

Raza Hussaln Vs. Emperor

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Court : Allahabad

Decided On : Oct-20-1926

Reported in : AIR1927All184

Appellant : Raza Hussain

Respondent : Emperor

Judgement :

Walsh, Ag. C.J.

1. This is one of those troublesome and difficult cases, which are dignified by the misleading description of an application for transfer. I am quite satisfied that no grounds for transfer exist, that the affidavit, which is put forward to support it, is a scandalous and irrelevant document, which must be removed from the file of the Court where it ought never to have been placed, and that I might confine myself to the simple duty of dismissing this application. It is true that there are two so-called complaints against the particular gentleman who is trying the charge under Section 110 against the applicant. One of them is that he refused to make an order disclosing to the accused the names of the witnesses for the prosecution. The circumstances under which he did so do not very clearly appear. My attention has not been drawn to any provision of the law which has been broken in this matter, and I decline to regard that as a serious allegation in any way affecting this application.

2. The other allegation is that he has shown 'extraordinary leniency' to the witnesses for the prosecution. What does this mean? It is one of those vague and general suggestions which generally mean nothing, except a desire to be offensive. What it means I do not know, except so far as Mr. Muhammad Husain for the applicant was able to give me an explanation. It appears that a gentleman of the advanced age of 55, in the month of June in the course of his durance while in the witness-box, which included three days' cross-examination was offered a chair by the Magistrate. Whether this was an act of leniency, or misplaced courtesy, I do not stop to enquire. I have no hesitation in holding that it is not an adequate ground for a broad charge against the Magistrate of having treated the witnesses for the prosecution with extraordinary leniency and undue favour. The rest of the affidavit is of the most irrelevant character possible to conceive. It is difficult to summarize 65 paragraphs of this sort of stuff in a compendious statement, but, generally speaking, it consists of a series of roving charges of misconduct, malicious and unfair prosecution on the part, so far as I can gather, of the District Magistrate and his subordinate officers and of the police in the district of Banda, where this applicant-resides. It opens up past matters, it flings charges against persons who have nothing whatever to do with this particular case, and it is one of the most unjustifiable documents I have ever seen filed in a Court of law.

3. There is an old saying that 'if you only throw enough mud some is certain to stick.' Whether that was the object of the affidavit is no concern of mine. But there is a fundamental and unanswerable objection to the practice of filing such affidavits, and I would appeal to the profession in this High Court, if they have any regard for their own reputation for professional conduct to abstain from lending themselves to such outrageous proceedings. The objection to such a proceeding is fairly obvious and not difficult to state. If the Court is silent with regard to such matters, which are, of course, highly controversial, it is assumed because proceedings in a Court of law are public and it is impossible to restrain or control the publication of matter, however offensive-it is assumed possibly only by ignorant and stupid people, who have no opportunity of investigating such matters possibly by persons who ought to know better, that there is something in it or such allegations would not be made. If, on the other hand, a Court endeavours to form an opinion upon such matters, it is doing so obviously on inadequate materials and

may be led into serious error and unconsciously inflicting injustice or undeserved pain upon individuals. For example: a reference in an affidavit of this kind to previous cases, in which the trying officer in this case was not concerned, is clearly irrelevant. If it were relevant, it would be the duty of the Court to re-open and judicially deal with previous matters which have no concern with the matter the Court is called upon to decide.

4. The attempt to investigate such matters upon affidavit evidence would involve a protracted and probably useless enquiry, and the Court necessarily feels itself embarrassed in dealing with the matter at all lest it should be thought that any opinion was expressed without adequate material. I decline to express any opinion about the matter, but I think it is due to the persons concerned to draw attention to what the Government Advocate pointed out to the Court, namely, that between the time when this charge was formally begun, and the current proceedings, about which complaint is made by the applicant, there has been a complete change in the personnel of the officials who are charged broadcast with this alleged prejudiced and unfair conduct. So far as I am concerned with regard to the transfer application, I am only repeating what I have said over and over again that in my view persons, who engage in what may be called political or social controversies, or controversial matters in the local affairs of their own community, and what may be described generally as public affairs, and who happen to be unable to do so without bringing themselves within, at any rate, an alleged breach of the criminal law, must take the local Courts as they find them.

5. There seems to be an impression abroad that you have only got to make yourself sufficiently objectionable to the local Magistrates, or the local authorities, so as to incur their displeasure, to render any judicial officer in that particular district unfit to try your case. It is often put in argument, and I believe it is sometimes to be found in decided cases, that it is sufficient to found an application for transfer that the applicant is apprehensive that he will not get a fair trial. That is not the law. There is not the slightest justification for such a conclusion, and there is ample authority throughout India establishing the contrary. There are instances of foolish orders, which can, no doubt, be found in the reports in which some support seems to be lent to that idle proposition. No Court ought to interfere by an

order for transfer unless it is satisfied by clear and unimpeachable evidence that the Court, or individual, from whom it is proposed to transfer the case, has by some personal conduct rendered himself unfit, or unlikely to give the accused a fair trial. Subject to that salutary provision local people must take the local Courts as they find them. So far as the High Court is concerned it will not encourage the public belief that the Judicial and Magistrate Benches can be dragged into the arena of political and personal strife by means of applications, the foundation of which is a deliberate attempt to involve members of the local Bench who have a public duty to perform, in local and personal controversy. In this country, it seems to me, although at one time there was a tendency to check the current of applications of this kind, that latterly that tendency has increased, and the idea has grown that you have only got to throw enough mud to be sure that some will stick, and by your own instrumentality to drag the Magistrate from his position as president of the tribunal into the arena of the actual dispute itself, by unjustifiable attempts to interfere with the performance of his duty and by aspersions cast upon him, in order to justify an allegation that he is unfit to try your case. If that were the law-certainly it is not-the result would be that the worse the conduct of the accused, the more unjustifiable the attacks made upon the tribunal, the stronger his case would become for representing to the High Court that the tribunal was unfit to try the case. Carried to its logical conclusion that sort of conduct would render many of the Magisterial Courts unable to carry out their public duties.

6. I have made it quite clear that there is no ground, in my opinion, either in the affidavit, or in any reasonable suggestion which can be made, for the notion that Mr. Liakat Husain, Deputy Magistrate of the First Class, who is trying this case, is unfit to do so, or that he has committed himself in any way to any course of conduct which could be regarded as having the faintest shadow of justification for this application. The only legal ground would be that he has by his conduct either on the Bench, or elsewhere, shown that he is unfit to give the applicant a fair trial. There are two sides to every question, and it would be a monstrous injustice, and I should be unfit to occupy the position I hold if I used a single expression which would justify any sane person in supposing that either in my mind, or justifiably in the mind of any reasonable person, there lingered the faintest suggestion that this gentleman was unfit to complete the trial in this case. I am satisfied that no more

unfounded application for transfer was ever made than this. On the other hand in such cases it is difficult to retrace one's steps and undo the harm that has been done. You cannot recall the past. I am therefore going out of my way to take a course, with the consent of the applicant, which to my mind is more in the public interest than merely dismissing this application and allowing things to take their course.

7. There are two proceedings, one under Section 110 of the Criminal P.C. (the badmashi section) and one under Section 504 of the Indian Penal Code for interfering with a witness or the due course of justice, and they stand upon a slightly different footing. The existence of the latter charge makes the course which I have finally decided to take somewhat more difficult, but nonetheless I am convinced that what I am going to do is in the best interest of everybody. The charge under Section 110 was instituted by an order somewhere in March. The actual proceedings have been going on since June. A large number of witnesses have already been called and some 200, it is said, though possibly that figure is an exaggeration, may yet have to be called. It is obvious that such a proceeding must loom very large in the criminal proceedings in the Magistrate Courts, and hold up a great deal of other useful work. The object of the section is, as everybody knows, to use a colloquialism, to keep the man quiet. In this particular case the applicant, who is the respondent to that proceeding, rightly or wrongly, is so completely out of touch with the authorities, and is nursing, again whether rightly or wrongly is not the question, such a sense of personal grievance that he has sworn, and repeats through his counsel before me, that his honour and liberty are bound to be lost if he stays in the district of Banda. It, therefore, would appear in the interest of everybody concerned that he should not stay in the district.

8. Probably nobody would be more satisfied than the authorities who have, as they consider, been compelled to take this proceeding, and I, therefore, in the public interest, without expressing any opinion one way or the other, except the very clear and positive opinion that no legal ground exists for this application, accept the undertaking of the applicant, through Mr. Muhammad Husain, that he will remain outside the district of Banda for the next three years. On that understanding I grant a stay of the proceeding under Section 110 of the Criminal

P.C. Three years is a long time. Mr. Muhammad Husain suggested that a shorter time would meet the case. It may be that it will. I hope it will. When bitter feeling exists between either parties or individuals, one of the best cures is abstention from one another. It may be if there are faults on one side, or the other, that in less time than three years more reasonable counsels will prevail and the gentlemen in question will be regarded as to be trusted to return to the district with the full agreement of the authorities with whom for the present he seems to be on such bad terms. So I will reserve both to him on the one hand and the District Magistrate on the other, liberty to apply to me, or any Single Judge if I am not sitting in the High Court, to abbreviate the term of this order.

9. On the other hand if the applicant without the consent of a Judge of the High Court, or of the District Magistrate, returns to any place within the district of Banda within the period, he will commit a breach of this personal undertaking given by him through his counsel which is intended by me to have the force of an injunction, and will render himself liable to the penalties usually consequent upon personal disobedience to an order. In other words he will be guilty of contempt of Court, and on the matter being brought before the High Court, he will be liable to be dealt with as such; and further it will be open under this order for either the Sub-Divisional Officer, or the District Magistrate, to apply to this Court for liberty to continue the proceedings which I propose to stay. On the above terms I stay the proceedings against the applicant under Section 110 until further order.

10. I now come to the more troublesome question under Section 504 of the Indian Penal Code. I recognize the force of the Government Advocate's submission on that point. It is a more serious matter to stay such proceedings under what may be regarded as to a large extent a consent order, than it is to stay proceedings under Section 110, where the person charged is willing to remove himself from the district. Interference with witnesses and the course of justice during proceedings is, of course, always reprehensible and unjustifiable and may be very serious. The District Magistrate obviously took that view in directing proceedings, although the person offended preferred not to become the complainant himself. But on the whole having regard to the difficulty of allowing that proceeding to subsist, after accepting an undertaking from the applicant to remain out of the district for three

years, I have come to the conclusion, which I hope is equally in the public interest, that even that may be allowed to remain dormant for the present. I, therefore, direct that, provided the applicant before me commits no breach of the undertaking which has been given in the other proceeding, which I have just dealt with, and provided that a Judge of the High Court sees no reason why, on the application of the District Magistrate, that proceeding should be revived on any subsequent date in spite of the applicant having complied with his undertaking, I grant a stay of that proceeding also until further order by this Court. If the undertaking is fully carried out the proceedings will come to an end at the end of three years.

11. In case the question should arise here after, I desire to make it plain that the intention of this order is that if the three years' undertaking is carried out on the part of the applicant, and no necessity arises for any application to this Court, or any further order in the matter, both proceedings under Sections 110 and 504 should then be withdrawn by the District Magistrate and terminated, without prejudice, of course, to any other proceeding which another District Magistrate may think it right to bring with regard to other matters.

12. This order is to take effect from the 14th of November, from which date the three years will begin to run. If after that date during the current year any emergency should arise requiring the presence of the applicant in the district and he is able to obtain the consent of the District Magistrate and the Government Advocate, I will, on application to me, grant that concession.

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