

State Vs. Devi Dayal

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Court : Allahabad

Decided On : Aug-18-1958

Reported in : AIR1959All421; 1959CriLJ803

Judge : B. Mukerji and ;H.P. Asthana, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 435 and 439;
[Constitution of India](#) - Article 225; Allahabad High Court Rules - Rule 1;
[Government of India Act, 1935](#) - Sections 223; [Government of India Act, 1915](#) -
Sections 108

Appeal No. : Criminal Revn. No. 456 of 1958

Appellant : State

Respondent : Devi Dayal

Advocate for Def. : R.K. Shangloo and ;S.N. Mulla, Advs.

Advocate for Pet/Ap. : A.G.A. and ;P.C. Chaturvedi, Adv. as Amicus Curiae

Disposition : Revision dismissed

Judgement :

B. Mukerji, J.

1. Although I am in entire agreement with the opinion expressed by my learned brother Asthana, yet I should like to say a few words of my own since the question that was raised in this case related to the jurisdiction of a Bench of this Court and as such was a matter of importance. It is not necessary for me to go into the facts in any detail since my learned brother's judgment has incorporated in it all the relevant facts necessary for the determination of the question that arose for determination. Suffice it to say that on the 24th March, 1958, a Bench of this Court consisting of Mr. Justice James and Mr. Justice Takru directed a notice to issue to the opposite party before us, Devi Dayal, to show cause, within three weeks, why the sentences which had been passed on him by the Magistrate by his Order dated the 29th October, 1957, be not enhanced. This notice was directed to issue by the aforementioned bench ostensibly in the exercise of, as they said, 'the High Court's power of Revision'.

2. On the 6th of August, 1957, James and Takru, JJ. while deciding Criminal Appeal No. 601 of 1957, namely, an appeal filed by Krishna Chandra alias Bhola and others against the State, held that the opposite party Devi Dayal had been, prima facie, guilty of perjury and forgery. They therefore directed a notice to issue to Devi Dayal to show cause why he should not be prosecuted and if found guilty, convicted for the commission of those offences. Devi Dayal showed cause and he, in effect, admitted his guilt and threw himself at the mercy of the Court.

The Court was of the opinion that there was no question in the case of the accused throwing himself at the mercy of the Court and thereby escaping the consequences of a legal prosecution. The Bench, therefore, directed the Registrar to file a complaint against Devi Dayal for having committed offences punishable under Sections 193 and 465 of the Indian Penal Code, The complaint was duly filed by the Registrar of the Court and it came up for hearing before Mr. S. N. Sharma, Judicial Officer of Khajuraho and he by his order dated the 29th of October, 1957, found the opposite party Devi Dayal guilty of offences punishable both under Section 193 and Section 465, I. P. C. The learned Magistrate, however, awarded very lenient sentences: he awarded a sentence of fine of Rs. 100/- and simple imprisonment till the rising of the Court under Section 193, I. P. C., in default to undergo three months' rigorous imprisonment, and he sentenced Devi Dayal to

pay a fine of Rs. 100/- for his conviction under Section 465, I. P. C., in default to three months' rigorous imprisonment.

3. It appears from the judgment, by which the Bench, consisting of James and Takru JJ., issued notice to Devi Dayal to show cause why the sentences which had been awarded to him by the learned Magistrate be not enhanced, that the order of the learned Magistrate was brought to the notice of the Bench by the office of the Court. From an examination of the relevant papers forming part of the record of this case it appears that an endorsement was made on the file by a clerk in the office of this Court in the following words:

'Reference your Lordships' order dated 26-9-1957, flagged A, copy of the Judicial Magistrate's order, flagged B, submitted for favour of perusal.'

This office note was, as the note itself indicates, meant for Hon'ble B. R. James J. and Hon'ble J. N. Takru J. The office note quoted above appears to have been perused by Hon'ble B. R. James J., alone for there is on the office note itself an endorsement by James J., in the following words:

'Seen. Office to inquire from Sessions Judge, Fatehpur, if any appeal has been filed before him and ask him to send to this Court his judgment as soon as it is delivered.'

This note by James J., is under date 20-2-1958. The office sent a letter of enquiry to the learned Sessions Judge of Fatehpur who by his letter dated the 10/11th March, 1958, informed this Court that no appeal had been filed by Devi Dayal against the order of the Judicial Magistrate dated 20-10-1957. On receipt of this information from the District Judge of Fatehpur some clerk of the office put up a note to the Assistant Registrar in these words:

'Please see the letter received from the S. J. Fatehpur, with reference to the Court's letter No. 2141 dated 1-3-1958 under the orders of Hon'ble B. R. James J., dated 20-2-1958, placed below.

May it be put up before Hon'ble B. R. James J., for information?'

It appears that it was on this note by the office that the matter was placed before James J. It may clearly be mentioned that there was no application on behalf of anybody, nor was there any request otherwise by anybody, to take any further action in respect of the sentences which had been awarded to Devi Dayal by the learned Judicial Officer, The matter appears to have been put up before James J., in compliance with his directions contained in his note dated 20-2-1958; at any rate, the office understood that note of James J., to contain a direction to put up the matter before him.

4. Mr. P. C. Chaturvedi, who appeared in this case *amicus curiae* at our request, searched through the cause lists as also through the files of this case to see whether or not there was any direction of the Chief Justice to lay this matter before James and Takru JJ., for the purpose of seeing whether or not it was a fit case in which a notice for enhancement of sentences should issue. The Cause-List of the date on which the order directing notice to issue to Devi Dayal was made, namely 24-3-1958, was also scrutinised by learned counsel and by us and we do not find this case shown in the cause-list as a case for hearing before James and Takru JJ. So that, on the facts it is perfectly clear to me that this case was not placed before these learned Judges by either the Chief Justice or in accordance with any directions given by him. The case appears to have been taken cognizance of by them *suo motu*, so to speak. The question that arises and has been raised is whether under the aforementioned circumstances the order which the Bench made directing issue of notice to Devi Dayal to show cause why his sentences should not be enhanced was within the jurisdiction of that bench.

5. Notice for enhancement could be issued by this Court under its Revisional jurisdiction. Re-visional jurisdiction is conferred on this Court by Section 435 of the Code of Criminal Procedure. The jurisdiction that this section confers is on the 'High Court' and not on any individual Judge of the Court or on any Bench of the Court. The powers which the High Court can exercise while exercising its revisional jurisdiction are provided for in Section 439 of the Code of Criminal Procedure and here too, it may be noticed, the powers that are described there are the powers of the 'High Court' and not of any individual Judge or any individual or particular Bench of the High Court.

If there was nothing else in the law then when-ever any revisional power had to be exercised by the High Court that power could only be exercised by the entire Court and not by any single Judge or a Division Bench of the Court.

6. As my learned brother has pointed out, the jurisdiction of the High Court and its powers are provided for by Article 225 of the Constitution. That article provides that :

'Subject to the provisions of this Constitution and to the provisions of any law of the appropriate Legislature made by virtue of powers conferred on that Legislature by this Constitution, the jurisdiction of, and the law administered in, any existing High Court, and the respective powers of the Judges thereof in relation to the administration of justice in the Court, including any power to make rules of Court and to regulate the sittings of the Court and of members thereof sitting alone or in Division Courts, shall be the same as immediately before the commencement of this Constitution.'

In order to discover what exactly were the powers immediately before the commencement of the Constitution one has to turn first to Section 223 of the Government of India Act of 1935. That section was in these words :

'Subject to the provisions of this Part of this Act, to the provisions of any Order in Council made under this or any other Act and to the provisions of any Act of the appropriate Legislature enacted by virtue of powers conferred on that Legislature by this Act, the jurisdiction of and the law administered in, any existing High Court, and the respective powers of the Judges thereof in relation to the administration of justice in the Court, including any power to make rules of Court and to regulate the sittings of the Court and of members thereof sitting alone or in Division Courts, shall be the same as immediately before the commencement of Part III of this Act.'

This necessitates our looking into the Government of India Act of 1915. Section 108 of that Act was in these words:

'108(1) Each High Court may, by its own rules, provide as it thinks fit for the exercise, by one or more Judges, or by Division Courts constituted by two or more

Judges, of the High Court, of the original and appellate Jurisdiction vested in the Court.

(2) The Chief Justice of each High Court shall determine what Judge in each case is to sit alone, and what Judges of the Court, whether with or without the Chief Justice, are to constitute several Division Courts.'

This Court has framed the following rule appropriate to what was provided for by Section 108 of the [Government of India Act, 1915](#), namely, Rule 1 of Chapter V of the Rules of the Court, which is in these words:

'Judges shall sit alone or in such Division Courts as may be constituted from time to time and do such work as may be allotted to them by order of the Chief Justice or in accordance with his directions.'

7. It is clear to me, on a careful consideration of the constitutional position, that it is only the Chief Justice who has the right and the power to decide which Judge is to sit alone and what cases such Judge can decide; further, it is again for the Chief Justice to determine which Judges shall constitute Division Benches and what work those Benches shall do. Under the rules of this Court, the rule that I have quoted above, it is for the Chief Justice to allot work to Judges and Judges can do only such work as is allotted to them.

It is not, in my view, open to a Judge to make an order, which could be called an appropriate order, unless and until the case in which he makes the order has been placed before him for orders either by the Chief Justice or in accordance with his directions. Any order which a Bench or a single Judge may choose to make in a case that is not placed before them or him by the Chief Justice or in accordance with his directions is an order which, in my opinion, if made, is without jurisdiction.

As has been pointed out by my learned brother and as I myself have briefly pointed out above, the case in which the Bench purported to make an order - the order directing a notice to issue to Devi Dayal to show cause why his sentences should not be enhanced - was not a case that had been directed to be placed before James and Takru, JJ. for orders. That being so, I agree with my learned

brother that the order which has been made and in consequence of which the present criminal revision has been listed before us for disposal was without jurisdiction. If the order issuing the notice was without jurisdiction, as both my learned brother and I have held it was, then the notice for enhancement, in my view, must be discharged and the revision dismissed.

8. I, therefore, agree with my learned brother in the order that he has proposed, namely, that this revision should fail and the notice for enhancement issued against Devi Dayal discharged.

H.P. Asthana, J.

9. This revision arises out of circumstances which may be shortly stated as follows.

10. Bawra, Sheo Balak and Krishna Chandra alias Bhola were prosecuted for the murder of one Manni Lal. Debi Dayal was one of the defence witnesses in order to prove the alibi of Krishna Chandra alias Bhola. Besides his oral evidence he also produced a document in support of the alibi. The learned Sessions Judge did not accept his evidence and convicted all the three accused on the charge of murder. They filed an appeal against their conviction and sentences in this Court and a Bench of this Court consisting of James and Takru JJ., dismissed the appeal and maintained the convictions and the sentences of death passed against Krishna Chandra and Bawra and set aside the sentence of death on Sheo Balak and in lieu of it sentenced him to imprisonment for life. It was further ordered by the Bench that a notice should be issued to Debi Dayal to show cause why a complaint should not be filed against him under Section 465, I. P. C., for falsely deposing that the accused Krishna Chandra was at Chitrakot in District Banda at the time of the said murder.

11. Debi Dayal appeared before that Bench in response to the notice issued to him. It was contended on his behalf that there was nothing on the record to show that the evidence given by him at the trial was false or that the document Ex. D-1 was a forgery. In the alternative it was pleaded that Debi Dayal was repentant of his act and would not repeat it in future. It was observed by the Bench that it was

not a case of a contempt of court where the contemner could purge himself by admitting his guilt and throwing himself on the mercy of the court, but that it was a proceeding under Section 476, Criminal P. C., where the basic consideration was whether or not it was expedient in the interest of Justice to make a complaint. It was further observed by their Lordships that if Debi Dayal was genuinely sorry and confessed his guilt and throw himself on the mercy of the court due consideration would be paid to his attitude. It was decided to file a complaint against Debi Dayal under Section 465 for filing the report Ex. D-1 and under Section 193, I. P. C., for falsely swearing to Krishna Chandra's alibi in the murder case before the Sessions Judge of Fatehpur and accordingly the Registrar of the Court was directed to file the complaint.

12. The learned Magistrate Sri S. N. Sharma before whom the complaint was filed and who decided the case, was of the opinion that both the charges under Sections 193 and 465, I. P. C., had been made out against the opposite party Debi Dayal. It may be mentioned here that when the case was taken up by the learned Magistrate Debi Dayal admitted his guilt and threw himself at the mercy of the court. In view of the confession made by Debi Dayal and also in view of the fact that he had thrown himself at the mercy of the court, the learned Magistrate seems to have taken a lenient view of the matter, probably because of the observations made by the Bench which directed the prosecution of Debi Dayal.

13. It appears that in the letter dated 9-10-1957 which was sent along with the complaint to the District Magistrate, Fatehpur, it was directed that the result of the complaint might be communicated to this Court. I have, however, not been able to find anything in the order of 26-9-1957 passed by the said Bench directing the filing of the complaint, that the result of the complaint should be communicated to it. On 18-2-1958 a copy of the judgment of the Judicial Magistrate was placed before the said Bench and it was mentioned therein that it was being submitted before their Lordships in pursuance of their order dated 26-9-1957.

It has already been said above that there is nothing in the order of 26-9-1957 that a copy of the judgment of the Judicial Magistrate should be submitted before it. On a perusal of the judgment of the Judicial Magistrate, James J., passed the

following order on 20-2-1958:

'Seen. Office to enquire from the Sessions Judge, Fatehpur, if any appeal has been filed before him and ask him to send to this Court the judgment as soon as it is delivered.'

On 10-3-1958 the learned Sessions Judge, Fatehpur informed this Court that no appeal had been filed in his court by the accused Debi Dayal against the order of the Judicial Magistrate, Khajuha, D/-29-10-1957 in the Case No. 227 of 1957, State v. Debi Dayal under Section 193, I. P. C., P. S. Kotwali, Fatehpur. This letter was put up before James and Takru JJ., and on 24-3-1958 their Lordships issued a notice to Debi Dayal to show cause within three weeks as to why the sentences passed on him by the Magistrate be not substantially enhanced and the present criminal revision has arisen out of this notice.

14. The question of law which is involved in the present case is whether the Bench constituted of James and Takru JJ., had the jurisdiction to issue notice to the opposite party to show cause against the enhancement of the sentences passed against him by the Judicial Magistrate. This notice appears to have been issued under the revisional powers of the High Court embodied in Sections 435 and 439 of the Code of Criminal Procedure. It will appear from a perusal of these sections that the power was conferred on the High Court and not on any individual Judge or Bench of Judges constituting the High Court. There must be some provision either in the Constitution or in the Rules framed by the High Court under the powers given to it to confer jurisdiction on individual Judges or Bench of Judges in respect of matters within the cognizance of the High Court before such individual Judges or Benches can exercise jurisdiction in these matters.

15. As it was question of some legal importance we asked Mr. P. C. Chaturvedi to assist us in this matter and he has very kindly studied the point and placed the entire law before us. We are very much indebted to him for the help which he gave us in this matter.

16. I have stated the entire facts which led to the issue of the notice by the aforesaid Bench. I will now proceed to consider the law on the question as has

been placed before us by Mr. Chaturvedi. Article 225 of the [Constitution of India](#) defines the jurisdiction of the existing High Courts and runs as follows:

'Subject to the provisions of this Constitution and to the provisions of any law of the appropriate Legislature made by virtue of powers conferred on that Legislature by this Constitution, the jurisdiction of and the law administered in, any existing High Court and the respective powers of the judges thereof in relation to the administration of justice in this court, including any power to make rules of court and to regulate the sittings of the court and of members thereof sitting alone or in division courts, shall be same as immediately before the commencement of this Constitution:

'Provided that any restriction to which the exercise of original jurisdiction by any of the High Courts with respect to any matter concerning the revenue or concerning any act ordered or done in the collection thereof was subject immediately before the commencement of this Constitution, shall no longer apply to the exercise of such jurisdiction.'

17. The law on this subject immediately before the commencement of this Constitution is embodied in Section 223 of the [Government of India Act, 1935](#). This section is as follows:

'Subject to the provisions of this Part of this Act, to the provisions of any Order in Council made under this or any other Act and to the provisions of any Act of the appropriate legislature enacted by virtue of powers conferred on that Legislature by this Act, the jurisdiction of and the law administered in, any existing High Court and the respective powers of the Judges thereof in relation to the administration of justice in the Court, including any power to make rules of Court and to regulate the sittings of the Court and of members thereof sitting alone or in Division Courts, shall be same as immediately before the commencement of Part III of this Act.'

18. It, therefore, became necessary to find out as to what was the law on the subject immediately before the commencement of Part III of this Act. The law which was enforced before Section 223 was enacted was contained in Section 108 of the [Government of India Act, 1915](#). This section provides as follows:

'108. (1) Each High Court may by its own rules provide as it thinks fit for the exercise, by one or more Judges, or by Division Courts constituted of two or more Judges of the High Court, of the original and appellate jurisdiction vested in the Court.

(2) The Chief Justice of each High Court shall determine what Judge in each case is to sit alone and what Judges of the Court whether with or without the Chief Justice are to constitute the several Division Courts.'

19. Rule 1, Chapter V, of the Rules of this Court, provides that Judges shall sit alone or in such Division Courts as may be constituted from time to time and do such work as may be allotted to them by order of the Chief Justice or in accordance with his directions.

20. It will appear from a perusal of the above provisions that the High Court as a whole consisting of the Chief Justice and his companion Judges has got the jurisdiction to entertain any case either on the original or on the appellate or on the revisional side for decision and that the other Judges can hear only those matters which have been allotted to them by the Chief Justice or under his directions. It, therefore, follows that the Judges do not have any general jurisdiction over all the case which the High Court as a whole is competent to hear and that their jurisdiction is limited only to such cases as are allotted to them by the Chief Justice or under his directions.

In this view of the matter I do not think that the Bench consisting of James and Takru JJ., which decided the appeal No. 601 of 1957, *Krishna Chandra v. State*, and during the hearing of which appeal it directed the issue of notice to Debi Dayal who was one of the witnesses in that case to show cause against his prosecution under Sections 465 and 193, I. P. C., had any further jurisdiction after the conviction of Debi Dayal by the learned Magistrate to issue notice to him to show cause as to why his sentences under Sections 193 and 465, I. P. C., should not be enhanced.

I am of opinion that after the said Bench had decided the appeal and had directed the filing of the complaint against Debi Dayal it became 'functus officio' and had no

further jurisdiction left in the matter. It could have jurisdiction in the matter only if the case were listed before it under the orders of the Chief Justice or in accordance with his directions. I have not been able to find anything from the record that the Chief Justice had passed any such order that the matter relating to the sentences of Debi Dayal under the different sections should be listed before the said Bench or that it had been listed for necessary orders before the said Bench. In this view of the matter I am of opinion that the Bench consisting of James and Takru JJ., had no jurisdiction to issue notice to Debi Dayal to show cause for the enhancement of the sentences passed against him under Sections 465 and 193, I. P. C., by the Judicial Magistrate.

21. I am, therefore of opinion that this revision should be dismissed and the notice issued to Debi Dayal should be discharged. I order accordingly.

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