Emperor Vs. Ram Bilas

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Court : Allahabad

Decided On : May-04-1908

Reported in : (1908)ILR30All364

Judge : George Knox, J.

Appellant : Emperor

Respondent : Ram Bilas

Judgement :

George Knox, J.

1. The applicant in this case is one Ram Bilas. The said Ram Bilas is the owner of a firm which has a shop situate in Barauli Bazar in the district of Gorakhpur.

2. According to an affidavit, dated the 9th of March 1908, and filed in these proceedings, Ram Bilas resides in the Jaipur State, and his firm at Barauli, known as the firm of Ram Karan Ram Bilas, is in the hands of managers.

3. The Sub-Divisional Magistrate being of opinion that a chabutra attached to the premises of Ram Karan Ram Bilas was an unlawful obstruction which should be removed from a road used by the public, issued a notice upon Ram Bilas calling upon him to appear and show cause why the obstruction should not be removed. This notice is dated the 17th of August 1907, and bears an endorsement which is

said to be an endorsement by Makund Ram, mukhtaram of the firm of Ram Karan Ram Bilas. On the 16th of December 1907, an application was put in and signed by a vakil on behalf of Ram Karan Ram Bilas to the effect that he nominated certain persons to act on his behalf as a jury to decide the question raised by the Sub-Divisional Magistrate. The Magistrate accepted the persons named by or on behalf of Ram Karan Ram Bilas and nominated two other persons be serve on the jury. On the 3rd of January 1908, the jury submitted a verdict, which was duly placed upon the record, and an order passed that the pacca chabutra and tin shed should be removed. No objection at the time was raised to this verdict, as the order of the Magistrate on the same will show. But in revision here it is urged that Section 133 of the Code of Criminal Procedure cannot apply to these proceedings. It is further contended that the proceedings have not been regularly held and that the conclusion was not based on the evidence, but on a local inspection.

4. Among other grounds urged before me was that the notice under Section 133 had never been legally served upon Ram Bilas. Neither of the affidavits go so far as to say that he (Ram Bilas) has not been cognizant of the proceedings. Stress is laid on the technical point that the summons was served, not upon him but upon his agent. I find it impossible to believe that in a matter like this Ram Bilas could or would have been kept in ignorance of what was going on, and this adds more significance to the fact that the affidavit nowhere expresses his personal ignorance of what was taking place. Again, the learned Counsel who appeared for Ram Bilas took his stand upon several rulings of the Calcutta High Court, notably that of Kailash Chunder Sen v. Ram Lall Mittra (1899) I.L.R. 26 Calc. 869. The Calcutta High Court appear to hold that when a person called upon under Section 133 to show cause why an obstruction should not be removed from a public way, denies that the latter is a public way, it is for the Magistrate to determine whether this is a bond fide objection, and he cannot, in spite of the objection, unless he determines that it is not bona fide, refer the matter to the jury. The jury is not competent to decide whether the way obstructed is or is not a public way. How far this goes or does not go beyond the Code I need not decide. The question which was at issue was that the chabutra and shed complained of were unlawful obstructions which should be removed from a way which was lawfully used by the public. The contention raised on behalf of Ram Bilas is that the chabutra and shed are not

situate in that portion which is admittedly portion of a way lawfully used by the public, but fall within a certain portion of that ground which had been by some Magistrate, remitted for use by the persons who have erected shops in this public place. I think the question raised was one which could, under the terms of the Code, be left to a jury to decide.

5. Again, it was contended on the strength of the Calcutta case that a jury was bound to hear the parties and such witnesses as they desired to have heard. This Court, however, in Queen-Empress v. Khushali Ram (1895) I.L.R. All. 158 laid down no hard and fast rule upon this point. The learned Chief Justice, who decided that case, held that if a jury required evidence, evidence should be produced before it, and that in that case it was for the Magistrate to show by evidence that the obstruction referred to was an obstruction of a public way or in a public place. So far as I can. see, Chapter X does not lay down any rules as to the procedure that must be adopted by a jury. The questions which are now raised are questions which, it appears to me, should have been raised by or on behalf of the firm long ago in the case.

6. It has been held by a learned Judge of this Court in In the matter of the petition of Lachman (1897) 11 C.W.N., p. xcii that a person who applies for a jury is bound by the verdict of the jury and cannot raise such a plea as that the obstruction was caused in the exercise of a bond fide claim of right. So far as I can judge from the record, the firm of Ram Karan Ram Bilas had long and sufficient notice of the action which the Divisional Magistrate intended to take, and I am not prepared in revision to interfere. I dismiss the application.