

Sukhdeo Sharma Vs. State

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Court : Allahabad

Decided On : Feb-08-1961

Reported in : AIR1961All637

Judge : W. Broome, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 448

Appeal No. : Criminal Revn. No. 1717 of 1960

Appellant : Sukhdeo Sharma

Respondent : State

Advocate for Def. : Asstt. Govt. Adv.

Advocate for Pet/Ap. : J.N. Chaturvedi, Adv.

Judgement :

ORDER

W. Broome, J.

1. The applicant, Sri Sukhdeo Sharma, an Advocate practising in Ghaziabad (district Meerut) has been convicted by a first class Magistrate of Ghaziabad for an offence under Section 448 I. P. C. and has been sentenced to pay a fine of Rs. 1,000/-. His conviction and sentence have been confirmed in appeal by the II

Additional Sessions Judge of Meerut.

2. The prosecution story in brief runs as follows. At about 10 p.m. on 4-8-1959, Sri M. Sayee-dullah, S. D. M. Ghaziabad, returned home with his wife after visiting a friend and found the door of his office room open, with the light on. A man came out and went away without replying to any questions, and then the accused applicant also came out of the room, wearing a bush shirt and green striped pyjama trousers, The Magistrate asked him what he was doing in the office and he replied that he had brought some rulings.

Sri Sayeedullah then enquired why he had come at such a late hour, but the applicant gave no further reply and hurriedly jumped down from the verandah and drove away in a car that was standing outside the gate. When the Magistrate went into his office he found that a red cloth bundle containing the file of a certain case under Section 145 Cr. P. C. in which the applicant had been appearing for one of the parties, had been opened and the file looked into; and suspecting foul play, he at once informed the police.

3. The accused applicant has admitted practically all the facts alleged by the prosecution; the only item of any importance that is denied by him being the suggestion that Sri Sayeedullah asked him why he had come so late in the night and that he went off without replying to this question. He had been appearing in the court of Sri Sayeedullah along with Sri H. C. Mathur, an Advocate of Meerut, for one Ram Bilas in a case under Section 145 Cr. P. C. In the course of the arguments in that case, which were concluded on 4-8-1959, 17 rulings were cited On behalf of Ram Bilas; ana the Magistrate, while fixing 6-8-1959 for judgment, asked the counsel to send him these rulings.

Accordingly at about 9.45 p.m. that very night the accused, accompanied by his servant, drove in his car to Sri Sayeedullah's house with 11 of the rulings which he had been able to trace out. He was unable to take the remaining 6, as those had been cited by Sri H. C. Mathur and he had omitted to note down the references. On arriving at the house, he found that Sri Sayeedullah was out, but the orderly allowed him to enter the office room and the 11 books that he had brought were deposited there by his servant.

While in the office he noticed the bundle containing the file of the Section 145 case and it occurred to him that the Magistrate had noted down the references to the 6 missing rulings; and in order to find out these references he opened the bundle and started going through the file. At this juncture the Magistrate and his wife returned home and the accused was so embarrassed at being found in the office room at that late hour in inadequate attire that he took his departure without waiting to give any proper explanation to Sri Sayeedullah for his conduct, apart from telling him that he had brought some rulings.

4. Certain circumstances revealed by the evidence have been stressed by the courts below and given a sinister meaning. It is asked, for example, why the accused went to the Magistrate's house so late at night, why he was so inadequately dressed, why he did not reply to the Magistrate's second question and why he jumped down from the verandah instead of walking down the steps. All these points however have been satisfactorily explained by the accused applicant and none of them seems to me incompatible with the story he has put forward in defence.

He was understandably eager to supply the Magistrate with the cited rulings as soon as possible, before the judgment was written, and so he decided to take the books to the Magistrate's house that very night, rather than wait for the next day. He was delayed because he was busy in another court upto 8 p.m. and then had to attend the Law College to teach classes from 6.30 to 8.30 p.m.

His unceremonious attire is explained by the fact that it was a very hot night and by the fact that he did not intend to meet the Magistrate personally but only to leave the books at his house through the servant whom he took with him in the car. And his failure to give proper replies and his jumping down from the verandah are obviously attributable to his extreme embarrassment at being caught by the Magistrate in the office which he must have known he had no business to enter without permission.

5. It is important to note that the prosecution in this case has been utterly unable to suggest any specific criminal intention on the part of the accused applicant. In the trial court the suggestion was put forward that he might have wanted to tamper

with the file of the Section 145 case; but that suggestion has been repudiated by the trying Magistrate himself, who has pointed out that the accused went on inspecting the file for about twelve minutes and yet no paper on that file was found either missing or tampered with, when the file was examined later.

The learned Sessions Judge has suggested that the accused wanted to study the Magistrate's confidential notes for some ulterior purpose; but this too is not an acceptable theory, for the arguments in the case had been concluded and no advantage could be derived at that stage from seeing any note that the Magistrate might have written. In the circumstances, I can see no reason why the explanation offered by the accused him-self should not be accepted. It is not denied that 17 rulings were cited on behalf of Ram Bilas in the case under Section 145; and it is admitted that 11 of these rulings were brought to the Magistrate's house by the accused and were left behind in the office room by him.

His suggestion that he wanted to trace out the remaining 6 rulings, so as to be able to sub-mit them as well to the Magistrate, and that he inspected the file in order to find out the references to those rulings, is quite plausible; and as already remarked, no satisfactory alternative motive has been suggested by the prosecution. It is no doubt true that the applicant, being an advocate and an educated person, ought to have known better than to enter the Magistrate's office room and inspect the file without his permission; but that does not mean that he would be incapable of yielding to it momentary impulse and acting in this fashion.

He possibly thought that he was doing no harm in looking into the file to find out the references to the cited rulings, so as to be able to procure them without going to the trouble of making enquiries from Sri H. C. Mathur (the Meerut Advocate who had also appeared in the case on behalf of Ram Bilas and who had cited the rulings in question). The defence story, to my mind, is psychologically sound and is fully compatible with all the proved facts of this case; and I can see nothing to justify the hypercritical attitude adopted by the courts below towards the explanation which the accused has put forward to account for his conduct.

6. Accepting all the facts alleged by the prosecution as proved, I fail to see what criminal offence has been made out against the applicant. Before he can be

convicted under Section 448 I. P. C. it must be proved that he committed criminal trespass, in other words that he entered the house in question 'with intent to commit an offence or to intimidate, insult or annoy any person in possession'. As already pointed out, there is nothing to show that the applicant tried to steal any paper or forge any document or commit any other kind of offence. No question of intimidation or insult arises in this case.

We are therefore left with only 'intent to annoy' to consider. The courts below have come to the conclusion that in the circumstances of the case the applicant must be deemed to have entered the house with intent to annoy the Magistrate Sri Sayeedullah; but in my opinion this conclusion is unjustified. In the first place, it is very doubtful whether Sri Sayeedullah would have felt any real annoyance if he had known the full facts and realised that the accused had merely inspected the file to trace out the references to the rulings without any desire to tamper with the file or to derive any unfair advantage.

And secondly, even if it be assumed that the accused's action in entering the room and inspecting the file without permission could have the effect of annoying the Magistrate, a clear distinction has to be drawn between mere result or effect and intention. In cases of criminal trespass, as pointed out in *Brij Mohan Lal v. Emperor* AIR 1947 All 61 -

'Intention is the sine qua non of the offence under Section 441, Penal Code. Annoyance or intimidation might result from a certain conduct and yet it may never have been intended.'

In this connection it is important to bear in mind that the accused had no idea that the Magistrate would ever come to know of what he had done, for when he inspected the file, he did so surreptitiously and never imagined that the Magistrate would turn up before he could get away. His intention obviously was to inspect the file and leave the premises without allowing the Magistrate any opportunity of coming to know of his action; and in such circumstances it is not possible to hold that there was any deliberate intent to annoy. Analogous cases, in which the accused was found to have surreptitiously entered premises for some purpose which though reprehensible did not amount to an offence, without intending his

entry to become known to the person in occupation, have been dealt with in Emperor v. Gaya Bhar, ILR 38 All 517 : (AIR 1916 All 152) and in Abdul Majid v. Emperor, AIR 1938 Lah 534 (FB); and in the latter case it was observed:

'I find it impossible to hold that the accused could be said to have the 'primary' or even the 'subsidiary' or 'secondary' intent to annoy the person in possession, from whom he had taken all possible precautions' to keep his entry secret. The mere fact that he knew, or ought to have known, that, if discovered, his presence in the house might cause annoyance to the owner or other inmates of the house, is by itself not sufficient to bring his case within Section 441 I. P. C.'

In the present case too, I am satisfied that the accused had no intention of annoying Sri Sayeedullah; and even if it be assumed that he must have known that his action, if discovered, would have the effect of causing annoyance, he cannot be held guilty under Section 448 I.P.C.

7. The action of the accused applicant surreptitiously inspecting the file in the Magistrate's office room was no doubt highly improper, but I am satisfied that it was in no way criminal, No offence of criminal trespass can be said to have been committed by the applicant and I accordingly allow this revision application and set aside his conviction and sentence. The fine, if already paid, shall be refunded.

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