

In Re: Kedar Nath

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Court : Allahabad

Decided On : Dec-05-1908

Reported in : (1909)ILR31All59; 1Ind.Cas.143a

Judge : Aikman and ;Karamat Husain, JJ.

Appellant : In Re: Kedar Nath

Judgement :

Karamat Husain, J.

1. The learned District Judge of Meerut acting under Section 36 of the Legal Practitioners Act (XVIII of 1879), by his order dated the 15th June 1908, framed a list containing the names of 11 persons who by the evidence of general repute were proved to his satisfaction to habitually act as touts and directed it to be hung in his own Court and in all Courts subordinate to him including the Rent Courts. The applicant Kedar Nath is one of the persons whose name is on that list. He has applied for the revision of that order of the learned District Judge. There is no appeal from such an order nor is there any revision either under Section 439 of the Code of Criminal Procedure, or Section 622 of the Code of Civil Procedure. The only section under which the High Court has been held entitled to interfere with an order passed under Section 36 of the Legal Practitioners Act is Section 15 of the High Courts Act (24 and 25 Vict., C. 104, 6th August 1861). In the application for revision there is no ground to the effect that Section 15 of the High Courts Act

gives the power of superintendence to the whole Court and not to a Bench of two Judges and that, therefore, this Bench has no jurisdiction to dispose of this revision, but as the ground deals with the jurisdiction of this Court and is of great importance, we allowed the learned Counsel for the applicant to argue it. He contends that Section 15 of the said Act gives the High Court power to call for returns, to make general rules for regulating the practice and proceedings of the Courts subject to its appellate jurisdiction and to prescribe forms for every proceeding in the said Courts, and no one can contend that a Bench of two Judges of this Court has power to do any of the above acts and that, as the power of superintendence is also given by the same section, a Bench of two Judges has no power to exercise it. If it has such a power the result will be that the whole Court will be bound by the act of two Judges only. The learned Government Advocate in answer to this contention says that Rule 4 of the Rules of the High Court, which is as follows, 'Save as prescribed by law or by these rules or by special order of the Chief Justice every other case shall be heard and disposed of by a Bench of two Judges,' gives this Bench a power to dispose of the application for revision, which undoubtedly is a case and for which there is no provision in the rules of High Court. He also argues that there has been a course of decisions in this Court as well as in other Courts, that cases under Section 36 of the Legal Practitioners Act have been dealt with by a Bench of two Judges and not by the High Court as a whole, and that the objection as to the jurisdiction of a Bench of two Judges to deal with the matter has never been taken (see *Tej Ram v. Harsukh* 1 A. 101; *Muhammad Suleman Khan v. Fatima* 9 A. 104; In the matter of *Madho Ram* 21 A. 181; *Mis. No. 39 of 1901*. decided on the 6th June 1901; *Mis. No. 127 of 1904*, decided on the 22nd February 1905, and the cases under Section 36 of the Legal Practitioners Act in the other High Courts quoted on p. 1040, under Section 15 of the High Courts Act in the Code of Civil Procedure by O'Kinealy, 6th Edition.)

2. In my opinion the contention of the learned Counsel for the applicant is well founded. The power of superintendence conferred upon the High Court by Section 15 of the High Courts Act--which power has been extended to interference with the orders passed under Section 38 of the Legal Practitioners Act--is no doubt; conferred upon the whole of the High Court and not upon a Bench of two Judges.

Rule 4 of the High Court Rules, owing to the saving clause save as provided by law', does not empower a Bench of two Judges to dispose of the revision, inasmuch as that power under Section 15 of the High Courts Act vests in the whole Court.

3. There exists no doubt a course of decisions in which the cases, under Section 36 of the Legal Practitioners Act, have been disposed of by a Bench of two Judges, but in none of these cases the question of jurisdiction was raised and in the absence of any decision on that point the course can be no authority for the proposition, that a Bench of two Judges has jurisdiction to deal with a case of this nature under Section 15 of the High Courts Act. To infer a rule of law from the silence of the Judges is inconsistent with their function.

4. For these reasons I am of opinion that this Bench has no jurisdiction to dispose of the revision. It follows from what has been said that a single Judge of this Court has also no power to admit a revision from an order passed by a District Judge under Section 36 of the Legal Practitioners Act. The application for revision is not, therefore, properly before this Bench and the learned Counsel for the applicant, on his own showing, has no locus standi to be heard. I would, therefore, reject the application.

Aikman, J.

5. This is an application by one Kedar Nath for the revision of an order of the learned District Judge Meerut, passed under the provisions of Section 36 of the Legal Practitioners Act, 1879, whereby he directed that a list should be prepared of the names of eleven persons, one of them being applicant Kedar Nath, who had been proved to his satisfaction to act habitually as touts, and ordered that this list should be hung up in his own Court, and in all Courts subordinate to him. He further ordered that the persons whose names were entered in this list should be excluded from the precincts of these Courts.

6. The petitioner is represented here by learned Counsel who has argued the case with much ability.

7. The Legal Practitioners Act confers on this Court no right of interference by way of appeal or revision in the case of an order under Section 36, nor is any right of interference conferred by the Code of Civil Procedure or the Code of Criminal Procedure. It has been held, however, that this Court can interfere with such an order under the general powers of superintendence over subordinate Courts, which are conferred on High Courts by Section 15, 24 and 25 Victoria, Chapter 104, though, as will be seen from the Full Bench decisions in *Tej Ram v. Harsukh* 1 A. 101 and *Muhammad Suleman Khan v. Fatima* 9 A. 104 its powers of interference under that section are very limited.

8. The learned Counsel took objections to the competence of this Bench to hear this case. He contended in the first place with reference to Rule 20 of the Rules of Court, that the case must be heard by a Bench of at least three Judges. The case is not a charge against a Legal Practitioner, and I hold it is not a disciplinary case within the meaning of the rule. I would, therefore, overrule this contention.

9. Mr. Howard next contended that with reference to the language of Section 15, 24 and 25 Vict., Chapter 104, those cases could only be dealt with by the Full Court. This is an ingenious argument. I think it must be admitted that no Division Bench of the Court could, of its own authority, take upon itself to exercise the powers conferred by that section. But it appears, to me that the Court has an inherent power to delegate to one or more of its members the power to deal with applications, such as the present, asking the Court to exercise the powers of superintendence conferred by the section, and that it is not necessary that such cases should be dealt with by the Full Court.

10. That the Court has delegated that power is clear from Rule 1(xiii) and Rule 4. It would be in the highest degree inconvenient if every application under Section 15 had to be dealt with by the Court. That Division Benches of the various High Courts have been in the habit of dealing with applications under Section 15 is shown by numerous reported cases. I think for these reasons that Mr. Howard's second contention must be overruled.

11. Moreover, if his contention were held, to be valid, it would follow that the single Judge who issued the rule in this case had no power to issue it.

12. As stated above the right of this Court to interfere under Section 15 with the proceedings of a Subordinate Court is strictly limited. It cannot interfere to correct an error of fact or even an error of law. See the cases cited above. All it can do is to direct a Court to exercise jurisdiction when it has declined to deal with a case within jurisdiction or to abstain from taking action in matters of which it has not cognizance.

13. My only doubt in this case was whether the District Judge had power to make his order applicable to Rent Courts.

14. These Courts are not subordinate to the District Judge in all branches of their work but in certain classes of cases they are. I am not, therefore, prepared to say that the order so far as it referred to Rent Courts was entirely without jurisdiction.

15. In my opinion no good ground has been made out for interference and I would dismiss the application.

16. The order of the Court is that the application is dismissed.

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