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State Vs. Puranchand

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Court : Madhya Pradesh

Decided On : Jul-04-1958

Reported in : AIR1958MP352; 1958CriLJ1398

Judge : V.R. Newaskar and ;T.C. Shrivastava, JJ.

Acts : Untouchability (Offences) Act, 1955 - Sections 3; Constitution of India - Article 25(2); Code of Criminal Procedure (CrPC) , 1898 - Sections 263 and 264

Appeal No. : Criminal Appeal No. 57 of 1956

Appellant : State

Respondent : Puranchand

Advocate for Def. : D.P. Bhargava and ;Chhajad, Advs.

Advocate for Pet/Ap. : P.R. Sharma, Govt. Adv.

Disposition : Appeal dismissed

Judgement :

T.C. Shrivastava, J.

1. This is an appeal under Section 417 Criminal Procedure Code filed by the State Government against the order of the Sessions Judge Ujjain acquitting the non-applicant of an offence under Section 3 of the Untouchability (Offences) Act (No.

22 of 1955). The accused was tried summarily under Section 260 Criminal Procedure Code in Criminal Case No. 114 of 1955 and was sentenced to imprisonment for one month and a fine of Rs. 50/- only. He went up in appeal and the learned Sessions Judge set aside the conviction and acquitted him.

2. The non-applicant is admittedly the Pujari of a Jain temple in Ujjain. The prosecution case was that on 6-10-1955 the complainant Mohanlal who is Balai by caste, went to have a Darshan at the temple but the non-applicant locked the door of the temple and did not allow him to enter the temple and have a Darshan on the ground that he was an untouchable,

3. The non-applicant denied that he had locked the door of the temple or had prevented Mohanlal from entering the temple or having a Darshan. He further stated that the temple is a Jain temple and as Mohanlal was not a Jain, he had no right to insist upon entering it.

4. The trial Court came to the conclusion that the non-applicant had locked the door and had prevented Mohanlal from going inside the temple. It has also been held that the reason for doing so was that Mohanlal was an untouchable. No finding was recorded expressly on the point whether Hindus have a right to enter the temple and have a Darshan but relying on the explanation to Section 3 of the Act, the trial Court held that all Jain temples should be deemed to be Hindu temples and all Hindus have a right to enter such temples. The learned Sessions Judge interpreted the explanation differently holding that according to the explanation although Jains would be treated as Hindus, Hindus could not be treated as Jains.

5. The appellate Court has also observed that the prosecution evidence shows that Mohanlal was stopped from going in because he is a 'Harijan'. This was not sufficient in his view to prove that he was stopped on the ground of untouchability. It is well known that the word 'Harijan' applies to untouchables and the use of that word by the witnesses should have been accepted as sufficient to hold that Mohanlal was prevented from going inside the temple as he was an untouchable. On this point the finding of the trial Court should have been accepted.

6. Before I deal with the merits of the case, it is necessary to analyse the provisions of Section 3 of the Act. The relevant part of the section reads as follows:

'3. Whoever on the ground of 'untouchability' prevents any person -

(a) from entering any place of public worship which is open to other persons professing the same religion or belonging to the same religious denomination or any section thereof as such person; or..., Explanation: For the purpose of this section and section 4 persons professing the Buddhist, Sikh or Jaina religion or persons professing the Hindu religion in any of its forms or development, including Virashaivas, Lingayats, Adivasis, followers of Brahmo, Prarthana, Arya Samaj and the Swaminarayan Sampraday shall be deemed to be Hindus',

7. The learned Government Advocate has contended that the non-applicant has committed an offence under Clause (a), of this section. A perusal of the clause shows that the place of worship must be (i) open to other person professing the same religion as the complainant, or (ii) open to other persons belonging to the same religious denomination as the complainant. The explanation lays down that persons professing Jain religion shall be deemed to be Hindus for the purpose of this section. This only means that the provisions of Section 3 will be applicable to Jain temples also. The word 'same religion' as occurring in Clause (a) refer to the religion of the complainant.

The complainant in this case is 'a Hindu and therefore it was necessary for the prosecution to establish that the particular temple was open to non Jain Hindus in general. The argument advanced by the learned Government Advocate that a temple exclusively open to Jains should in the light of the explanation be deemed to be open to Hindus in general and Harijans should be admitted in such temples, does not appear to me to be correct. The object of the provision is not to create any new rights in favour of untouchables but it is intended only to put them at par with other caste Hindus.

If the contention of the learned Government Advocate is accepted, the result would be that the so-called untouchables will have a right to enter Jain temples

even if the other castes Hindus have no such right. I do not think that the fiction created by the explanation should be read in a manner which creates this anomaly.

8. The complainant is a Hindu and is claiming to enter the temple as such. It was therefore necessary for the prosecution to prove that the temple is open to other Hindus generally. If the temple was a purely denominational temple confined to Jains alone, the complainant could not insist upon entering it.

9. It has now to be seen whether the prosecution has established that Hindus in general have a right to enter the particular Jain temple in this case. No finding on this point has been recorded by the trial Court or the appellate Court. The substance of the evidence referred to in the judgment of the trial Court does not show what the witnesses said on this point. This was a case tried summarily under Section 260 of the Code prior to the amendment made in 1955. Section 264 at that time provided that the judgment shall be the only record in such trials.

The question which arises now is, whether the substance of evidence recorded by the trial Court forms part of the record and can be looked into by the appellate Court. It was held by a Division Bench of the Allahabad High in Mantoo Tewari v. Emperor, AIR 1927 All 124 (A) that the notes of evidence prepared by the Magistrate do not form a part of the record and it is not illegal for the Magistrate to destroy them.

The purpose of these notes is to aid the memory of the trying Magistrate who is required to record a substance of the evidence in the judgment and after the judgment has been written it is open to the Magistrate to destroy the notes. See also Emperor v. Maung Po Saw, AIR 1935 Rang 106 (B). Further, it has been held in Nagoor Kanni Nadura v. Sithu Naick, AIR 1927 Mad 298 (C) and Kampasari v. Puttappa, AIR 1944 Mad 168 (D), that the notes recorded by the Magistrate cannot be looked into by the appellate Court and any conclusions drawn by the appellate Court from such notes would be really based on irrelevant matter.

It is thus clear that the substance of evidence recorded by the Magistrate in this case cannot be looked into. It must therefore be held that the prosecution has

failed to prove that the Hindus in general have a right to enter the Jain temple concerned or to have a Darshan of the idol therein. The complainant cannot therefore claim any such rights as a Hindu.

10. The acquittal under these circumstances is justified. The appeal is accordingly dismissed.

V. R. Newaskar, J.

11. I agree with my learned brother Shrivasvava J. There is no material on record from which it could be said either that the complainant Mohanlal Balai professed Jain religion or that caste Hindus could enter the Jain temple in question as of right. On the other hand Mohanlal specifically admitted that he is not a follower of Jain religion.

12. The learned Government Advocate, who pressed the present appeal before us, could not therefore maintain that the complainant Mohanlal professed Jain religion and that therefore he could not be prevented from entering the temple in question which is open to other persons professing Jain religion. He admitted that Mohanlal could only be called a Hindu that is the person professing Sanatan Dharma. His contention however is that by explanation at the foot of Section 3 of the Act which prescribes the penalty for the penal act dealt in that section persons professing Jain religion are deemed to be Hindus that is persons professing Hindu religion. The effect of the explanation, according to him, is that it is not necessary for a person who is a Harijan to profess Jain religion and that if he is prevented from entering a public Jain temple on the ground of untouchability by any person then that person commits the offence under the Act.

The effect of the explanation according to him, is to obliterate the distinction between places of public worship of persons who profess either of the four religions viz., Hindu, Sikh, Jain or Buddhist. From none of these a Harijan professing Hindu religion could be prevented from entering on the ground of untouchability. Not only this there could even be no distinction for the purposes of Sections 3 and 4 between denominational places of public worship.

13. To my mind the contention is untenable.

14. Section 3 (a) of the Untouchability Offences) Act, 1955, together with the explanation Clause is as follows:

'Whoever on the ground of 'untouchability' prevents any person:

(a) from entering any place of public worship which is open to other persons professing the same religion or belonging to the same religious denomination or any Section thereof, as such person, or

(b)....:.. ....

Explanation: For the purposes of this section and Section 4 persons professing the Buddhist, Sikh or Jain religion or persons professing the Hindu religion in any of its forms or developments including. Virashaivas, Lingayats, Adivasis, followers of Brahmo, Prarthana, Arya Samaj and the Swaminarayan Sampraday shall be deemed to be Hindus'.

15. It is clear from the main part of the section quoted above that if a person is prevented from entering any place of public worship on the ground that he is untouchable the act of prevention is penal on the part of the person who does it only if the place be one of public worship and either open to other persons professing the same religion as the person prevented or belongs to persons of the same religious denomination as that person. Thus the person prevented must either be professing the same religion as other persons to whom the place is open or, in the case of denominational or sectional places of public worship, he must belong to that particular denomination or section. It therefore follows that the Section means to preserve the distinction between the places of public worship not only belonging to different religions but even between such places as belonging to different denominations or sections included in one religion.

16. The argument of the learned Government Advocate about the effect of the explanation at the-foot of the Section, if accepted will lead to obliterate the distinction which is sought to be preserved in the main part. To my mind such could not be the intention. The reason for incorporating the explanation to my mind

is to bring it in the line with Article 25(2)(b) and Explanation II at the foot of that Article.

17. The aforesaid Article of the Constitution together with the Explanation are as follows:

'(2) Nothing in this Article shall affect the operation of any existing Law or prevent the State from-making any Law:

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

Explanation II: In Sub-clause (b) of Clause (2), the reference to Hindus shall be construed as including a reference to persons professing the Sikh, Jain or Buddhist religion, and the reference to Hindu religious institutions shall be construed accordingly'.

18. Thus the Article bereft of Explanation II authorised the State to make Laws providing for the throwing open of the Hindu religious institutions of public character to all classes and sections of Hindus, and in as much as due to historical and other reasons other religions such as Sikh, Jain and Buddhist religions had come to recognise untouchability in this country to more or less extent the term Hindu used in the main part was made, comprehensive enough to include the other three religions also. Though the Explanation widened the scope of the terms 'Hindu' and 'Hindu religious institutions' by resorting to inclusive definitions yet it cannot, be read as intending to obliterate the distinction existing between the four different religions and religious institutions.

19. The object of Explanation under Section 3 of Act No. 22 of 1955 is to bring the Act within the ambit of Article 25(2)(b) and Explanation II.

20. If this construction were not accepted the result will be that the distinction sought to be preserved between different religions, denominations and sections by the main Section will have to be held as wiped out. Another consequence which would follow will be that even if a place of public worship of persons belonging to, say, Jain, Sikh, or Buddhist religion be not open to caste Hindus it will have to be

taken as open to the Harijans. These results cannot be held to have been intended.

21. It therefore follows that the argument of the learned Government advocate cannot be accepted.

22. Since it is not established that the complainant Mohanlal, about whose prevention from entry the accused is charged, did profess Jain religion, nor is it established that the temple in question is open to caste Hindus, the act of the accused though regrettable, cannot be said to be penal.

23. The appeal therefore ought to be dismissed.

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