

Bhola S/O Kuber Vs. State

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Court : Allahabad

Decided On : Jun-05-1963

Reported in : 1963CriLJ542

Judge : N.U. Beg, J.

Appellant : Bhola S/O Kuber

Respondent : State

Judgement :

N.U. Beg, J.

1. On the 9th March, 1960, the Station Officer of police station Qazimpur, made a report under Section 133 of the Code of Criminal Procedure to the Sub-Divisional Magistrate, Sandila, Shri Section S. Raturi, that one Bhola who is the applicant in this revision application had blocked a. Nali thereby causing great hardship to the general public. On the 23rd of March, 1960, Shri S. S. Rathuri, Sub-Divisional Magistrate, Sandila, passed conditional order calling upon the applicant to open the Nali within a week's time or to show cause against it on the 2nd of April, 1960. The applicant was absent on the 2nd April, 1960. On the 29th of April, 1960 which was a subsequent date fixed in the case, the applicant moved an application objecting to the said order. Instead of taking any evidence in the case or calling upon the applicant to produce evidence in support of his objection, Shri S. S. Raturi, Sub-Divisional Magistrate, Sandila transferred the case to the file of Shri P.

N. Srivastava, Additional Sub-Divisional Magistrate, Sandila, directing the applicant to appear in the Court of the latter on the 13th of May, 1960. The applicant being absent on the 13th of May, 1960, Shri P. N. Srivastava, Additional Sub-Divisional Magistrate adjourned the case to the 14th of May, 1960. On the 14th of May, 1960, again the applicant was absent. The Additional Sub-Divisional Magistrate, Sandila, accordingly, passed an order under Section 137 (3) of the Code of Criminal Procedure, making the conditional order absolute, and ordering the applicant to remove the obstruction within 15 days, and, in case of disobedience, making him liable to penalty under Section 188 of the Indian Penal Code. Dissatisfied with the said order the applicant preferred a revision application before the Additional District Magistrate (J), Hardoi who has made this reference for setting aside the order passed by Shri P. N. Srivastava on 14th of May, 1960.

2. Having gone through the record of the case, I am of opinion that this reference should be accepted. In the present case, Bhola had put in objections against the order. In this case, therefore, Bhola, had appeared to show cause against the conditional order issued by the Magistrate. Section 137 (1) of the Code of Criminal Procedure lays down that where the person against whom the show cause notice has been issued appears and shows cause against the order, the Magistrate shall take evidence in the matter as in a summons case. The Magistrate did not take any evidence in the case. Even if Bhola did not appear to substantiate his objection in Court, it was incumbent on the Magistrate to take some evidence on behalf of the police in order to substantiate the allegations which were the basis of the conditional order. Bhola had denied his liabilities to comply with the order. In this situation, the burden was-on the police to establish the allegations made against Bhola by reliable evidence to the satisfaction of the Magistrate concerned. No such evidence-was taken in the present case. The final order is, therefore, liable to be set aside on this ground.

3. The other objection to the validity of the order passed by Shri P. N, Srivastava in the present case is that the Sub-Divisional Magistrate Sandila having passed the conditional order could not transfer the case to the file of another 'Magistrate subsequent to that stage. A perusal of Section 133 (1) of the Code of Criminal Procedure indicates that the order of transfer can be passed only at the time when

the conditional order is passed by the Magistrate concerned and not at any subsequent stage. In the present case, the stage of Section 133 (1) of the Code of Criminal Procedure was crossed. The show cause notice was served on Bhola under Section 134 of the Code of Criminal Procedure. Bhola had appeared in response to the show cause notice and had filed his objections under Section 135 of the Code of Criminal Procedure. At that stage, the Magistrate instead of trying the case himself proceeded to transfer it to another Magistrate. The procedure adopted by the Magistrate was not warranted by the provisions of the Code of Criminal Procedure. Shri P. N. Srivastava, Additional Sub-Divisional Magistrate, Sandila, to whom the case was transferred, therefore, had no jurisdiction to proceed with the case. The final order passed by him on the 14th of May, 1960, is, therefore, liable to be struck down on this ground as well.

4. For the above reasons, I am of opinion that this reference has force. I, accordingly accept this reference and set aside the order passed by Shri P. N. Srivastava, dated the 14th of May, 1960.