

Baddu Khan Vs. Emperor

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Court : Allahabad

Decided On : Nov-10-1927

Reported in : AIR1928All182; 108Ind.Cas.124

Appellant : Baddu Khan

Respondent : Emperor

Judgement :

Boys, J.

1. The applicant in revision, Baddu Khan, was an accused in a criminal case, and applied to this Court for transfer. In support of that application he filed an affidavit affirmed by himself in which the statement occurred:

That one Shib Lal... who is a relation of the complainant (Nand Kishore) owns a shop in Kashipur where the complainant and the trying Magistrate both often come: and sit together.

2. The trying Magistrate, Mr. Sadanand in his explanation, replied as follows:

(1) It is a fact Lala Shib Lal is some relation of the complainant.

(2) It is altogether false that I ever saw the complainant at the shop of Lala Shib and that I had any talk with the complainant.

3. Mr. Justice Dalal, in view of this denial, ordered the prosecution of Baddu Khan under Section 199, I.P.C., for having made a false statement in the affidavit to the effect that the complainant, Nand Kishore, and the Magistrate, Mr. Sadanand often came and sat together at the shop of Shib Lal who is admittedly a relation (first cousin) of the complainant, Nand Kishore. As a result of this order a prosecution was started which resulted in the conviction of the accused by the Joint Magistrate, and a sentence of six months rigorous imprisonment, which conviction and sentence were upheld by Mr. Thurston, the Sessions Judge of Allahabad.

4. It may be noticed that the composite allegation by the accused, Baddu Khan, when applying for transfer, contained several statements:

(a) That Shib Lal is a relation of the complainant.

(b) That Shib Lal owns a shop in Kashipur.

(c) That the complainant Nand Kishore used to sit there;

(d) That Mr. Sadanand, the trying Magistrate, used to sit there.

(e) That the complainant Nand Kishore, and the trying Magistrate Mr. Sadanand often sat there together.

5. As to (a), it is admitted by the Magistrate in his reply that Shib Lal is a relation of the complainant. As to (b): this was not denied by Mr. Sadanand and is inferentially admitted. As to (c): this is not denied by Mr. Sadanand. As to (d): this was not denied by Mr. Sadanand. As to (e): Mr. Sadanand denied this. He not only denied that he often sat there with the complainant, but denied that he had even seen the complainant there at all.

6. In view of this denial as to (e) it was inevitable perhaps that the prosecution of the accused should be ordered.

7. What, however, had to be determined at the trial was not whether a prosecution was called for, but whether the charge of making a false statement on the point (e) had been affirmatively proved against the accused. (After considering the evidence His Lordship proceeded). To turn to the judgment of Mr. Thurston in the

appellate Court: he appears to have confused himself from the outset by not keeping clearly in mind the one single point that he had to decide. After referring to the facts of the issue of a warrant, the inspection of Shib Lal's registers for the purposes of income-tax, the living of the Magistrate in the guest house of Shib Lal, and purchases of cloth by the Magistrate from Shib Lal, the learned Judge says:

None of these facts are by themselves sufficient to establish an inference that the Magistrate, was corrupt or partial.

8. This was not an issue that the Judge had to try. He then continues:

It is to be seen, however, whether the appellant had any justification for his apprehension.

9. This, again, was wholly immaterial to the issue, and the only issue, which the Judge had to try, viz., whether or not the Magistrate had often sat with Nand Kishore at the shop of Shib Lal.

10. The Judge then says:

I will refer to his witnesses. Sardar Ali deposed that he had seen the Magistrate on one occasion at Shib Lal's shop. This one occasion cannot be treated as 'often.'

11. It is sufficiently obvious that 'one occasion cannot be treated as often,' and it is equally obvious that 'one occasion' added to other occasions might amount to 'often.' Moreover, the Judge omits to note that Sardar Ali, whom he does not say he disbelieves, specifically stated on oath that Nand Kishore was also there at the time. The learned Judge then says of the next witness:

Ibrahim stated that he had on one occasion seen both Nand Kishore and the Magistrate at Shib Lal's shop;

12. and as to the other witness Shaukat Ali, he says:

The third witness Shaukat Ali deposed that he had seen the Magistrate and Nand Kishore twice at the shop.

13. He clearly does not reject the evidence of any of these three, witnesses who between them speak on oath as to four occasions when the Magistrate was seen at the shop of Shib Lal with Nand Kishore there also, but contents himself with saying:

This evidence is clearly insufficient to justify the assertion of the appellant in his affidavit.

14. I do not agree. The learned Judge has approached the question he had to decide from a wholly wrong standpoint. Baddu Khan had not even got to prove that his statement was true; the prosecution had got to prove that it was false. The evidence for the defence was specific as to the Magistrate and Nand Kishore having been at the shop of Shib Lal together on four occasions, and that was not disbelieved. As I have said above, it must be borne in mind in fairness to Baddu Khan that while it may be that these are the only three or four occasions on which Nand Kishore and the Deputy Magistrate were at the shop together, it is not in the least probable that Baddu Khan would be able to produce evidence as to or even to remember all the occasions on which he had so seen the two together. In my view the learned Judge approached the case from a wholly wrong standpoint and I have no hesitation in holding that on the Judge's own findings the prosecution have failed to prove that the statement of Baddu Khan that the Magistrate and Nand Kishore often sat at the shop together, was false and Baddu Khan must be acquitted.

15. Mr Thurston then proceeded to consider an argument to him on behalf of the accused to the effect that an accused person could not in law make an affidavit, and therefore could not be prosecuted for any false statement therein. With this argument the learned Judge deals as follows:

I have also been referred to a number of rulings: 19 All. 200; 7 A.L.J. 1142 and 27 A.L.J. 333. The rulings in question refer to affidavits filed before Magistrates, and not to affidavits filed before the Hon'ble High Court. Section 526 Sub-section 4, Criminal P.C., clearly lays down that applications for transfer are to be supported by an affidavit except when made by the Advocate-General. It is a pity that Mr. Sarkar Bahadur Johri should have come all the way to this Court with the rulings in

the hope of deceiving the Court. No doubt he was of opinion that the simplicity of the Court was as great as his own dishonesty.

16. The reference, 27 A.L.J. 333 is clearly wrong (I have the original judgment before me). There is no such volume. Nor am I able to trace the case in 17 A.L.J. 333, or in 27 All. 333, and nobody is able to give me the correct reference. [see I.L.R. 28 All. 331 at 333-Ed.]

17. This is, however, immaterial. There can be no doubt whatever that according to the present practice approved by the 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 that he can be prosecuted in regard to any false statement made in the affidavit. No question arose in the lower Court as to whether the counsel for the appellant knew or did not know of the change of practice. There is not, however, so far as I am aware, any reported ruling.

18. In view of my opinion that Baddu Khan must on the merits be acquitted, it would be unnecessary to deal with this point further, but for the fact that the learned Sessions Judge has allowed himself to make the remarks about Mr. Johri, which I have quoted above, and for the fact that in regard to those remarks Mr. Johri has filed a separate petition which has been connected with this application in revision, asking for those remarks to be formally expunged from judgment. It is obvious this Court will not entertain any and every application made by some person, whether an accused or not an accused, who feels himself aggrieved by remarks made in a judgment but there are cases in which such action is called for and I am unhesitatingly of opinion that this is such a case.

19. The learned Judge has returned a lengthy explanation, which, in my view, indicates that the learned Judge was much too hasty. He says:

It was first argued that there was no perjury committed, because the evidence of appellant showed that the Magistrate concerned had often sat at Shib Lal's shop. I asked the first counsel (Mr. Uma Shankar) to quote what particular passages he relied on. In return he asked me, if I had read the file and I replied: 'yes.' He then

answered that in that case he would pass on to his other points. I stopped him and told him, that he should not misquote the record, and that no witness for appellant had deposed to the effect that the Magistrate had often sat at Shib Lal's shop. Mr. Johri then audibly prompted his colleague that 'once' or 'twice' meant 'often.'

20. Now, in this passage, he says that it was first argued that "the evidence of appellant' showed that the Magistrate concerned had often sat at Shib Lal's shop, and he then himself makes the statement that 'no witness for appellant' had deposed to the effect that the Magistrate had often sat at Shib Lal's shop, and on this basis charged the counsel with misquoting the record. It is manifest that there is a very material difference between 'the evidence of appellant' establishing a point, and any single witness establishing that point. Moreover it was for the Crown to prove that the statement of the accused was false, not for him to prove that it was true; and on this basis I have held above that the prosecution failed.

21. The next point in which the learned Judge holds that counsel had failed in his duty and had tried to deceive the Court is the action of counsel in quoting the rulings referred to. The learned Judge says that counsel

had stated that the affidavits (in the cases quoted) had been filed in the Hon'ble High Court,

22. whereas in fact they had been filed in the District Court. It is possible that counsel did not wholly appreciate the point of the question or the misapprehension under which the learned Judge was labouring. It is not at all improbable that counsel was disturbed by the impatient attitude which had already been adopted towards him. Be that as it may, it is certain that the misstatement made could not possibly have been made with any improper intention, and the learned Judge would have appreciated that fact if he had not himself been under a complete misapprehension as to the ratio decidendi of those cases. In those earlier cases in which it was held that an accused person could not affirm an affidavit himself or be prosecuted for a false statement therein, the decision had nothing whatever to do with whether the affidavit was filed in the High Court or a subordinate Court, but was solely based on the proposition that an accused person could not himself file an affidavit in any Court whatever, whether subordinate or supreme. That the

learned Judge was under this misapprehension is clear from his question as to whether the affidavits in those cases were filed in the High Court, and from his reference to Section 526 (4), Criminal P.C. Even in quoting that section the learned Judge again misread the section. That section says:

Every application for the exercise of the power conferred by this section shall be made by motion, which shall, except when the applicant is the Advocate-General, be supported by affidavit or affirmation.

23. There is clearly not a hint in that clause that the affidavit can or must be affirmed by the accused himself. It is silent on the point altogether, and could not possibly form the basis of a decision that even if an accused person could not affirm an affidavit himself in a subordinate Court he could do so in the High Court.

24. The learned Judge was taking a sound position when he said (vide his explanation) that 'it was not for me to quash the order for prosecution' which had been made by the High Court, and he might properly have refused to accept the argument on that ground alone; but what I have now to consider is whether the remarks made in regard to counsel had any justification or not, and for the reasons I have given above I am of opinion that they had not. If counsel stated that the affidavits in those cases had been filed in the High Court, he was manifestly wrong. But, for the reasons I have given, if the Judge had not been under a misapprehension and impatient, I am clear he would have seen that the misstatement, such as it was, could have no bearing whatever on the applicability of those rulings, which, though they dealt with affidavits actually filed in subordinate Courts were equally and wholly applicable to affidavits filed in High Courts.

25. I, therefore, direct that the words

It is a pity that Mr. Sarkar Bahadur Johri should have come all the way to this Court with the rulings in the hope of deceiving that Court. No doubt he was of opinion that the simplicity of the Court was as great as his own dishonesty,

be deleted from the judgment of the learned Judge, and be not included in any further certified copy that may be made of the judgment. The applicant Baddu Khan is acquitted and will be forthwith released.

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