

Sankhdhari Singh Vs. State of U.P.

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Court : Allahabad

Decided On : Sep-01-2004

Reported in : 2005CriLJ1377

Judge : Amar Saran, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 340 and 482; [Indian Penal Code \(IPC\), 1860](#) - Sections 193 and 195(1); Code of Civil Procedure (CPC) - Sections 24

Appeal No. : Criminal Misc. Appn. No. 6657 of 1999

Appellant : Sankhdhari Singh

Respondent : State of U.P.

Advocate for Def. : K.N. Tripathi, Adv. and ;Pushpa Singh, A.G.A.

Advocate for Pet/Ap. : B.K. Tripathi, Adv.

Disposition : Revision allowed

Judgement :

ORDER

Amar Saran, J.

1. This application has been filed under Section 482, Cr. P.C. for setting aside the orders dated 2-9-1999 and 27-11-1999 passed by the learned District Judge, Gorakhpur recommending the initiation of criminal proceedings under Section 193, I.P.C. against, the applicant and consequent criminal proceedings, vide Complaint Case No. 6507 of 1999 under Section 193, I.P.C. (State v. Sankhdhari Singh) pending in the Court of the Chief Judicial Magistrate, Gorakhpur.

2. The order dated 2-9-1999 recommending the prosecution of the applicant has been passed on the ground that in a transfer application under Section 24, C.P.C. the applicant is alleged to have stated that he was told by the opposite party, his wife, Smt. Prabhawati, the contestant, that her counsel was the colleague of the Presiding Officer. This fact according to the complaining Court was not correct. Secondly, in his affidavit the applicant has stated that he was told this fact on 30-8-1999 by Smt. Prabhawati, opposite party. But before the Court he had stated that the disclosure has been made to him by Smt. Prabhawati on 31-8-1999 and thus the Court observed that there was a contradiction in the two versions. It was further stated that as the learned counsel for Smt. Prabhawati was a senior advocate he could not be the colleague of the Presiding Officer, who was much younger in age.

3. It appears that against the order dated 2-9-1999 rejecting the transfer application of the applicant, the applicant moved Transfer Application No. 220 of 1999 before this Court wherein this Court issued a direction to the complaining Court to proceed in the matter under Section 340, Cr. P.C. after giving an opportunity to the applicant to show cause as to why a criminal complaint should not be filed against him. This Court further directed the trial Court to dispose of the matter after receiving the reply of the show cause notice and after consideration of the same. Thereafter the applicant filed his reply, paper No. 8-C pursuant to the direction issued by this Court. His reply was that due to slip of tongue he has mentioned the date as 31-8-1999 in place of 30-8-1999 and the statement made by him was in respect of Rajesh Khullar, Advocate son of Sri Kamal Kishore Khullar, Advocate that he was the colleague of the Presiding Officer. There was also a prayer for mercy in case the Court did not accept his contentions.

4. By order dated 27-11-1999 the Court rejected the reply principally on the ground that the applicant had also made a prayer for forgiveness which according to the Court proved that the applicant's affidavit was false.

5. It may be mentioned that under Section 340, Cr. P.C. proceedings for making a complaint in the case ought not to be initiated in a routine manner but only in case when the Court is of the opinion that it is expedient in the interest of justice that an enquiry should be made into such an offence referred to in Clause (b) of Sub-section (1) of Section 195.

6. I do not think that in the present case it would be expedient in the interest of justice to allow proceedings under Section 340, Cr. P.C. to be initiated against the applicant. In the first place I find trial there is some cause for the applicant to apprehend that the Court was ill-disposed towards him. He had filed a caveat in this case before the Civil Judge, (Senior Division), Gorakhpur where in spite of his caveat, the case was taken up and when his counsel prayed for time to submit a reply, the case was adjourned only till the next day. Also it is not uncommon in the village that the parties sometimes boast about their connections or their counsel's connections with a particular, Court, which has no substance in fact, but which creates a grave apprehension in the minds of the contesting party. There could have been some confusion whether the counsel with whom Sri A.K. Singh, Presiding Officer, is said to have some connection was Sri Kamal Kishore Khullar, senior advocate, or his son Sri Rajesh Khullar. Variation in the dates mentioned in the affidavit and the statement in Court i.e. on 30-8-1999 and 31-8-1999 when the opposite party No. 1 is said to have told the applicant about this connection is also of not much consequence. Such confusion often arisen even in normal life. Much weight should not be attached to such minor discrepancies. Last but not the least, the learned District Judge was not justified in rejecting the reply paper No. 8-C, which he was adherence inclined to accept only on the ground that the applicant also made a prayer for mercy. It may be noted that in a contempt proceeding apart from denial of the averments against them, the contemnors usually also tender an apology. That should not constitute a ground for proceeding in that case where a Court is disinclined to proceed otherwise.

7. In this view of the matter, this criminal miscellaneous application under Section 482, Cr. P.C. succeeds and is allowed and the impugned orders dated 2-9-1999 and 27-11-1999 passed by the learned District Judge, Gorakhpur are set aside and all consequent proceedings are quashed.

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