

Ram Das Vs. State

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Court : Allahabad

Decided On : Jan-10-1957

Reported in : AIR1958All703; 1958CriLJ1257

Judge : Raghubar Dayal and ;J.K. Tandon, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 195(1), 411A and 476B

Appeal No. : Criminal Appeal No. 1152 of 1953

Appellant : Ram Das

Respondent : State

Advocate for Def. : G.A. and ;P.C. Chaturvedi, Adv.

Advocate for Pet/Ap. : B.S. Darbari, Adv.

Disposition : Appeal allowed

Judgement :

Raghubar Dayal, J.

1. This is an appeal under Section 476-B of the Criminal Procedure Code against the filing of a complaint under a 195 (c), Criminal Procedure Code by the Registrar on behalf of this Court in compliance of the order of the Chief Justice dated the 6th

of April, 1953 on a complaint filed on behalf of Parduman Das on the 28th of September, 1951 complaining that Ram Das appellant had committed forgery in connection with two entries in the Kachchi Rokar Bahi of Parduman Das for the year Sambat 2005.

2. A criminal case under Sections 408 and 477-A, I. P. C. was instituted against Ram Das by Ram Shanker Lal, manager and mukhtar-i-am of Parduman Das, in February, 1949. That case had nothing to do with the aforesaid forged entries. Ram Das was convicted by the trial court of those offences but was acquitted by the Sessions Judge on appeal on the 17th of April, 1951. On the 18th of May, 1951 Ram Shanker Lal filed a criminal revision No. 747 of 1951 in this Court against the acquittal of Ram Das. This criminal revision was allowed and a retrial was ordered. On re-trial Ram Das was again acquitted.

3. On the 22nd of May, 1951, a few days after the filing of the criminal revision, Parduman Das instituted original suit No. 289 of 1951 against Ram Das in the court of the Munsif of Banaras for the recovery of Rs. 2,449/-. The claim included an amount of Rs. 1,999/- for principal and Rs. 450/- for interest. These specifications were not clearly mentioned in the plain which mentioned that Ram Das had taken a loan of Rs. 2,500/- on Jeth Badi 10 Sambat 2005, that he had paid Rs. 501/- and that the interest on the loan up to the date of the institution of suit worked to Rs. 450/- and that thus the sum sued stood due from him.

Ram Das in his defence alleged that he had taken a loan of Rs. 2,501/- and that he had paid up the entire amount by a payment of Rs. 501/- a few months later, and by a deposit of Rs. 2,000/- on Jeth Badi 2 Sambat 2005 with the plaintiff. He further mentioned that the alleged payments were noted in the Bahis of the plaintiff.

4. 12th September, 1951 was the date fixed for the filing of the written statement in the Civil Suit. Ram Das defendant did not file a written statement that day and filed it on the 19th of September. In between Ram Das obtained copy of the entries in the Kachchi Rokar of the plaintiff for the period Jeth Badi 1 to Jeth Badi 15 Sambat 2005. He had applied for the copy on the 12th of September, and got it on the 15th September. He had applied for inspection of the Bahi on the 16th August, 1951 but

the application was rejected as the Bahis were not in this Court. It may be mentioned that the aforesaid copy of the entries was supplied by the High Court office.

5. Ram Shanker Lal had the Kachchi Rokar Bahi inspected in the High Court office on the 24th and 28th September, 1951. Thereafter Mr. P. C. Chaturvedi, Advocate sent an application to the Registrar of the High Court on the 28th of September, 1951 alleging that the appellant committed forgery with respect to certain items and giving various reasons which would establish the allegation. This application naturally led to an enquiry. The papers of the enquiry are not available having been misled or lost in this office.

It is, however, not disputed that the Chief Justice ordered an enquiry by the police in this matter and that the police reported on the 16th of February, 1952 that the Court could make a complaint against Ram Das under Section 195 (1) (c) of the Criminal Procedure Code. It may be mentioned that on the 1st of February, 1952 the-police during the investigation arrested Ram Das. He was allowed bail by the Magistrate on 6th February, 1952. It was cancelled at the instance of Parduman Das on the 8th of February, and ultimately he was allowed bail by the Sessions Judge on the 13th of February.

6. It does not appear, from the papers available, what happened between the 16th of February, 1952 and 6th of April, 1953 when the order under appeal was passed by the Chief Justice. We have not got the police report of the enquiry before us. The order under appeal is a very brief one and is simply to the effect:

'Having gone through the relevant papers, I authorise the Registrar to file the Complaint placed below on behalf of the Court.'

7. A preliminary objection has been raised on behalf of the State that the appeal is not competent as no appeal lies against the order of a single Judge of this Court in the exercise of criminal jurisdiction and that therefore the court of a single Judge of this Court cannot be said to be subordinate to a Division Bench of this Court within the meaning of Section 195 (3) Cr. P. C. which is:--

'For the purposes of this section, a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former court, or in the case of Civil Court from whose decrees no appeal ordinarily lies to the principal Court having ordinary original civil jurisdiction within the local limits of whose jurisdiction such Civil Court is situate

8. In *M. S. Sheriff v. State of Madras*, AIR 1954 SC 397 (A), it was observed at page 399:--

'Two things are evident. First, that a right of appeal has been expressly conferred by Section 476-B provided there is a higher forum to which an appeal can be made; and second, that the appellate forum has been designated in an artificial way. The appeal lies to the Court to which the former Court is subordinate within the meaning of Section 195 (3). But 'Subordinate' does not bear its ordinary meaning. It is used as a term of art and has been given a special meaning by reason of the definition in Section 195 (3); a fiction has been imposed by the use of the word 'deemed'.'

It was again observed:

'Before we can apply the definition we have first to see whether there is a class of decrees or sentences in the Court under consideration which are at all open to appeal. If there are not the matter ends and there is no right of appeal under Section 476-B. If there are, then we have to see to which Court those appeals will 'ordinarily' lie.'

9. Section 411-A, Criminal Procedure Code provides an appeal from the sentences of High Court in certain circumstances :

'Any person convicted on a trial held by a High Court in the exercise of its original criminal jurisdiction may, notwithstanding anything contained in Section 418 or Section 423, Sub-section (2) or in the Letters Patent or law by which the High Court is constituted or continued, appeal to the High Court.'

10. It follows, therefore, that whenever an appealable sentence is passed by the High Court the appeal lies to the High Court in certain circumstances. We are,

therefore, of opinion that in view of the provisions of Section 411-A, Criminal P. C., appeals against appealable sentences by the High Court lie to the High Court and that an appeal under Section 476-B against an order of this Court can lie to this Court. Of course, an appeal would ordinarily be heard by a Division Court consisting of Judges other than those whose order is under appeal. We, therefore, hold that this appeal is competent.

11. We may also incidentally refer to another point which did crop up at the hearing, it being whether the order under appeal was an administrative order or a judicial order. The application dated 28th of September, 1951 was addressed to the Registrar of the Court and was not ostensibly submitted to this Court invoking its criminal jurisdiction. The order of the Chief Justice in the paper book indicates that the order was passed on the criminal side of this High Court.

The complaint filed by the Registrar itself mentions that an application was made to the High Court through Mr. P. C. Chaturvedi on 28th September, bringing the matter to the notice of the Court and that the High Court directed that the matter be investigated by the police. The heading of the complaint itself is complaint under Section 195 (c), Criminal Procedure Code. It is a Court alone which is to make a complaint under Section 195 (c) with respect to certain offences committed in certain circumstances. It should, therefore, follow that the complaint is made by this Court and that the order in furtherance of which the complaint was made was passed by the Court.

The offences for which the complaint is made are not such for which the complaint of the Chief Justice was necessary for the Magistrate to take cognizance of the offences. Subsection (1) (a) to Section 195, Criminal Procedure Code mentions offences of which cognizance can be taken only on the complaint in writing of a public servant. Those offences do not include the offences under Sections 456 and 467, I. P. C. subsections (1)(b) and (1) (c) to Section 195, Criminal Procedure Code speak of complaints by Courts and not by any public servant.

It appears that it would have been absolutely unnecessary for a complaint to be lodged by the Registrar under the orders of the Chief Justice, if it had been considered that the Magistrate was competent to take cognizance of the case

without the complaint of a court. We, therefore consider the order under appeal to be an order passed by the Chief Justice as a Court and not in his administrative capacity.

12. On the question whether the complaint should be withdrawn or not, as urged for the appellant, we are of opinion that it should be withdrawn. The two entries about which the alleged commission of forgery is alleged, relate to an entry of Rs. 2,000/- said to be deposited with Parduman Das by Ram Das on Jeth Badi 2 Sambat 2005 and with respect to the alteration of the figure of Rs. 3,000/- to Rs. 3,001/- in the entry about giving loan to Ram Das on Jeth Badi 10 Sambat 2005. We have perused these entries and we do not consider that the entry with respect to Rs. 3,000/- can be proved to have been tampered with.

The figure of Rs. 3,000/- in the details of this entry has not been tampered with. Some blot felt near the entry of Rs. 3,000/- in the beginning of the main entry and the ink spread over the figure of zero in the unit place. The naked eye does not disclose that this zero has been changed into '1'. The expert's opinion filed in the civil suit mentions that the figure '1' appears in a silhouetted form. We fail to understand what it means. The expert writes :

'If this spilling of ink would be at the same time as the writing of the said zero and the bi-kari, there would have been no trace of the stroke thereof, as is the case with the stroke of the altered figure '1', an indication of which is there in a silhouetted form, to a certain extent.'

13. This can only mean that the altered figure '1' cannot be read now and the alteration is only indicated in a silhouetted form. At the conclusion of his opinion, the expert wrote :

'this ink and spilled portion, on the face of it, bears a suspicious outlook. It indicates that it was done with undue care and attention.'

Suspicion will not go far in establishing the alleged forgery.

14. The accusation about the forgery seems to be the unfortunate result of both Parduman Das and Ram Das failing to recollect at the time of filing the plaint or

this written statement in the civil suit about the transaction of Re. 1/- which had taken place between the parties on Asarh Sudi 2, Sambat 2005. Naturally one could have forgotten the debiting of Re. 1/- to Ram Das on this date. It was on account of this fact that the plaint did not disclose an advance of Re. 1/- to Ram Das and simply mentioned that Rs. 2,500/- had been advanced and that the written statement did not mention that Rs. 2,500/- had been taken on loan on Jeth Badi 2, Sambat 2005 and Re. 1/- on Asarh Sudi 2, Sambat 2005, on the other hand, wrongly alleged that Rs. 2,501/- had been taken on Jeth Badi 10.

When this entry came to his knowledge, Ram Das defendant applied for amendment of his written statement. Probably this wrong defence led to the impression that Ram Das must have tried to tamper with this entry in order to give support to his contention. However, the fact remains that we do not consider that this entry had been tampered with or it could be proved to have been tampered with.

15. The other entry of Rs. 2,000/- is not among the main entries which really constitute the Kachchi Rokar Bahi. Some entries, according to the system of accounting by Parduman Das are made fortnightly at the top of the entries made in this Bahi. Such entries are known as Sira entries, i.e., entries written at the top. It appears that these entries are then noted in another Bahi known as Sira Bahi, Lal Bahi or Badi Bahi. This entry of Rs. 2,000/- is not noted in the Sira Bahi filed by Parduman Das in the civil suit for Sambat 2003 to Sambat 2006.

It is the absence of this entry in the Sira Bahi which is considered to give a He to the defendant's allegation that he deposited Rs. 2,000/- with Parduman Das on Jeth Badi 2. There are reasons to suspect the genuineness of this Sira Bahi and they are on account of the statement of Parduman Das or his agent Ram Shanker Lal in the criminal case that the Sira Bahi used to be destroyed at the end of the year when the entries had been taken over to proper Bahis. It was in the answer to the interrogatories in the civil suit that it was said that Sira Bahis are in existence and would be produced.

Ram Das then pleaded that the plaintiff was trying to prepare a false Sira Bahi. Further, we have tried at the hearing of this appeal to get a clear idea of the nature

of Sira entries Land how they are dealt with in the Kachchi Rokar Bahi later on and are unable to get ft clear picture. We have been referred to the statement of Parduman Das in the civil suit that all the Sira entries in Kachchi Rokar are not accounted for in the Kachchi Rokar or Sira Bahi or anywhere else. It follows, therefore, that too much importance cannot be given to the absence of the entry of Rs. 2,000/- in the Sira Bahi in which also the entries are made fortnightly.

The other circumstances said to establish that this entry of Rs. 2,000/- was forged in the High Court by Ram Das, who admits the entry to be in his handwriting, do not appear to go far in establishing that the entry was forged by Ram Das in this High Court.

16. In this view of the matter, it does not appear to us to be expedient that Ram Das should be put on trial for the alleged offences under Sections 466 and 467 I. P. C.

17. We, therefore, allow this appeal and order that the complaint filed against the appellant under Section 467. I. P. C. be withdrawn from the court of the Magistrate.

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