

Balram and Another Vs. Aswani Kumar Yadav and Another

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Court : Madhya Pradesh

Decided On : Sep-04-2000

Reported in : 2001(2)MPHT330; 2001(3)MPLJ363

Judge : Mr. S.C. Pandey, J.

Acts : Judges (Protection) Act, 1985 - Sections 2, 3, 3(1) and (2) and 4; Madhya Pradesh Land Revenue Code, 1959 - Sections 19; [Indian Penal Code \(IPC\), 1860](#) - Sections 120, 219, 420, 467, 468 and 471; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 319; Judicial Officers Protection Act, 1850

Appeal No. : Criminal Revision No. 1423/99

Appellant : Balram and Another

Respondent : Aswani Kumar Yadav and Another

Advocate for Def. : Shri P.R. Bhave, Adv. and ;Shri Prakash Gupta, Panel Lawyer

Advocate for Pet/Ap. : Shri S.L. Kochar, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

S.C. Pandey, J.

1. It was alleged that the land was gifted to the temple of Shri Deo Hanumanji in Village Richhai. This land was given by the trustees or Sar-varakar of the temple to Ramesh Kumar in Adhiya. It was alleged that Ramesh Kumar got his name mutated as the owner of the property and thereby committed offence registered under Sections' 420, 467 and 468 of the Indian Penal Code. It is alleged that the non-applicant No. 1 Aswani Kumar, who was serving as Naib-Tehsildar at the relevant time, had also aided and abetted the crime committed by Ramesh Kumar, the main accused. Initially, the non-applicant No. 1 was not made an accused in the case. After the evidence was recorded including that of the non-applicant No. 1 himself, an application under Section 319 of the Code of Criminal Procedure was filed by the applicant for making the non-applicant No. 1, Aswani Kumar as a co-accused in the case. This application was rejected by the learned Magistrate on merits. It is apparent that the non-applicant No. 1 was exercising his judicial powers under the M.P. Land Revenue Code while passing the order of mutation in favour of Ramesh Kumar. It is now being urged that the very act of passing of the order by the non-applicant No. 1 in favour of Ramesh Kumar amounted to an offence as he had conspired with Ramesh Kumar, the main accused in derogation of the right of the Presiding Deity to get the name of Ramesh Kumar mutated as a Bhumiswami. Apart from this fact, the non-applicant No. 1 himself was the prosecution witness, it is clear that the non-applicant No. 1, Aswani Kumar is protected under the Judges (Protection) Act, 1985 (henceforth 'the Act'). The definition of a Judge is given in Section 2 of the Act, as follows :--

'2. Definition.-- In this Act 'Judge' means not only every person who is officially designated as a Judge, but also every person--

(a) who is empowered by law to give any legal proceeding a definitive judgment, or a judgment which, if not appealed against, would be definitive, or judgment which, if confirmed by some other authority, would be definitive; or

(b) who is one of a body of persons which body of persons is empowered by law to give such a judgment as is referred to in clause (a).' Section 3 of the Act reads as under :--

'3. Additional Protection to Judges.-- (1) Notwithstanding anything contained in any other law for the time being in force and subject to the provisions of sub-section (2), no Court shall entertain or continue any civil or criminal proceedings against any person who is or was a Judge for any act, thing or word committed, done or spoken by him, or in the course of acting or purporting to act in the discharge of his official or judicial duty or function.

(2) Nothing in sub-section (1) shall debar or affect in any manner, the power of the Central Government or the State Government or the Supreme Court of India or any High Court or any other authority under any law for the time being in force to take such action (whether by way of civil, criminal or departmental proceedings or otherwise) against any person who is or was a Judge.'

It is also made clear in Section 4 of the Act that the provisions of the Act is in addition to, and not in derogation, of the provisions of any other law for the time being in force providing for protection of Judges. It is clear from the definition given in Section 2 of the Act that the non-applicant No. 1 is covered by clauses (a) and (b) thereof. The non-applicant No. 1 was empowered to give a definite judgment in a legal proceeding. It does not matter that for the purpose of the M.P. Land Revenue Code, the judgment is mentioned as an order. The definition given in Section 2 of the Act is much wider and it includes an order which determines the right of the parties, for the reasons given in it. If the non-applicant No. 1, exercising his power under the M.P. Land Revenue Code, is a Judge, then he is entitled to protection under Section 3(1) of the Act and no Court could entertain any civil or criminal proceedings against him for any act, thing or word committed, done or spoken by him, or in the course of acting or purporting to act in the discharge of his official or judicial duty or function. It cannot be said that if the non-applicant No. 1 is charged of the offences which the applicant-complainant wants him to be charged with, the action taken by him during the course of passing of the judicial order of mutation, will not form part of the offences. The charge against the non-applicant No. 1 would be that he too conspired to commit the offences under Sections 420, 467, 468, 120, 219 and 471 of the Indian Penal Code with Ramesh Kumar, the main accused. No Criminal Court could entertain such proceeding against the non-applicant No. 1, therefore, the order dated 5-7-1999 passed by the

Court below, rejecting the application filed by the applicant-complainant under Section 319 of the Code of Criminal Procedure, is justified.

2. The applicant cannot invoke the sub-section (2) of Section 3 of the Act. It is true that sub-section (2) of Section 3 of the Act apparently saves the powers of the (i) Central Government, (ii) State Government, (iii) Supreme Court of India, (iv) any High Court, (v) any other authority under any law for the time being in force to take such action inter alia by way of criminal proceedings against any person who is or was a Judge. The applicant-complainant is not one of them. He cannot file an application under Section 319 of the Code of Criminal Procedure. Nor could he file this revision. This Court, by way of abundant caution, makes it clear that sub-section (2) of Section 3 of the Act is not being considered and authoritatively interpreted here. Such an exercise would require the effect of Section 4 of the Act and consequently the effect of the Judicial Officers Protection Act, 1850 which shall be applicable to the facts of the case. It is wholly unnecessary to decide the scope of Sections 3(1) and 3(2) of the Act read with Section 4 thereof, for the reason, this revision could be decided otherwise.

3. Accordingly, this revision filed by the applicant against the order dated 5-7-1999 passed by Judicial Magistrate, First Class, Deori, District Sagar in Criminal Case No. 1707/91 is hereby dismissed.

4. Criminal Revision dismissed.