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Dongarsingh Vs. State

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Court : Madhya Pradesh

Decided On : Jan-22-1957

Reported in : AIR1957MP97; 1957CriLJ854

Judge : Dixit and ;Samvatsar, JJ.

Acts : Constitution of India - Article 228; Madhya Bharat Police Act, 1950 - Sections 49(2); Code of Criminal Procedure (CrPC) , 1898 - Sections 6

Appeal No. : Criminal Misc. No. 24 of 1956

Appellant : Dongarsingh

Respondent : State

Advocate for Def. : K.A. Chitale, Adv.

Advocate for Pet/Ap. : G.L. Ojha, Adv.

Disposition : Appeal dismissed

Judgement :

Dixit, J.

1. The circumstances giving rise to this petitionunder Article 228 of the Constitution of India are that in1954 it appeared to the District Magistrate ofUjjain that an order should be made under Section 49 (2)of the Madhya Bharat Police

Act externing thepetitioner from Madliya Bharat or certain portionsthereof. Accordingly, a notice was issued to thepetitioner under Section 50 (1) of the Act informing himof the general nature of the material allegationsagainst him and of the action proposed to be takenand giving him an opportunity to show cause againstthe action intended to be taken. The applicant gavehis explanation and also expressed a desire to produce certain witnesses.

Before, the recording of his evidence, the petitioner moved an application under Article 228 of the Constitution in the Madhya Bharat High Court which was rejected on the ground that as no evidence had been recorded and us on that evidence no findings had been given, it could not be said that the petitioner's case of externment involved any question as to the validity of the provisions of Sections 49 (2), 50 (4) and 52 (f) (b) of the Madhya Bharat Police Act as being repugnant to Article 19(i)(d) and (e) of the Constitution. That evidence has now been recorded. The petitioner, before the hearing of the arguments, requested the District Magistrate to refer his case to tin's Court under Section 432 Cr. P. C. for the decision of the question as to the validity of the aforesaid provisions. The District Magistrate refused this prayer. Hence this application under Article 228 of the Constitution of India.

2. We have heard Mr. Ojha, learned counsel appearing for the applicant. In our judgment, this petition must be rejected on the short ground that Article 228 of the Constitution relates to transfer to the High Court of a ''case pending in a Court subordinate to it' and the proceedings pending before the District Magistrate of Ujjain in this case cannot on any reasoning be regarded as proceedings in a case pending in a Court. As to what is meant by a 'Court' has been explained in Chimansingh v. State, AIR 1951 Madh-B 44 (A), Sawatram Ram-prasad Mills Co. Ltd. v. Vishnu Pandurang, AIR 1950 Nag 14 (B), and in the judgment of Mahajan J. in the Bharat Bank, Ltd., Delhi v. Employees of the Bharat Bank Ltd, AIR 1950 SC 188 (C).

Applying the tests indicated in these cases for determining whether a body or an authority is acting its an executive authority or as a Court while discharging a particular function or duty, there can be no doubt that in making an order of

externment against any person under Section 49 (2) of the Police Act, the District Magistrate acts as an executive officer and not in his capacity as a presiding officer of the Court of a Magistrate under the Code of Criminal Procedure. This is patently obvious from the provisions of Section 49 (2) and Section 50 of the Madhya Bharat Police Act. No doubt in making the order, the District Magistrate is required to follow the procedure laid down, in Section 50 (1) and (2) of the Act and to give a reasonable opportunity to the person against whom an order of externment is intended to be made to tender his explanation regarding the material allegations against him and for leading such evidence as he may desire to rebut those allegations.

But the fact that the intended externee is given such an opportunity, or that an order made by the District Magistrate is appealable to the Government under Section 50 (3), or that the District Magistrate's order can be challenged in a Court under Section 50 (4) when he has tailed to follow the procedure laid down in Section 50 (1); or when there is no material whatever before him for passing the order or when he has not formed an opinion that witnesses are unwilling to come forward to give evidence in public against the intended externec, does not make the order of externment a judicial order of a Court. These provisions at the most indicate that the decision of the District Magistrate is quasi judicial (see Mrs. Lilawati Mutatkar v. State of Madhya Bharat, AIR 1952 Madh-B 105 (D)).

It is significant that under Section 50 (2) the District Magistrate has been empowered to exercise 'all or any of the powers of a Court under Sections 75 to 77 of the Code of Criminal Procedure then in force in Madhya Bharat' to secure the attendance of any person against whom an order under Section 49 is proposed to be made. If the District Magistrate were functioning as a criminal Court under the Code of Criminal Procedure, there would be no need to give him the powers under certain provisions of the Code of Criminal Procedure for the purpose of securing the attendance of the person, concerned. As a Court he would have exercised these powers under the Code of Criminal Procedure without the fiction created by Section 50 (2) of the Act. This shows that the District Magistrate does not function as a Court when he acts under Section 49.

3. For these reasons this petition must be and is dismissed. Before leaving this case we must express our surprise at the time taken by the District Magistrate in the disposal of the proceedings under Section 49 which have necessarily to be decided with utmost expeditiousness.

Samvatsar, J.

4. I agree.

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