

Bindeshari Prasad Vs. State

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Court : Allahabad

Decided On : Jan-29-1957

Reported in : 1958CriLJ119

Judge : Raghubar Dayal and; Tandon, JJ.

Appellant : Bindeshari Prasad

Respondent : State

Judgement :

ORDER

Raghubar Dayal, J.

1. This is a revision by Bindeshwari Prasad against the order of the Assistant Sessions Judge of Etawah confirming his conviction for offences under S 3 (i) (c) and under Section 3 (ii) of the U. P. Removal of Social Disabilities Act (XIV of 1947).

2. The applicant was the proprietor of Rashtriya Swatantra Bhojnalaya, Etawah on the 16th of ~June, 1952 and was its proprietor in December, 1952 as' well. Several persons including Swami Chhamanand, Chamar by caste, went to this hotel for a meal on the night of the 16th of June, 1952. Three of them happening to arrive earlier and belonging to other castes went inside the chowka portion and took their meal there in brass utensils. Swami Chhamanand and two others belonging to

Kumhar and Nai castes reached a little later. The applicant prevented Swami Chhamanand. from going inside the chowka and told him. that he would be served his meal on the Takhat in the compound and on pattals. He and his companions came away from the hotel.

3. The accused contended that the hotel possessed no brass utensils of its own and that regular customers deposited their brass utensils if they liked to have food in them. The hotel served food in china vessels or leaf pattals. He was not questioned about his preventing Swami Chhamanand from going inside the chowka and he gave no explanation for that allegation.

4. In December, 1952 the police found a sign board with the notice that only Brahmins, Thakurs, Vaishyas, Kayasthas and 'Yaduvanshis could take food in that hotel.

5. The accused has been convicted under Section 3 (i) (c) for preventing persons of the Scheduled Castes, merely on the ground that they belonged to a Scheduled Caste, from enjoying the advantages, facilities and privileges of his hotel which was open to other Hindus, as was indicated by the notice on the sign-board, and also under Section 3 (ii) for refusing to render to Swami Chhamanand merely on the ground that he belonged to a Scheduled Caste such service which the accused ordinarily rendered to other Hindus on the terms on which such service was rendered in the ordinary course of business.

6. We are of opinion that the two offences alleged to have been committed by the applicant were distinct offences committed on different dates separated by a period of about six months. They should not have been tried together. Further, the accused was not questioned at the commencement of the trial with respect to the offence alleged to have been committed by him in December, 1952 on, account of his having the aforesaid sign-board at his hotel. We, however do not In this case decide whether the conviction of the accused is bad on account of the joint trial for both these offences. The offences are punishable with less than six months' imprisonment. No charge is framed in summons trials and it is open to argument whether the provisions of Section 233, Or, P. C, would strictly apply to such trials.

7. There is nothing on the record to establish that in the ordinary course of business the I accused supplied brass utensils to the customers. The witnesses examined for the prosecution do not depose about this as all of them except Sri Bishan Dayal has visited the hotel that day alone. Sri Bishan Dayal too had taken food for three days. He was a member of the Legislative Assembly and consideration might have been shown him. It was essential for the prosecution to establish that the supply of brass utensils was service rendered by the hotel to other Hindus, In the absence of such evidence we are of opinion that the applicant's conviction for contravening S, 3 (ii) is not correct.

8. The putting up of the notice board intimating that the hotel will serve only Brahmins, Thakurs, Vaishyas, Kayasthas and Yaduvanshis does not lead to the commission of any offence by the applicant. The notice means that only these five communities among the Hindus will be served with food at that hotel. Besides the Scheduled Castes there are many other communities among the Hindus which the hotel was not serving according to its notice. It cannot therefore be said, that the hotel refused to serve some persons merely because they belonged to a Scheduled Caste. One would commit an offence under S 3 (i) (c) only when one prevents the members of Scheduled Castes from enjoying the advantages, facilities and privileges of the hotel which were open to other Hindus, as it is only then that it can be properly said that such prevention was merely on the ground that those persons belonged to the Scheduled Castes. This hotel according to its notice on the sign-board, refused to serve people who were Hindus but did not belong to the Scheduled Caste and therefore its refusal to serve persons who belong to the Scheduled Castes would not be merely on the ground that they belonged to the Scheduled Castes.

9. In view of the above, we consider the conviction of the applicant to be illegal and therefore allow this revision, set aside the orders of the Courts below and acquit the applicant of the offences he was convicted of.