

Ghassoo Vs. Emperor

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Court : Allahabad

Decided On : Jan-06-1930

Reported in : AIR1930All737

Appellant : Ghassoo

Respondent : Emperor

Advocate for Pet/Ap. : Mr. Zahur Ahmad

Judgement :

Dalal, J.

1. I have gone through The various affidavits and the explanation of the Magistrate who is trying the different cases, Unfortunately the cases have assumed a communal aspect as the dispute is between Hindus and Mahomedans. I well realize that in such a case the class to which the Magistrate belongs raises a suspicion in the opposite class, and, therefore, in cases of transfer where communal interests are involved a transfer should be granted with considerable hesitation. In the present case, however, I am afraid that the trying Magistrate has shown a certain amount of irritation and behaved in a way which would give legitimate cause to the Mahomedans to think that they would not receive justice in his Court. As I have often stated from this Bench, the matter is not to be decided in the abstract whether a certain Magistrate would deal with a matter impartially or not. The question always would be whether through some error or unfortunate

accident the Magistrate has behaved in a way to give legitimate ground for fear to one party or the other. In this case such legitimate ground does exist. First of all certain Mahomedans were prosecuted by the police out of several against whom a complaint was made by the Hindus. When others were not prosecuted a complaint was made in Court and the Magistrate without holding any inquiry under Section 202, Criminal P.C., promptly ordered all the Mahomedans to be prosecuted at the same time. It is true that the complaint was made prior to the result of the police inquiry. Even so, when the favourable result of the police inquiry was available to some of the Mahomedans it would have been better if the Magistrate had waited until the completion of the inquiry in the case sent up by the police before ordering the prosecution of men whose prosecution was not desired by the police. A certain amount of confusion must arise and the defence must be prejudiced when the police case is mixed up with the case put forward by a partial complainant. It is rightly pointed out on behalf of those who are prosecuted by the police that by the complainant spreading wide his net to include all the Mahomedans, the persons prosecuted by the police have been deprived of defence witnesses because those who were prosecuted on the private complaint were the witnesses for those prosecuted by the police.

2. Secondly, the Magistrate has passed a most extraordinary order on the prayer of the Mahomedan accused for a copy of the statements of witnesses recorded by the police. Under Section 162, Criminal P.C., a witness who was examined by the police and whose statement was recorded by the police may be cross-examined if in Court he makes a statement in conflict with the statement made by him before the police. The Magistrate has a curious idea that the person to be contradicted is the police officer who recorded the statement and not the witness who made conflicting statements. He even goes to the length of informing the public that such is the law 'as it exists' meaning thereby that the law was different previously. As is usual with Magistrates, I am certain that a copy of the Code of Criminal Procedure was not bandy for this Magistrate to refer to, and he never read the provisions of that section before recording this most amazing order.

3. Another thing is that there was no necessity to insist on the Mahomedan accused putting in an application. An oral request ought to be entertained as the

law does not prescribe any application. To ask for a reason is another amazing order when every Magistrate ought to know that when a statement is required under Section 162 it must be required for the purpose of contradicting a witness. Another noticeable matter is that the application was filed on 19th July, and no order thereon was passed till 30th September. It appears to me that the order was passed on 30th September, merely for the purposes of the record and that the Magistrate had no desire to carry out orders of the law under Section 162. The procedure is well laid down in *Salt v. Emperor* [1909] 36 Cal. 560 by a Bench of two Judges of the Calcutta High Court. The rule laid down there was that when a copy of a statement made by a witness before the police is asked for it is the bounden duty of the Magistrate, and it does not depend upon his volition or good will, that he should refer to the statement made before the police and furnish a copy, or record a definite order that he did not think it expedient in the interests of justice to furnish the accused with such a copy. The irritation shown by the Magistrate in first of all insisting on an application from an accused person who in every case has to be given facility for his defence, secondly, in passing an order more than two months afterwards on the application, and, thirdly, in giving a most amazing reason for the refusal of the copy, would naturally give an accused person reasonable belief that the Magistrate had no desire to be fair to him.

4. In one case the prosecution was no doubt on behalf of the police, yet there was a Mahomedan complainant. When that complainant applied for stay so that he may request this Court to transfer the case, the Magistrate again took an exceedingly narrow view. He gave it out as his opinion that the Mahomedan was not the complainant and that he had no right to apply to this Court for transfer. In ordinary language the Mahomedan was certainly a complainant even though the prosecution was launched by the police. The refusal to grant a postponement which was absolutely compulsory under the law may have been an error of judgment but yet combined with the other actions of the Magistrate would create an impression of fear in the minds of the Mahomedans.

5. It appears that this Magistrate made a local inquiry. Mr. Dube on behalf of the opposite party was under the impression that the inquiry was made for some report to be submitted to Government. If so the inquiry was of a nature in which

the Magistrate had to arrive at some conclusion, and I do not think that such a Magistrate would approach an inquiry in Court with an open mind. Reference was made on behalf of the opposite party to the explanation under Section 556, Criminal P.C., that the local inquiry did not deprive a Magistrate of jurisdiction. That merely means that the local inquiry would not amount to a necessity for transfer but there may be circumstances under which it would be advisable to direct a transfer from the Court of a Magistrate who has made a local inquiry.

6. I direct the transfer of all the cases to which these five applications for transfer relate from the Court of Mr. Chandra Mani to the Court of some other Magistrate having jurisdiction in the Etawah District. The District Magistrate is requested to fix upon such a Court. The trial shall proceed from the stage where it was left off. I have informed Mr. Zahur Ahmad, counsel for the applicants, accordingly.

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