

Devi and ors. Vs. State

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Court : Madhya Pradesh

Decided On : Apr-03-1962

Reported in : 1963CriLJ543

Judge : A.H. Khan, J.

Appellant : Devi and ors.

Respondent : State

Judgement :

A.H. Khan, J.

1. In the course of a bail-application, it was argued before me that the trial of the accused was being delayed by the tactics of the Police. I sent for the record and discovered that 3rd October, 1961, was fixed for the trial of the accused along with eight other persons, but on this date, the Public Prosecutor did not produce any witness and the Court adjourned it for the next day. On the next day also, the prosecution witnesses were not examined and the Court again adjourned the case for the third day. On the third day, too, the Public Prosecutor failed to examine any witness and the trial Court then in sheer disgust postponed the trial to 28-11-1961. During all these three days, the reason why the Public Prosecutor was not examining the prosecution witnesses was that on the very date, when the trial was to open i. e., on 3-10-1961, he had moved the Sessions judge Bhind, for the transfer of the case. In fairness ho should have told the trial Judge of his intention

to move for the transfer of the case and not dilly-dallied in the manner he did. As nothing was said in the bail application as to why the transfer was sought, I called for the file from the Sessions Judge, Bhind. It shocked me to see what it contained.

2. The Public Prosecutor of Morena in his application to the Sessions Judge had said that there were two cases of great importance before the third Additional Sessions judge (Mr. Jinsiwalla) and that a number of witnesses were to be examined in those cases; that in the course of trial, important law points would crop up, that would require instant decision, that the third Additional Sessions Judge, Shri Jinsiwalla, having been newly appointed on the post of Additional Sessions Judge, would find it difficult to deal with them. It was, therefore, requested that both the cases mentioned in the application should be transferred to the Court of Public Prosecutor's choice and that in their place some simple cases may be handed over to the third Additional Sessions Judge. After usual formalities, but without ascertaining from the third Additional Sessions Judge whether he felt the cases to be onerous and would experience the difficulty attributed to him, the Sessions Judge passed the following order, which I reproduce in extenso:

Shri Nagendra Bahadur, P.P. Morena, appeared for the State. He has no objection if the case is withdrawn from the file of III Additional Sessions Judge Morena and tried and disposed of by this Court.

It is, therefore, ordered that the Sessions case No, 17 of 1961 be withdrawn from the file of III A.S.J. Morena and taken on this Board for -trial and disposal.

III A.S.J. Morena be asked to send the record of the case here on or before 14-11-1961 for trial. The Jailor sub-Jail Morena be also intimated to send accused persons in the sub-Jail Bhind as they will be tried by this Court. Shri Nagendra Bahadur should prosecute the case here.

On seeing these proceedings, which I regarded as scandalous and improper, I directed the Deputy Registrar to register the case as Criminal Revision and send for the record of both, the cases that were transferred by the Sessions Judge. I

also asked the Sessions Judge to make any observations, regarding the transfer should he care to do so. From the observations he has made, it appears that the learned Sessions Judge has taken pepper in his nose by my use of the word 'scandalous' and has tried to explain the dictionary meaning of the word.

3. I am sorry to observe that the learned Sessions Judge only consulted the dictionary to ascertain the meaning of the word 'scandalous', but did not look up any legal text book in order to ascertain its legal import. The application by the Public Prosecutor of Morena, a gist of which I have produced above, is undoubtedly scandalous because it scandalises the Third Additional Sessions Judge. Contempt of Court according to Lord Hor-wick, L.C. is of three kinds: One kind of contempt is scandalising the Court itself. It is a contempt of Court to scandalise the Court or say something to offend against the dignity of a Judge by attributing to him dishonesty or impropriety or incompetency. Their Lordships of the Supreme Court in *State of Madhya Pradesh v. Revashankar* : 1959 CriLJ251 had occasion to observe that

there are innumerable ways by which attempts could be made to hinder or obstruct the due administration of justice in Courts and one type of such interference is found in cases where there is an act which amounts to 'scandalising the Court itself'. This scandalising might manifest itself in various ways but in substance it is an attack on individual Judges or the Court as a whole with or without reference to particular cases, causing un-warranted and defamatory aspersions upon the character and ability of the Judges. Such conduct is punished as contempt for the reason that it tends to create distrust in the popular mind and impair the confidence of the people in the Courts which are of prima importance to the litigants in protection of their rights and liberties.

Here the Public Prosecutor considered that the newly appointed Additional Sessions Judge was not competent to try the cases entrusted to him, and, in order to make the worse appear the better reason, he stated that the case bristled with important questions of law and assumed that the learned third Additional Sessions Judge would not be able to dispose of them. I have gone through the records and without expressing any opinion on merits of the cases, it would be enough to say

that they are ordinary cases and that there is no complication such as was attributed to them. It was highly improper for the Public Prosecutor to say that these cases be withdrawn and other cases of simple nature be shunted off to the third Additional Sessions Judge. And it goes without saying that the Sessions Judge unwittingly approved of the action of the Public Prosecutor by acceding to his request.

There is not the slightest doubt that the move for transfer was made by the Public Prosecutor of Morena in terms which are most objectionable. It was impertinent on his part to have stated to the Sessions judge that a certain Additional Sessions Judge was not up to the mark to try a particular Sessions Case, He forgot that this amounted to casting an aspersion on the appointing authority. Once a person occupies a judicial office under a valid appointment, it is highly improper to move for transfer, on the ground that the Judge would not be able to cope with the task. The Additional Sessions Judge, whoever he may be, as soon as he is validly appointed on that post and assumes charge of that office, is as competent to try all cases as the Sessions Judge himself. All of us must remember that all of us had made a beginning, I would have taken a very serious view of the matter but the Public Prosecutor, who was present in person before me, has tendered an unqualified apology for the way in which the application for transfer was made by him.

4. I am no less surprised at the learned Sessions Judge in allowing such scandalous observations and in approving of them. When I asked him if he cared to make any observation, the learned Sessions Judge said -

Mr. Jinsiwalla expressed his desire to him of being supplied with simple and uncomplicated sessions cases to begin with, and, if possible, the withdrawal of those two difficult cases from his Court for the time being.

But that is not the basis of the order of transfer, because it nowhere says so. Besides this the Sessions Judge does not appear to have taken the trouble to examine those cases and find out for himself if the cases were really complicated. Moreover, the remarks of the Sessions Judge are confused and conflicting. On one hand, he transfers these cases on the request of the Public Prosecutor

because the Additional Sessions Judge was deemed to be incompetent to try them, and, on the other he says 'not that the third Additional Sessions Judge was incapable of coping with complicated and big sessions cases'. If this was so, where was the need to transfer them.? At the end of his observations, the Sessions Judge has taken up the cudgels on behalf of the Public Prosecutor and has pleaded that he did not come in the picture at all. But I am sorry that I find both of them in the picture, which is hopelessly out of focus.

5. On referring to the Civil List of Madhya Pradesh, I find that Mr. Jinsiwalla, the Additional Sessions Judge of Morena, has put in 16 years of service and having regard to the nature of the cases which I have taken particular pains to study, I think he can try them alright. Even if he makes some mistake, there is the High Court above him to -rectify it.

6. For reasons stated above, I set. aside the orders of transfer passed by the learned Sessions Judge, Bhind, on 1-11-1961, and, direct that the Sessions Cases No. 17 of 61 and 68 of 61 be sent back to the Third Additional Sessions Judge, Mojiena, for trial according to law, with a direction that the learned Additional Sessions Judge would expedite the trial of both the cases.

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