

imam Ali and anr. Vs. Emperor

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Court : Allahabad

Decided On : Dec-17-1923

Reported in : 77Ind.Cas.888

Judge : Sulaiman, J.

Appellant : imam Ali and anr.

Respondent : Emperor

Judgement :

Sulaiman, J.

1. This is a Reference by the Sessions Judge of Brada recommending that the order of the Magistrate for the prosecution of the applicants under Section 193, Indian Penal Code, be quashed.

2. The applicants are two Civil Court process servers and, witnesses, who had been sent out with a warrant of arrest against Mahant Ram Kishen Das, who was a judgment-debtor in certain execution proceedings. On the 5th of March, the applicants stated that, they went to the Railway Station Bahitpurwa and found the judgment-debtor there; the warrant was shown to him; and he was arrested. A Police Constable was also in attendance, and the judgment-debtor was asked to give in writing to the Constable a written note to the effect that he had been served. He did sign a paper, Later on the judgment debtor taking a spear from his

servant asked the Constable to give back the paper to him which was returned. On this he tore the paper into pieces and threw them away, and then rode a way from the station. The process servers picked up this paper which was all torn to pieces and the servant of the decree-holder sent a telegram to the decree-holder at Karwi stating that the judgment-debtor had been arrested but had gone away. On the 6th of March the process servers made a report in which they set forth their version of the occurrence and also alleged that at that time the Station Master, the Assistant Station Master, the Constable and the other accused were present. The judgment debtor was accordingly prosecuted, but was ultimately acquitted by Mr. Desai.

3. The judgment under which the judgment-debtor was acquitted shows that altogether eight witnesses were examined on behalf of the prosecution, six of whom substantially supported the prosecution story. The Station Master and the Assistant Station Master, who were examined on behalf of the prosecution and also were cross-examined as hostile witnesses, stated that they knew nothing of the occurrence and that within their knowledge no such occurrence took place. Taking all the points into consideration, and particularly the extremely unreliable character of the evidence, the material contradiction in the statement of some of the prosecution witnesses, and a total denial of any knowledge by the two witnesses above named, as well as the non-production of the Constable, the learned Magistrate was convinced that the case was a *sic*. He accordingly acquitted the accused. He did at once order proceedings under Section 476 against the process servers, but submitted a copy of the judgment to the District Magistrate. Later on he started proceedings under Section 476.

4. The learned Magistrate however was not satisfied with the evidence which was already on the record and in order to further satisfy himself he decided to hold a preliminary enquiry. No notice to show cause was issued to the present applicants, and they were not given any opportunity to be present at the time when this enquiry was held and when further evidence was recorded. It is true that in proceedings under Section 476 notice is not absolutely necessary but it has been held by this Court in a number of cases that it looks with disfavour upon an order passed without such notice, and it has also often been remarked that it is highly desirable, though not essential, that such notice should be given *vide* Ram Piari v.

Emperor 16 Ind. Cas. 515 : 10 A.L.J. 247 : 13 Cr.L.J. 707 and Inayat Ali v. Mohar Singh A.W.N. (1905) 231 : 28 A. 142 : 2 Cr.L.J. 598.

5. This case is however stronger still. It was not only a case where no preliminary enquiry was held and notice issued but where a preliminary enquiry was actually held and additional evidence recorded by the Magistrate; and a report from the Circle Inspector, who made another independent private enquiry taken into consideration. In his order passed under Section 476 the learned Magistrate has remarked that he had acquitted the accused in the previous case merely because of the unreliability of the prosecution witnesses, although no defence evidence had been taken. That later on he deputed the Circle Inspector to make a thorough local enquiry and to send a report, that he himself went to the village and made an enquiry at the station and examined some of the persons mentioned by the Circle Inspector in his report. He also added that the Circle Inspector had thoroughly enquired into the case, and every one who could throw any light in the case had been examined by him, except the Constable Jamaluddin, who was alleged to have been present at the time of the occurrence, and was on leave and out of station. All this evidence was recorded behind the back of the applicants, and the report of the Circle Inspector, who made an enquiry in the absence of the Magistrate has been taken into account and stress laid upon it.

6. The learned Sessions Judge who has considered the case on the merits, has pointed out that the present applicants, from the very start, had been mentioning the names of the Station Master and the Assistant Station Master, as well as the Constable, who has not been examined, as being among those persons who were present at the time. It is not very probable that if the whole story was altogether false, they would have mentioned the names of the Station Master, and of the Assistant Station Master, as well as of the Constable, without any expectation that they would support them. There were six witnesses produced in support of the prosecution story, and as against them the only evidence consists of the denial of the judgment-debtor and also the ignorance of the Station Master and the Assistant Station Master.

7. In view of all the circumstances pointed out above I am of opinion that this Reference must be accepted, and the order directing the prosecution of the applicants be quashed.

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