

Badri Prasad Vs. Jhamman

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Court : Allahabad

Decided On : Sep-01-1932

Reported in : AIR1933All47

Appellant : Badri Prasad

Respondent : Jhamman

Judgement :

ORDER

King, J.

1. This is an application in revision against an order passed by the learned Sessions Judge of Budaun rejecting an application for revision of an order of acquittal under Sections 193 and 199, Penal Code. It appears that one Jhamman was being tried before tahsildar- Magistrate for an offence under Section 323, Penal Code, and While the trial was pending Jhamman made an application to the District Magistrate asking that the case should, be transferred from the Court of the tahsildar on the ground that the tahsildar was siding with the complainant who was an influential person, and that the tahsildar had openly stated in Court that if the accused did not pay Rs. 100 as compensation to the complainant he (the tahsildar) would convict him. The District Magistrate obtained an affidavit from Jhamman in support of these allegations and then called for a report from the tahsildar from which it appeared that the allegations made by jhamman were false.

The District Magistrate accordingly rejected the application for transfer and ordered that Jhamman should be prosecuted under Sections 193 and 199 Penal Code. When Jhamman was tried for the offences mentioned above, the trial Court found on the strength of certain rulings of this High Court that even if the facts alleged in the -affidavit were false nevertheless he was immune from prosecution. The matter was taken up to the Sessions Judge in revision but he also came to the conclusion, in view of the authorities cited that the accused had been rightly acquitted.

2. For the applicant a case decided by a single Judge, *Baddu Khan v. Emperor* : AIR 1928 All 182, has been relied upon and it is directly in point. In that case it was held that according to the practice approved by the Allahabad High Court an accused person can legally tender his own affidavit in support of an application for transfer, whether the affidavit is tendered and the application made in a subordinate Court or in the High Court, and he can be prosecuted in regard to any false statement made in the affidavit. Several other rulings have been cited which take the same view, namely, *Ghulam Muhammad v. Emperor* AIR 1922 Lah. 113, *Emperor v. Pir Qadir Shah* AIR 1925 Lah 312 Mt. *Allah Wasai v. Emperor* AIR 1926 Lah 12. On the other hand we have a ruling of two Judges of this Court, in *Emperor v. Matan* [1911] 33 All 163, which clearly supports the view taken by the two Courts below to the effect that the accused is immune from any prosecution in respect of any false statement which he may make in an affidavit supporting his application for transfer. The same view was taken by single Judges of this Court in *Emperor v. Bindeshri Singh* [1906] 28 All 331 and *Ram Prasad v. Emperor* 1912 35 All 58. As there is a clear conflict of opinion between the decisions of this High Court and one of the decisions is by a Bench of two Judges, I refer the case to a Bench of two Judges as it would not be proper for me to dissent from the judgment of a Division Bench of this Court;

Pullan, J.

3. This is an application made by one Badri Prasad for revision of an order of acquittal passed against Jhamman in a case of perjury. Jhamman was accused of some petty offence in the Court of the Tahsildar Magistrate. He swore an affidavit

in connection with an application for transfer of the case, in which he made certain allegations about the presiding officer. It is in respect of this affidavit that he was prosecuted for offences under Sections 193 and 199, I.P.C.

4. The Magistrate, and in revision, the learned Sessions Judge, believed that the case should be decided in the same way as the case of Emperor v. Matan 1911 33 All 163 decided by a Bench of this Court in the year 1910. The opinion held by that Bench was that no accused person could be prosecuted in respect of any statement made by Mm for the purpose of his defence, and an application made for transfer was made by the accused person in pursuance of his defence. At that time an accused person could not take oath under any circumstances. We see no reason to differ from the view taken by the Bench of this Court in that case at that time; but Section 539-A has been enacted in the year 1923, and there is nothing to show that that section does not apply to an accused person. In our opinion it applies to any person who chooses to make allegations respecting a public servant and in support of those allegations swears an affidavit. If an accused person chooses to come within the scope of this section and swears an affidavit on false facts, we consider that he should be liable to punishment which can be inflicted upon persons who swear such false affidavits. As pointed out by the learned Judge of this Court, who referred this matter to a Bench, this view has already been taken in other High Courts, and we are of opinion that in view of the change of law the judgment of the Bench in the case of Emperor v. Matan [1911] 33 All 163 need no longer be followed.

5. In the present case we consider that the matter has gone far enough, and we do not propose that this case should go back for decision on the question which has not yet been tried, namely, whether the affidavit was or was not false. With these observations, we direct that the record is returned.