

Ranjit Kumar Vs. the State

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Court : Delhi

Decided On : Jul-08-1980

Reported in : 18(1980)DLT369

Judge : G.R. Luthra, J.

Acts : [Evidence Act, 1872](#) - Sections 43

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 99 of 1980

Appellant : Ranjit Kumar

Respondent : The State

Advocate for Pet/Ap. : Ashok Sapra and; D.B. Sethi, Advs

Judgement :

G.R. Lathra, J.

(1) The present Petition under Section 482 of the Code of Criminal Procedure, invoking inherent jurisdiction of this Court, is against an order dated 7th December 1979 of Shri Ravi Kumar, Chief Metropolitan Magistrate, Delhi directing that a charge be framed against the present petitioner in respect of commission of offences punishable under Section 406 and 420 Indian Penal Code. 11th January 1980 was fixed for framing of the formal charge on which date charge was framed by Shri K. P. Verma, then Chief Metropolitan Magistrate, Delhi and the case was

fixed for prosecution evidence.

(2) The prosecution was started on account of a complaint in writing of Shri Bishashar Nath dated 21st September 1975 on the basis of which F.I. R. was recorded on September 22, 1975. The petitioner is son of sister of Bishashar Nath.

(3) Bishashar Nath is owner of motor cycle No. Hru 3248. As alleged by him in his complaint he had kept that motor cycle with one Avtar Krishan Sharma at the house at Joshi Road, Karol Bagh, Delhi of the latter and on 10th September 1975 the present petitioner took away aforesaid motor cycle from Avtar Krishan by making

(4) On account of aforesaid complaint and lodging of the F. I. R. Police investigated the case and in October 1975 motor cycle was recovered from the house of Shri R. P. Ghawla, father of the petitioner. After completion of the investigation charge sheet was filed against the present petitioner in the court of Chief Metropolitan Magistrate, Delhi.

(5) On March 15, 1976 present petitioner Ranjit Kumar made an application to the court to the effect that the motor cycle in question was attached by Assistant Collector of Revenue Ballabgarh in June 1974 in execution of warrant of attachment against Bishashar Nath because Bishashar Nath had to pay a sum of Rs. 3600 to the Haryana Government, that after attachment motor cycle was handed over to his father Shri R. P. Chawla on Superdari, that was how his father Shri R.P. Chawla came to possess the motor cycle and from his possession the same was recovered by the Police, that file of the revenue authorities in respect of attachment of motor cycle be summoned so that truth may come before the court and that complaint of Bishashar Nath was false.

(6) On the above application Chief Metropolitan Magistrate passed an order summoning record from the office of revenue authorities. An inquiry was held against one Dewan Chand, a clerk in the revenue department, in connection with tempering with Superdari name of the motor cycle. File relating to that inquiry and report of the S. D. M. were also summoned and four witnesses were examined.

(7) On October 24, 1977 Shri Bishashar Nath filed an application to the effect that the court had no jurisdiction to examine any witnesses before the framing of charge, that therefore, neither file of the inquiry against Dewan Chand nor one relating to attachment of motor cycle, nor statement of the witnesses examined in court could be taken into consideration. Shri Mohammed Shamim, who was then Chief Metropolitan Magistrate accepted that application and directed that the statement of witnesses examined incourt shall not be looked into. The present petitioner went in revision which was accepted by Hon'ble Mr. Justice R. M. Aggarwal vide his order dated August 1, 1978 and it was directed that the entire oral evidence as well as documents shall be looked into before coming to a decision whether charge is to be framed against the present petitioner or not. Accordingly the learned Chief Metropolitan Magistrate considered all the aforesaid material and came to the conclusion that charge should be framed against the petitioner and it was held that it was not clear that it was motor cycle Hrg 3248 which had been attached by the revenue authorities.

(8) At the instance of the petitioner four witnesses were examined. Avtar Krishan Sharma G. W. 2 supports the entire prosecution version. therefore, that statement justifies framing of charge.

(9) Niranjn Dev C.W.1, an accountant in the Tehsil Ballabgharh, while narrating that motor cycle of Bishashar Nath was attached in execution of warrant for recovery of Rs. 3600.00 was unable to tell registration number of that motor cycle. therefore, it cannot be said that it was motor cycle No. Hrg 3248 which was attached and that the said motor cycle had not been taken away by the petitioner from Avtar Krishan. Dewan Chand G. W. 3 did not support the petitioner. His statement was discontinued on the ground that file of inquiry pending against him had not been summoned. Thereafter, as it appears, the said witness was never summoned at all. Yudeshtar Lal G. W. 4 brought file relating to institution of inquiry against Dewan Chand clerk G. W. 3 in respect of tempering with record of case relating to recovery of Rs. 3600.00 from Shri Bishashar Nath. However, his statement does not mention about attachment of motor cycle No. Hrg 3248.

(10) The learned counsel for the petitioner relied upon following statement on cross-examination of Shri Avtar Krishan :

'Motor cycle in question did not belong to Lakhmi Dass. Lakhmi Das was to pay about Rs. 3500.00 to Haryana Govt. Bashashar Nath had told me that the motor cycle had been attached by the revenue authorities. He, however, told that the motor cycle was wrongly attached. I do not know that Bishashar Nath ever worked in partnership with Lakhmi Dass.'

The learned counsel pointed out that even Bishashar Nath had admitted that his motor cycle had been attached. But that statement does not give any indication as to whether it was motor cycle Hrg 3248- which was attached and as to when the attachment took place. Hence the aforesaid statement does not help the petitioner.

(11) The learned counsel then relied upon a report of Sub-Divisional Magistrate (Ex.C.W. 1/3) in connection with inquiry relating to tempering of record by Dewan Chand, clerk. That report is in Hindi and relevant portion on which reliance has been placed by the learned counsel, when translated into English reads as under :

'From this it appears that some proceedings must have taken place regarding superdgi of motor cycle No. Hrg 3248 as alleged by the applicant.'

The learned counsel contended that it had been clearly bound by the S.D.M. that there was superdgi of motor cycle No. Hrg 3248.

(12) Firstly the aforesaid report is not definite that it was motor cycle Hrg 3248 which had been attached and which had been handed over on Superdari basis. Secondly such a finding is not relevant at all. It is at the most a judgment and such a judgment is not relevant under Section 43 Evidence Act which reads as under :

'Judgments, orders or decrees, other than those mentioned in Sections 40, 41 and 42 are irrelevant unless the existence of such judgment, order or decree is a fact in issue, or is relevant under some other provision of this Act.'

Section 43 refers to Sections 40 to 42 of Evidence Act. Section 40 makes those judgments relevant which debar any court from taking cognizance of any fresh suit or holding of trial. That means that judgment must operate as resjudicata. Obviously judgment of the court of Sub Divisional Magistrate does not so operate. Section 41 relates to judgments in rem in exercise of probate, matrimonial, admiralty or insolvency jurisdiction. That is not the case here. Section 42 is regarding such judgments or orders or decree which relate to matter of public nature relevant to the inquiry. Report of S. D. was not of public nature but was regarding conduct of Dewan Chand.

(13) It was held in Emperor v. Khawaja Nazir Ahmed that any finding in civil proceedings is not binding in a subsequent prosecution founded on the same or similar allegations. In the same manner findings given by S. D. M. are not binding on the Chief Metropolitan Magistrate when the latter is holding criminal trial.

(14) Under these circumstances there is no force in the revision petition. However, I may make it clear that all these matters can be taken into consideration by the trial court at the time of final judgment. Revision petition is dismissed with the above remarks. Parties are directed to appear before the court of Chief Metropolitan Magistrate on July 28, 1980. Send a copy of this order and file of the trial court immediately to the said court.