trial if he was of the opinion that Salag Ram had previously reasonable opportunity of making an application for transfer and had failed without sufficient cause to do so. But having regard to the fact that the order directing Salag Ram to be taken into custody was passed on the very day on which the application under Section 526(8) was filed, Sub-section (9) of that section was not applicable. The order cancelling the bail bonds apparently furnished a good ground to Salag Ram for moving an application for transfer and it cannot be said that he had before 25th August an opportunity to file such an application. In Sessions trials the provisions of Sub-section (8), Section 526, Criminal P.C., are no doubt subject to the provisions of Sub-section (9) of that section, but unless the case falls strictly within the provisions of Sub-section (9) the Judge is bound to grant time in accordance with the provisions of Sub-section (8). In considering the question whether or not the applicant had ample opportunity before to file an application for transfer, regard must be had to the fact whether or not the ground on which the application for transfer is proposed to be based did exist earlier. As in the case before me an order adverse to Salag Ram was passed on the very date, viz., on 25th August, it is impossible to hold that he had 'reasonable opportunity' of applying for transfer of the case on an earlier date. The order of the learned Judge rejecting the application of Salag Ram for the postponement of the case cannot therefore be supported. I am not overlooking the fact that on more occasions than one it was brought to the notice of the learned Judge that the accused either intended to or had filed applications for transfer in this Court. But the fact of the matter is that no such application had ever been filed in this Court.

10. I must therefore approach the consideration of the present application on the assumption that the order rejecting the application under Section 526(8) was bad

in law. But the mere mistake of law committed by a Court during the trial of a case is no ground for the transfer of a case unless it is made to appear that the Court with a view to prejudice the party applying for transfer passed an illegal order. I am by no means satisfied in the present case that the order passed by the learned Judge was of such a description. After rejecting the application of Salag Ram the learned Judge proceeded with the trial of the case and, after the hearing for the day was finished, Salag Ram was marched off to jail. But before Salag Ram had reached the jail he was called back to the Court room and the learned Judge started proceedings against Salag Ram for contempt of Court under Section 228, I.P.C. These proceedings had reference to the passages quoted above contained in the application of Salag Bam asking for the adjournment of the case. The learned Judge convicted Salag Ram and sentenced him to a fine of Rs. 150 and in default of payment of fine to three weeks' simple imprisonment. Salag Ram prayed for time to pay the fine. This request was also refused, by the learned Judge on the ground that he had no jurisdiction to grant time with the result that Salag Ram was sent to jail to undergo the sentence of imprisonment passed on him.

11. I am informed that Salag Ram has filed an appeal which is pending in the Court of the Sessions Judge. As the appeal is to be heard and decided by the Sessions Judge I refrain from expressing my opinion about the propriety or otherwise of the conviction recorded by the learned Judge under Section 228, I.P.C., but I must observe that the learned Judge would have shown judicial balance by not taking notice of the passages in the application quoted above and by not taking proceedings under Section 228, I.P.C., Further I am not sure what would have been the view of the learned Judge if the decision in *Murlidhar v. Emperor* A.I.R. 1916 All. 330 had been brought to his notice.

12. The conviction of Salag Ram under Section 228, I.P.C., has also been made the ground of the present application for transfer. It is argued that as the learned Judge has already convicted Salag Ram for contempt of Court he cannot be trusted to bring to bear on the facts of the Sessions case an impartial mind so far as Salag Ram is concerned. In support of this contention reliance has been placed on the decision in *Asa Nand v. Emperor* A.I.R. 1931 Lah. 30. I am not impressed with this argument. It may be that the learned Judge erred in taking proceedings

for contempt of Court and in convicting Salag Ram for that offence, but the mere conviction of Salag Ram by the learned Judge does not warrant the transfer of the Sessions case from his Court. To hold otherwise would be to concede the privilege to a party to a case to secure the transfer of a case from a particular Court by being unnecessarily offensive and insolent and thus courting proceedings for contempt of Court. It is needless to observe that this cannot be allowed. In this connexion I cannot lose sight of the fact that the proceedings in the Court below have been disfigured by repeated attempts to secure adjournment of the case and that delaying tactics have been consistently adopted by the accused. If under such circumstances the learned Judge took proceedings for contempt of Court against Salag Ram I cannot allow that fact to be made the ground for the transfer of the case. I therefore dismiss this application. But before I part with this case I must bring it to the notice of the learned Judge that the counsel for the accused are within their right to ask the presiding Judge to hear the case as far as possible during the hours fixed for the sitting of the Court. Further in a complicated case of the description that is before the learned Judge it is but fair that the accused should be allowed ample opportunity for complete and effective cross-examination without undue interference by the presiding Judge. The record may be sent to the Court below at once.