

Ganpat Singh Vs. Zora

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Court : Rajasthan

Decided On : Apr-12-1950

Reported in : 1950CriLJ1606

Judge : Oak, J.C.

Appellant : Ganpat Singh

Respondent : Zora

Judgement :

ORDER

Oak, J.C.

1. This is a reference by the learned District Magistrate of Ajmer recommending that, a proceeding under Section 447/109, Penal Code which is pending against Thakur Ganpat Singh be quashed. Zora filed a complaint against Thakur Ganpat Singh, Lai Singh and certain other accused with the following allegations. The complainant was in possession of a plot of land. Lai Singh accused under the instigation of Thakur Ganpat Singh accused made a forced entry upon the plot of land. The TahaiHar-Magistrate summoned Thakur Ganpat Singh and other accused. A request was made to the trial court for exempting Thakur Ganpat Singh accused from personal attendance. This prayer was not accepted. The trial Court directed that, summons be issued against Thakur Ganpat Singh accused for personal appearance in Court. Against this order passed by the Tahsildar-

Magistrate a revision was filed before the Extra Assistant Commissioner. That revision was dismissed. A fresh revision was filed before the learned District Magistrate. The learned District Magistrate has made this reference by his order dated 7th December 199 for quashing the proceedings as regairia Thakur Ganpat Singh ac-oneed on the ground that, there is no material on the reoori to justify his conviction. I have heard the learned Counsel for Zora complainant Thakur Ganpat Singh accused and the learned Counsel holding brief for the Public Prosecutor.

2. A preliminary objection was raised od behalf of Zora complainant that the revision application to the District Magistrate was not maintainable in view of the dismissal of a similar revision application by the Extra Assistant Commissioner. Section 435, Criminal P. O. enables a High Court, a Sessions Judge, a District Magistrate or a Sub. Divisional Magistrate-specially empowered in this behalf to call for records of inferior Courts. Section 483, Criminal P.C., consists of four Sub-sections. Sub-section. (2) lays down that, if a Sub-divisional Magistrate is not satisfied with any order of an inferior Court, such Sub-Divisional Magistrate haa to forward the record with his remarks to the District Magistrate. Sub-section lays down that, if any application under this section has been made either to the Sessions Judge or District Magistrate, no further application shall be entertained by the other of them. There is no provision directing that a District Magistrate should not entertain a revision application after a similar revision has been rejected by a Sub-Divisional Magistrate. Under Section 438, Criminal P. O.i a Sessions Judge or a District Magistrate may make reference to the High Court. It appears that a Sub-Divisional Magistrate cannot make a direot reference to the High Court. Prom a persual of all these sections it appears-that the jurisdiction of a Distriot Magistrate and a Sub-divisional Magistrate in the matter of revision is not concurrent. It is therefore open to a District Magistrate to entertain a revision application even after tha dismissal of a, similar revision appliaation by a Sub-Divisional Magistrate. In the present case, the Extra-Assistant Commissioner dismissed the first revision on 23rd September 1949. The second revision application was filed before the Distriot Magis. trate on 6th October 1949, i. e. within a month from the dismissal of the first revision application. There was no undue delay in filing the second application. Of course there ia no statutory bar as regards limitation for filing revision applications. No doubt the first application

before the Extra-Assistant Commissioner was largely concerned with the application of Section 206, Criminal P.C. But I find that other points were also raised in the first revision application. The learned District Magistrate was therefore fully competent to entertain the second revision application dated 6th October 1949.

3. Now I turn to the merits of the revision. Certain witnesses stated before the Tabsildar that they heard from Lai Singh accused that : he had entered upon the land under the authority of Thakur Ganpat Singh. Of course, a confession of Lai Singh accused would not be enough for convicting Thakur Ganpat Singh. But the prosecution evidence is not over. It may be that, the complainant is in a position to produce direct evidence to prove that Thakur Ganpat Singh accused instigated Lai Singh accused to commit criminal trespass. It will not be proper to quash the proceedings simply because the evidence already recorded by the Court is not sufficient to warrant Thakur Ganpat Singh's conviction.

4. Another point urged on behalf of the accused is that, his prosecution is barred by Section 37 of BeGn. no. 2 of 1877. Against this, the complainant relies upon Section 18 of Ordinance No. 8 of 1949. Section 18 states:

If a land-holder enters upon a holding in the possession of a tenant ... such land-holder shall be deemed to have committed an offence of criminal trespass ... and shall, notwithstanding anything in Section 27, Ajmer Land and Revenue Regulation, be liable to be prosecuted on the complaint of such tenant,

It has been conceded on behalf of the complainant that Thakur Ganpat Singh did not personally commit criminal trespass. The charge against him is that he instigated Lai Singh accused to commit the offence. Whether a land-holder should personally enter upon the land to attract the provision of Section 18 of the Ordinance, and whether the section governs the offence Under Sections 447/103, Penal Code, are debatable points. The learned District Magistrate, who has made this reference is of the opinion that, an abettor is not exempted. In *Emperor v. Ghasi* 39 ALL. 722 : A.I.R. (6) 1918 ALL. 378 : 19 Cr.L.J. 46, it was held that a man may be guilty of criminal trespass on the land of another without ever personally setting foot on the land, if for example, he causes others to build on

the land against the wishes and in spite of the protest of the owner of the land. This ruling is authority for the proposition that, the accused may be guilty of criminal trespass even though he does not personally set foot on the land in dispute. I do not wish to express my final view on the point whether this ruling lays down correct law. Suffice it to say that, whether the prosecution of the accused is barred or not is a debatable point.

5. It is to be remembered that the trial is not yet over, In *Jai Kishen v. Ealla A. I. R. (7) 1920 ALL. 8 : 21 Cr.L.J. 379* it was held that as a general rule High Courts will not interfere in interlocutory proceedings. Of course a High Court may quash proceedings if it is clear from the record that conviction of the accused is not at all possible. But the present case is not of that type. It will be open to the trial Court to decide the question of law, that has been raised on behalf of the accused. I do not think it necessary to quash the proceeding.

6. In the original Summons, which was issued by the trial Court against Thakur Ganpat Singh accused it was mentioned that he should appear before the Court either personally or through a pleader. In obedience to that summons the accused appeared before the Court through a pleader. The trial Court was not satisfied with such appearance. The Court directed the issue of fresh summons for personal attendance.' The Court remarked that there is no order of the Court Under Section 205, Criminal P. O., exempting the accused from personal attendance. It is true that there was no written application by the accused Under Section 205, Criminal P.C. But the original summons itself permitted the accused to appear through a pleader. There was no application by the complainant insisting upon the personal appearance of the accused. The Court has not given any reason for holding that the personal attendance of the accused was necessary. After all, this is a petty case, in which Thakur Ganpat Singh accused did not personally trespass upon the land. He is a man of some social status, I am informed that he is an old man of 60 years. In these circumstances I do not see any reason why the trial Court should have insisted upon the personal appearance of the accused.

7. The reference is accepted to this extent that Thakur Ganpat Singh accused is permitted to appear before the trial Court through a pleader. If the trial Court

considers that there are some special circumstances demanding the personal attendance of the accused it will be open to the trial Court to pass an order directing the personal appearance of the accused. But till such an order is passed, the accused may appear through a pleader. In other respects the reference is rejected.

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