

Durga Prasad Vs. Emperor

Durga Prasad Vs. Emperor

SooperKanoon Citation : sooperkanoon.com/475377

Court : Allahabad

Decided On : Aug-14-1931

Reported in : AIR1933All318

Appellant : Durga Prasad

Respondent : Emperor

Judgement :

ORDER

Sulaiman, J.

1. This is an application in revision from a conviction under Section 193, Penal Code. The accused and his father were plaintiffs in a civil suit pending in the Court of the Munsif, and on 24th March 1930, which was the date fixed for its hearing, an application was filed on their behalf for an adjournment of the case on the ground that the accused's father Gobri Ram was ill and not present in Court, and this evidence was indispensable. The learned Munsif was informed by the defendants that Gobri Ram was actually present outside the Court-room, and that if an orderly were sent out he could be brought in. On this information the learned Munsif sent his Orderly to call in Gobri Ram. The orderly met Gobri Ram and was bringing him to the Court-room. When they reached the Court-verandah the accused, Durga Prasad, went out and made Gobri Ram run away. The reader of the Court and the defendant's vakil, as well as the orderly, saw this and informed the Court that

Gobri Ram had been made to run away by the present accused. Durga Prasad was examined by the Court on oath on the fact whether Gobri Ram, his father, was ill and had not come to Court. There is some controversy as to the exact stage at which Durga Prasad's statement was recorded, but there is no doubt that he made the statement of oath that his father Gobri Ram was seriously ill that day and had not come to Court, and that he was not with the orderly of the Court. The Court dismissed the application for adjournment. It was after this that the Court was informed by the defendant's vakil that he had information that Gobri Ram was actually hiding in the petrol shop near the Court. The learned Munsif went to the place himself and found Gobri Ram in the shop. These facts are undisputed. It cannot possibly be suggested that Durga Prasad did not make a deliberately false statement before the Munsif, and in spite of the fact that Gobri Ram had been seen by people, he persisted in his false statement that he had not come to Court at all. The learned Munsif on this started proceedings under Section 476 and Section 195, Criminal P.C., and filed a complaint against the accused under several sections of the Indian Penal Code, including Section 193.

2. An appeal from the order was filed, on the ground that the statement had not been recorded in the course of a judicial proceeding, and therefore Section 476 was not applicable. The appeal was dismissed, and no further attempt was made to bring the matter up in revision to the High Court, and get the order set aside. The accused was prosecuted and has been convicted, and his conviction under Section 193 has been affirmed by the Sessions Judge. The learned advocate for the applicant urges that the statement was not taken down in or in relation to any judicial proceeding, and therefore neither Section 476 nor Section 195 applies. He further contends that the statement was not material to the inquiry, because it was made after the application for adjournment had been dismissed. The order sheet does not show exactly at what stage this statement was recorded. It was certainly recorded before the Munsif went to the petrol shop, but it is not at all clear that it was recorded after the application for adjournment had been dismissed. The learned Sessions Judge has come to the conclusion that Durga Prasad was examined in connexion with the adjournment of the case which was sought by the plaintiffs on the ground that Gobri Ram had not come to Court, being unwell, and that his evidence was essential. The accused did not lead any evidence to show

that the statement was recorded after the application for adjournment had been dismissed.

3. Section 476, Criminal P.C., would apply when the offence is committed not only in a proceeding in a Court of law, but also in relation to a proceeding in such Court. The same remarks apply to Section 195(b). The learned Munsif had to consider whether an adjournment should be allowed. If he took down the statement before dismissing the application for adjournment, there can be no question that it was taken down in the course of the judicial proceeding relating to such an adjournment. Even if he took down the statement after dismissing the application summarily on information received, it was open to him to reconsider his order if he was satisfied that Gobri Ram had in reality not come to Court. The suit was fixed for hearing on that date, and there was nothing to prevent him from postponing it if, on the evidence of Durga Prasad, he was satisfied that Gobri Ram was really ill. I am therefore unable to hold that the statement of Durga Prasad was not recorded 'in relation to' the proceeding relating to the adjournment of a pending suit. He was a party' to the suit which had to be dismissed for want of prosecution or default if no one appeared to prosecute it. It was as a matter of, fact dismissed for default. Durga Prasad's statement on the question whether one of the plaintiffs was ill and lying at home was-material to the question under consideration before the Munsif.

4. But even assuming that this inference is open to doubt, it is clear that the Munsif could, as a public servant, file a complaint to the Magistrate against the accused for an offence which had been committed within his knowledge. If the offence had not been committed in or in relation to any judicial proceeding there was no bar to such a complaint under Section 195 or Section 476. The accused has been convicted of an offence under Section 193, and so far as the Trying Magistrate is concerned, the question whether there could or could not have been a proper order under Section 476 would not arise so long as he had jurisdiction to try him. It is contended on behalf of the accused that the statement made by him was not material to the inquiry, and therefore Section 193 cannot apply. So far as the language of Section 191, Penal Code, goes, it is not strictly necessary that the statement should be material to the inquiry, so long as it was made by a person

who was bound by oath to state the truth. It is noteworthy that in other sections like Sections 197 to 200, where the act is committed out of Court, the materiality is made essential by the Legislature, but not so in Section 191. Reliance has been placed on the case of Sheodahin Singh v. Bandhan Singh (1905) 2 ALJ 836. But in that case all that the learned Judge meant to lay down was that the probability of a witness making a false statement with reference to an immaterial fact unintentionally was far more than in the case of a material fact. If in the course of a long cross-examination a wrong statement is made, it may not be considered proper to convict him of perjury. As pointed out in the case of Emperor v. Babu Ram (1904) 26 All 509, in which two previous Calcutta cases were quoted with approval:

the words in Section 191 are very general and do not contain any limitation that the statement made shall have any bearing upon the matter in issue. It is sufficient to bring a case within that section if the false evidence is intentionally given, that is to say, if the person making the statement makes it advisedly, knowing it to be false, and with the intention of deceiving the Court and of leading it to be supposed that that which he states is true.

5. In the present case there cannot be the least doubt that Durga Prasad made the false statement deliberately, knowingly and advisedly. There is not the least possibility of his attention not having been directed to the matter and his having made a mis-statement inadvertently. I therefore think that the offence under Section 193 read with Section 191 was fully established. After all, this is a criminal revision, and when the facts are clear, I am not bound to interfere. The application is dismissed.