

**State Vs. Nand Kishore**

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**Court :** Rajasthan

**Decided On :** Feb-02-1968

**Reported in :** 1969CriLJ582

**Judge :** L.S. Mehta and; C.M. Lodha, JJ.

**Appellant :** State

**Respondent :** Nand Kishore

**Judgement :**

**L.S. Mehta, J.**

1. Civil Suit No. 206 of 1957, Balaknath v. Parbhati Nath and Ors. had been pending in the Court of learned 'Munsiff-Magistrate, Thana Gazi, District Alwar. In that case Shri N.K. Sharma, Advocate, had been engaged by the plaintiff Balak Nath. On April 16, 1964, the defendant Parbhati Nath had been examined. In the course of his cross-examination, a transfer application had been moved before the trial Court on behalf of the plaintiff. Consequently, the case had been adjourned for about a month. That day Shri Nand Kishore, Advocate, is alleged to have caused interruption in the judicial proceeding and offered insult to the Presiding Officer of the Court Shri D.C. Hagela. He is alleged to have remarked that he would move, either personally or through his clients, transfer applications in each and every case and that he would see the Presiding Officer. He is also alleged to have made certain gestures with his hands and face and a threatening voice at the presiding

officer. Soon after the said officer drew up proceeding under Section 480, Criminal P.C. He framed the following charges:

I.D.C. Hagela, Munsiff-Magistrate F.C., Thangazi, hereby charge you Shri Nand Kishore Sharma Advocate as follows; that you today viz., the 16th day of April, 1964, at 11.30 A.M., intentionally offered insult and also caused interruption to me by threatening that in each and every case you will now either personally or through your clients go on moving the transfer applications and that you will see me and you made such gestures with hand and face and with a threatening noise that amounted to interruption and insult while I was sitting in a judicial proceeding namely Balak Nath v. Parbati Nath C.S. No. 206 of 1957 and thereby committed an offence under Section 228, I.P.C. and within my cognizance.

And I hereby direct that you be tried on the said charge.

To the above charge the Advocate, Shri Nand Kishore Sharma, gave the following reply:

That no occasion arose for drawing the contempt of Court proceeding, that he was called to hear the judgment in Hanuman Sahai and Jagannath and that he has heard the judgment and that he has done nothing.

It may also be noted here that Shri Sharma refused to sign the charge-sheet below his reply. Eventually the said Magistrate held Shri Sharma guilty under Section 228, I.P.C. and imposed on him a fine of Rs. 200, in default of payment of fine to undergo simple imprisonment for a period of one month. On an appeal, learned Sessions Judge, Alwar, held that the trial Court did not write in its judgment, in accordance with Section 481(2), Criminal P.C. the nature and the stage of the judicial proceeding in which the Court was interrupted. The first appellate Court further held that there was no evidence at all against the accused regarding his using insulting language or making threatening gestures except the impression of the presiding officer himself and such an impression was not enough to convict the accused so as to attract the provisions of Section 228, I.P.C. On these grounds, learned Sessions Judge, Alwar, set aside the conviction and acquitted the accused Shri Nand Kishore of the offence under Section 228, I.P.C.

2. Dissatisfied with the above verdict, the State Government has filed the present appeal. The contention of learned Deputy Government Advocate is that it has been fully brought home that the presiding officer of the Court of Munsiff-Magistrate, Thana Gazi, Shri D.C. Hagela, was offered insult at the time when he was bilsy at a certain stage of the judicial proceeding in connection with the case, Balak Nath v. Parbhati Nath, Civil Suit No. 206 of 1957. and, therefore, the appellate Court went wrong in acquitting the accused of the offence under Section 228, I.P.C. In support of his contention he mainly relied on Vijai Rao v. State AIR 1953 Hyd 285.

3. Section 481(2), Cr.P.C. is in the terms following:

If the offence is under Section 228 of the Indian Penal Code, the record shall show the nature and stage of the judicial proceeding in which the Court interrupted or insulted was sitting, and the nature of the interruption or insult.

There is no ambiguity in the above provision. It shows that where the offender is punishable for an offence under Section 228, Indian Penal Code, the record must show-(a) the nature and the stage of the judicial proceeding in which the Court interrupted or insulted was sitting, and (b) the nature of the interruption or the insult. In the present case it is not possible from the record to ascertain exactly the nature and the stage of the judicial proceeding. The order passed by Shri D.C. Hagela, dated April 16, 1964, does not show it. It is no doubt stated therein that the accused Shri Nand Kishore Sharma insulted and interrupted the Court when the presiding officer was discharging his duties in judicial proceedings, but it omits to mention what type of that judicial proceeding was and what was the stage thereof. There is also no mention regarding this fact in the order-sheet in the Civil Suit No. 206 of 1957, dated April 16, 1964. The Munsiff-Magistrate ought to have placed on record definite informations as to whether depositions were being taken of arguments were being heard or other judicial proceedings were being carried on and so on. But he failed to do so. The omission of such an information is fatal to the order of conviction, since the provisions of Sub-section (2) of Section 481, Criminal P.C. are mandatory.

4. In *Ramnath v. State* : AIR1953 All59 , it was held that in a trial for an offence, of which cognizance has been taken under Section 480, Cr.P.C. omission to record proceeding in the manner laid down in Section 481 damages the proceedings. It has further been laid down that such an omission is not merely an irregularity but is an illegality in the mode of trial. To the same effect are the observations made in *Capt. Gurbaksh Singh v. State*, AIR 1960 Punj 211. In that case it was pointed out that the provisions of Section 481, Cr.P.C. must be construed as mandatory calling for strict compliance. Likewise, in *Ramlal v. Emperor* AIR 1931 Nag 193, it was held that directions contained in Section 481, Cr.P.C. are mandatory and the omission to record the particulars, as given in Section 481(2), Cr.P.C. would vitiate the proceeding for contempt of Court. It was further observed in that case that the offence of contempt of Court is appealable and, therefore, it is all the more necessary that the provisions of Section 481(2), Cr.P.C. are duly complied with by the trial Court to enable the Appellate Court to judge the correctness of its finding. Thus, omission to set forth the particulars, as required by Section 481 (2), Cr.P.C. is not merely an irregularity but is an illegality.

Learned Deputy Government Advocate relied on AIR 1953 Hyd 285 (supra). In that case the Magistrate's order showed that he was engaged in the trial of criminal cases and a perusal of the record, specially the statement of Vijai Rao, indicated that he had finished the recording of a deposition of a witness and was presumably to proceed with the record of other depositions when the interruption occurred. That position was considered to be sufficient to show at what stage of the judicial proceeding the Magistrate was interrupted. In the instant case all that appears from the record is that Shri Nand Kishore had appeared in a civil suit. It is not manifest whether at the time when the alleged offence is said to have committed the case was fixed up for hearing or for any other purpose, Therefore, the Hyderabad authority does not lend any assistance to the appellant.

5. From what has been stated above, it is clear that in a trial for an offence of which cognizance has been taken under Section 480, Cr.P.C. omission to record proceeding in the manner laid down in Section 481 is, in our opinion, fatal to the proceedings and such an omission can be construed not merely an irregularity but an illegality. The reason is obvious. Section 480, Cr.P.C. provides summary

proceedings for the trial of direct contempt of Court. In such a proceeding the Court concerned is the complainant, prosecutor and Judge. In view of the summary nature of the trial and in order to safeguard the interests of the persons dealt with in a summary manner, who are given a right of appeal, the proceedings must show precisely the nature and the stage of the judicial proceeding in which the Court interrupted or insulted was sitting. But such a requirement is lacking in this case.

6. Further, the nature of the interruption is also by no means clear in the instant case. Learned Magistrate says that the Advocate had told him that he would get all his cases transferred and would see him. It is difficult from this remark for an appellate Court to get an idea of what had exactly happened. There is no evidence on the-record from which it can be gathered definitely the nature of interruption or the insult. By the mere utterance of the words, that he would get his cases transferred, it cannot be concluded that the accused was behaving so as to cause interruption or insult. It is not discerned from the record what was the exact language used by the accused, nor had the Magistrate brought on the record intelligible facts from which it could be gathered that the conduct of the Advocate was vexatious so as to lead to the inference that his obvious intention was to insult or interrupt the Court. We may also point out here that in his zeal an advocate sometimes annoys a particular Court by his insistence upon a particular thing to be done, but a judicial officer should not be ever sensitive to take offence where none is intended. It is desirable to bear in mind what was said in the judgment of their Lordships of the Privy Council, delivered by Lord Goddard in *Parasharam Detaram Shamdesani v. King Emperor* 1945 AC 264, where these words are to be found:

Their Lordships would once again emphasise what has often been said before, that this summary power of punishing for contempt should be used sparingly and only in serious cases. It is a power which a Court must of necessity possess its usefulness depends on the wisdom and restraint with, which it is exercised, and to use it to suppress methods of advocacy which are merely offensive is to use it for a purpose for which it was never intended.

It is not every act of discourtesy to the Court by counsel that amounts to contempt nor is conduct which involves a breach counsel of his duty. In the present case the respondent's conduct might be a bit discourteous. But such conduct cannot be placed over the line which divides mere discourtesy from contempt.

7. In view of the fatal defect in the procedure, in the absence of the particulars required by Sub-section (2) of Section 481, Cr.P.C. and in the absence of anything to show that Shri N.K. Sharma had intentionally done anything to annoy or insult the Courts, the conviction of (sic) and the trial Court were rightly set aside by the appellate Court. This appeal is accordingly dismissed.

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