

Bachcha Lal Vs. Lalji

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Court : Allahabad

Decided On : Nov-07-1975

Reported in : AIR1976All393

Judge : O.P. Trivedi, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 39, Rule 2A; [Constitution of India](#) - Article 20(2)

Appeal No. : Civil Revision No. 312 of 1975

Appellant : Bachcha Lal

Respondent : Lalji

Disposition : Revision dismissed

Judgement :

ORDER

O.P. Trivedi, J.

1. This revision has been filed by Bachcha Lal and arises in the following circumstances.
2. It appears that opposite party-plaintiff filed a suit in the Court of Mun-sif against Bachcha Lal applicant. During the pendency of the suit he applied for temporary

injunction which was granted by the Munsif. Thereafter, opposite party moved an application before the Munsif under Order 39 Rule 2-A of the Civil Procedure Code alleging violation of the injunction and stating in the application inter alia that for the alleged breach opposite party had already lodged a report with the police and Bachcha Lal was already being prosecuted in a criminal court for an offence punishable under Section 188 of the Indian Penal Code. It was prayed on these facts and allegations that action may be taken by the court against Bachcha Lal under Order 39, Rule 2-A of the Civil Procedure Code. Against this application Bachcha Lal filed an objection taking the plea amongst others that the bar of Article 20(2) of the [Constitution of India](#) operated and he could not be prosecuted or punished twice for the same offence. This objection was rejected by the Munsif, Bachcha Lal appealed to the District Judge and the District Judge also rejected the appeal upholding the order of the Munsif.

3. I have heard Sri Hargovind Dayal Srivastava in this revision. By amendment of Rule 2 of Order 39, Civil Procedure Code by this court for a breach of terms of an injunction power is given to the court to order attachment of property of the person guilty of disobedience of injunction and also to order his detention' in Civil prison for a term not exceeding six months. The orders passed by the courts below do not disclose any error of jurisdiction nor any illegality or material irregularity in the exercise of jurisdiction. They seem to have taken a correct view on the plea raised for Bachcha Lal invoking Article 20(2) of the [Constitution of India](#). Article 20(2) provides that no person shall be prosecuted and punished for the same offence more than once. There is no doubt that Bachcha Lal was being prosecuted before a criminal court for breach of injunction for an offence punishable under Section 188 of the Indian Penal Code but any action which may be taken by a court under Order 39, Rule 2-A of the Civil Procedure Code does not amount to prosecution within the meaning of Article 20(2) of the [Constitution of India](#). In the case of S. A. Venkataraman v. Union of India, (AIR 1954 SC 375) the Supreme Court observed that the language of Article 20 and the words actually used in Article 20(2) afford a clear indication that the proceedings in connection with the prosecution and punishment of a person must be in the nature of a criminal proceedings, before a court of law or judicial tribunal etc., what they emphasised in this case was that prosecution implies trial of a person in a criminal proceeding or in a proceeding

partaking the nature of a criminal proceeding. In the case of *Thomas Dana v. State of Punjab*, (AIR 1959 SC 375) the majority view was expressed in the judgment of B. P. Sinha, J. (Para. 11). It was observed:

' 'Prosecution' means a proceeding either by way of indictment or information in the criminal Courts in order to put an offender upon his trial.'

Their interpretation of the word 'prosecution' in this case also made it clear that the indictment must be before a criminal court. I hold that any proceeding started for disobedience of injunction under Order 39, Rule 2-A of the Civil Procedure Code is not criminal proceeding nor proceeding in the nature of criminal proceeding and to such proceedings the bar of Article 20(2) of the Constitution does not apply.

4. I find no force in this revision which is summarily dismissed. Civil Misc. Application No. 620 (M) of 1975 is also dismissed.

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