

Sundar Lal Vs. Emperor

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Court : Allahabad

Decided On : Apr-05-1922

Reported in : 68Ind.Cas.827

Judge : Stuart, J.

Appellant : Sundar Lal

Respondent : Emperor

Judgement :

Stuart, J.

1. The facts out of which this application for revision have arisen are as follows:-- Mr. Parmanand Singh, Tahsildar of Basti, as Magistrate of the Third Class, tried in 1921 a Criminal case in which Adhar Singh made a complaint against Davi Bakhsh Singh under the provisions of Sections 352 417 of the Indian Penal Code. In the course of the trial, Sundar Lal Patwari gave evidence. As a result of the examination of this evidence, Mr. Parmanand Singh came to the conclusion, that Sundar Lal was not telling the truth in his evidence, and that he had falsified certain of his records. Mr. Parmanand Singh did not complete the decision of the case, for, after he had heard practically all the evidence, the case was transferred for decision to the Court of Mr. Sarju Prasad, Honorary Magistrate, by an order of the District Magistrate of Basti. There is nothing before me to show why the order of transfer was passed. Such order was, however, passed and the case left Mr.

Parmanand on the 3rd of September 1921. Mr. Sarja Prasad decided it on the 7th of October 1921, Ha acquitted the accused persons and found that the Patwari, Sundar Lal, was telling the truth, and that the entries in his records were correct. Mr. Parmanand then proceeded to make a preliminary enquiry into the truth of the Patwari's statements in the case in question, and into the nature of the entries in the Patwari's records to which I have already referred. He appears to have lost no time in sending for the Patwari and to have made a careful enquiry, in which the Patwari was given every opportunity of meeting the charges. He finally passed an order under Section 476 of the Code of Criminal Procedure and sent Sundar Lal Patwari, to the District Magistrate to be tried on certain charges. This order is dated the 25th of January 1922. Sundar Lal applies in revision to have the order get aside.

2. The points taken by the learned Counsel, who represents Sundar Lal, are:--That Mr. Parmanand Singh having ceased to be seised of the case on the 3rd of September 1921, had no jurisdiction to pass the order which he passed, and that on the merits, the offenses suggested have clearly not been committed upon the finding of Mr. (sic) Prasad.

3. The plea raises a question which, as far as I know, has not been decided by any Court so far. If a Court is of opinion that there is ground for enquiry into any offence referred to in Section 195 of the Code of Criminal Procedure committed before it in the course of a judicial proceeding, even if the case has passed out of the hands of that Court and been decided by another Court, it cannot be held that the First Court's powers under Section 476 of the Criminal Procedure Code come to an end.

4. The circumstance that a case has passed out of the hands of a Court, in so far as an effective order regarding its disposal is concerned, does not deprive the Court of its jurisdiction under Section 476 of the Code of Criminal Procedure according to the view taken in this Court. In *King Emperor v. Zalim Singh* A. W. N. (1901) 177, Knox, A. C. J., decided that a Subordinate Judge was competent to take proceedings under Section 476 of the Code of Criminal Procedure after another Court had finally decided the case. In a decision of a Bench in *Girwar*

Prashad v. Emperor 1 Ind. Cas. 306 : 6 A. L. J. 392 at p. 398 : 9 Cr. L. J. 219, an order under Section 476 of the Code of Criminal Procedure passed considerably after the matter had left the hands of the Court passing the order, in so far as its final determination of the matter before it was concerned, was upheld. The views enunciated by the Madras High Court in Rahimadulla Sahib v. Emperor 31 M. 140 : 7 Cr. L. J. 54 : 17 M. L. J. 584, 3 M. L. T. 79 and Aiyakannu Pillai v. Emperor 1 Ind. Cas. 597 : 32 M. 49 : 59 M. L. J. 42 : 4 M. L. T. 404 : 3 Cr. L. J. 41 were not accepted in their entirety by that Bench. The view which I take is that under the provisions of Section 476 of the Code of Criminal Procedure proceedings can undoubtedly be taken by a Court after the decision in the substantive case has been delivered and the Court is functus officio in respect of the decision of the substantive case. There can, I think, be no doubt on this point on the plain reading of the section, The further point remains: does the circumstance that another Court has arrived at a different conclusion on the merits, take away this jurisdiction? I do not see how any finding by another Court can take away this jurisdiction; so my opinion is that Mr. Parmanand had jurisdiction to pass this order.

5. I would not, however, leave the matter there. This court has decided that it is the duty of the High Court, when matters such as these are brought to its notice, to satisfy itself that there has been no unreasonable delay, that the orders are not vexatious and that the charges are not of (sic) nature, and I consider it necessary to examine the order of Mr. Parmanand Singh from these points of view. There has certainly been no unnecessary delay in this matter. Mr. Parmanand Singh was well advised in awaiting the decision of the case before he proceeded with the 476, Criminal Procedure Code proceeding, and it appears that, once the case had been decided, he put the enquiry through as expeditiously as he could. I am perfectly ready to examine the matter upon its merits. For obvious reasons--largely in the interest of the appellant himself--I do not propose to arrive at a definite conclusion. If I were satisfied with Mr. Sarju Prasad's reason for believing the Patwari to be telling the truth and for believing the entries in the Patwari's records to be correct and genuine entries or considered his reasons of such weight as practically to conclude the matter, I should have had no hesitation in setting aside this order, and if I were satisfied that Mr. Parmanand Singh had passed the order under Section 476 of the Code of Criminal Procedure for

insufficient reasons, I should have been ready, apart from anything which Mr. Sarju Prasad has said, to set aside that order. But upon the merits I do not find Mr. Sarju Prasad's reasons convincing, and I find Mr. Parmanand Singh's proceedings to have been most careful and his order to have been well thought out. It would be unfair to the appellant to carry the matter further. For the above reasons, I dismiss this application.

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