

Bhanwar Lal Vs. the State

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Court : Rajasthan

Decided On : Jul-18-1950

Reported in : AIR1951Raj107

Judge : Gupta, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 526

Appeal No. : Criminal Transfer Case No. 31 of 1950

Appellant : Bhanwar Lal

Respondent : The State

Advocate for Def. : Sumerdan, Adv.

Advocate for Pet/Ap. : Changani and; M.L. Joshi, Advs.

Judgement :

ORDER

Gupta, J.

1. This is an appln for transfer in a criminal case pending against the petnr in the Ct of the First Class Mag, Jaisalmer, for an offence under Section 406 of the Penal Code.

2. It appears that the petnr had collected a sum of Rs. 101/- as subscription to the Congress funds from one Prem Raj Jetha of Bhadli, Jaisalmer but did not deposit it in the local Congress office. Somehow the matter reached the police who investigated into the matter & put up a challan under Section 406, Penal Code, before the First Class Mag, Jaisalmer. During the pendency of the case before the Mag, one Satya Deo, said to be the Secretary of the Jaisalmer Congress, was examined on behalf of the prosecution on 10-2-1950. During his examination he produced a receipt bearing the No. 204 & showing that the sum of Rs. 101/- had been deposited. After his statement was over & the witness had been discharged, he was asked to produce the receipt-book containing the receipt No. 204 but no date was fixed for his doing so. After the charge had been framed against the accused, the witness was, at the instance of the accused, re-summoned for his further cross-examination on 12-4-1950. On this date, the witness appeared but did not bring the receipt-book. After the witness had been re-cross-examined by the accused, the Prosecuting Inspector instead of re-examining the witness made an appln seeking permission for cross-examining him on the ground that the witness had been won over by the accused & that he had turned hostile as was clear from the fact that the witness had stated to the police that the accused had not deposited the amount with the Congress, while in the Ct he had deposed that Bhanwar Lal had deposited the money & passed a receipt of the amount which was produced by him, but did not produce in the Ct the receipt-book containing the receipt though he had been asked to produce the same. The learned Mag passed a long order on this appln of the Prosecuting Inspector & made an observation to the following effect:

'Again, under such circumstances, 'it can be presumed that the witness Satya Deo was not producing papers in order to shield the accused Bhanwar Lal'. The appln of the Prosecuting Inspector for declaring the witness Satya Deo hostile is granted under Section 154, Evidence Act.'

3. The transfer is prayed for on three grounds. Firstly, it is said that the Mag Shif B.N. Goswami is prejudiced against the accused because a number of complaints were made against him on behalf of the Prajamandal of which the petnr was once the Secretary & later on the President when Shri Goswami was the Textile Comr in

the Price Control Dept of the former State of Jaisalmer. Secondly, it is said that the Collector of the District, Shri Mangi Lal, was taking a personal interest in the case, that he had made inquiries from the Secretary, District Congress, even before the case was registered before the police, & that Shri Mangl Lal had appeared as a prosecution witness in this case. It is further alleged that complaints had been made on behalf of the Congress, Jaisalmer, against the Collector with regard to his food-grain policy & other matters & that, therefore the Mag, who is a subordinate of the Collector, is interested in this case against the accused. Lastly, it is said that the Mag who to subordinate to the Collector is playing in the bands of the Prosecuting Inspector & passes orders as desired by the latter. It is particularly mentioned that on 10-2-1950, after the statement of Shri Satya Deo, Secretary, District Congress Committee, Jaisalmer, had been completed & he had been discharged, he was asked to produce certain documents, that when on 12-4-1950 Satya Deo appeared for re-cross examination by the accused, he was asked about the documents & when he stated that they were not with him, the Mag lost his temper & Observed:

'Why should not chits be affixed to your Congress Office? The police had committed a mistake & not taken possession of the documents beforehand. You want to hide the truth. You are a liar & want to shield the accused wrongly. Certainly, there is something in the documents.'

It was further alleged that after this the Mag & the Prosecuting Inspector held consultations whereupon the Prosecuting Inspector said to the Mag that he was declaring the witness hostile. Thereupon, the Mag asked the Prosecuting Inspector to submit an appln which was promptly made whereupon the counsel for the accused requested for an opportunity to address arguments before the witness was declared hostile but the Mag paid no heed to it & declared the witness hostile with the remark that he wanted to shield the accused. It is said that on account of the above reasons the accused had a reasonable apprehension that they would not get a fair trial before Shri Goswami.

4. The learned counsel for the appct contended that in the absence of the direction that the witness was to produce the receipt book or other papers on a particular

date, the witness was not bound to produce the same on 12-4-1950. The appln of the Prosecuting Inspector to have the witness declared hostile under the particular circumstances was not justified & the aforesaid observation of the Mag was uncalled for. He strenuously contended that the direction of the Mag requiring the witness to produce a receipt-book & other papers without fixing any date for their production was meaningless. The witness when he was summoned for re-cross-examination was not required by the summons issued to him to produce the receipt-book in question or any other paper. It was strenuously argued by the learned counsel that the above mentioned observation of the Mag clearly showed that he was prejudiced against the accused & that the accused could have no hope of getting a fair trial from him.

5. The learned Mag has submitted a long expln & has generally denied all the allegations. He has not specifically denied his holding consultations with the Prosecuting Inspector, the Prosecuting Inspector's declaring that the witness had turned hostile, his asking the Prosecuting Inspector to make an appln the counsel for the petnr requesting him to hear arguments before declaring the witness hostile & his Ignoring the request. He has not even denied that he allowed the Prosecuting Inspector to cross-examine the witness Satya Deo with an observation that the witness wanted to shield the accused. In fact, as stated above, the learned Mag has, in his order dated 12-4- 1950, observed that under the circumstances, it could be presumed that the witness Satya Deo was not producing the documents with a view to shield the accused Bhanwar Lal. Cts should be very cautious in making observations in the course of a trial, because, while disposing of a transfer-petn, the superior Cts have to see whether or not the particular observation made by the Ct will raise a reasonable apprehension in the minds of the accused that they would not have a fair trial in that Ct. Observations like the one mentioned above must necessarily raise such an apprehension in the mind of the accused. Moreover, the observation complained of appears to be uncalled for. On 10-2-1950, after the evidence of Satya Deo had been closed, he was asked to produce documents but no date was fixed. For two months he was not called upon to produce the required documents. In the summons that was issued to the witness on 11-4-1950 (No. 1/51 on the file of the Mag), he was not required to produce any document. Under the circumstances, the witness was not

expected to bring any document on 12-4-1950.

6. The first two grounds mentioned in the appln do not deserve any notice but in view of the serious allegations mentioned above that are made on behalf of the accused & are not specifically denied by the Mag, this Ct has to see what the cumulative effect of the incident is likely to be in the mind of the person in the position of an accused & whether a reasonable apprehension has been raised in his mind that he would not get a fair trial in the Ct of Shri Goswami. I am satisfied that the case should be transferred to some other Ct. I, accordingly, order that the case be transferred to the Ct of the Extra Mag, Jaisalmer.

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