

Mustafa Khan Vs. the State

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Court : Rajasthan

Decided On : May-28-1952

Reported in : 1954CriLJ1008

Judge : Sharma, J.

Appellant : Mustafa Khan

Respondent : The State

Judgement :

ORDER

Sharma, J.

1. This is a reference by the Additional Sessions Judge, Baran, recommending that the conviction of the accused Shri Mustafa Khan, sub-court Inspector, under Section 228, I. P. C., be set aside.

2. It appears from the judgment of the Sub-Divisional Magistrate, Baran, that while a witness for the prosecution, namely Shri Narainial, Sub-Inspector, Police, was being examined in a criminal case, which the accused Shri Mustafa Khan was conducting on behalf of the prosecution, the accused complained to the court that the clerk of the court had without actually summoning the witnesses falsely entered the note of compliance. The Magistrate thereupon called for the register and found that the order had been properly complied with although rather late,

upon this the accused retorted again and again in heat and anger that his complaint was true and did not stop even when asked by the court to do so. The accused even Interrupted the proceedings which were going on before the Magistrate. The accused did not admit the allegations which were made in the question put to him, and made a rather long statement justifying his action.

Towards the end of his statement, the accused stated that whatever he had done was with a view to save expenses of the Government and not with a view to Insult or to interrupt any business of the court. He further said that if the complaint made against the clerk considered to be unjustified, he would riot make any complaint against the clerk in future. The learned Magistrate did not record any evidence, but on his own impressions he held that the attitude of the accused was insulting to the court, and that the accused intentionally interrupted the business of the court. The accused was, therefore, convicted under Section 228, IPC and sentenced to a fine of Rs. 50/- only. He filed an appeal against his conviction and sentence, but later on finding that no appeal lay, he prayed to the learned Additional sessions Judge before whom his appeal was pending that it may be treated as revision, The learned Additional Sessions Judge treated the appeal as an application for revision, and holding that the order of the Magistrate could not be supported, has made this reference, and has recommended that the conviction and sentence of the accused be set aside.

3. I have heard Mr. Shah Alimuddin Ahmad who appears on behalf of the accused. He supports the reference and has argued that the accused could not be convicted only on the opinion of the Magistrate that the tone and temper and the heat and anger with which the accused objected were insulting to the Magistrate, and that his opinion that in spite of being repeatedly asked not to interfere in the business of the court, the action of the accused in strongly retorting with heat and anger and saying that he was right was not only insulting to the court taut also interrupted the proceedings before the court was not enough for the conviction of the accused.

4. I have considered the arguments of the learned Counsel for the accused. There is nothing on the record excepting the question put by the learned Magistrate in

support of the learned Magistrate's, finding that the accused intentionally offered insult to the court and caused interruption to the Magistrate while he was busy with his judicial proceedings. In his answer, the accused has not admitted the allegations made in the question. The learned Magistrate does not say in his judgment what were the expressions used by the accused from which he inferred that the accused intentionally offered any insult to him or caused any interruption in the judicial business before him. The only complaint that the learned Magistrate has made in his judgment against the accused is that his tone and temper and the heat and anger with which the accused objected were insulting to the court, and the fact that in spite of repeatedly being asked not to interrupt, the accused persisted in repeating his complaint with heat & anger & said that he was right, amounted to intentionally offering Insult to the court and interrupting the court in the judicial business.

The learned Magistrate does not say what was the language used by the accused which he considered to be insulting. The opinion of the learned Magistrate that by his tone and temper and heat and anger the accused intentionally offered Insult to the court is not enough. There ought to have been facts before higher courts from which they could infer whether the opinion of the Magistrate was right or not. The Magistrate was himself very much exasperated at what he considered to be the insulting behaviour of the accused, and under these circumstances it would be very dangerous if his opinion is accepted without any concrete facts on the record. It is possible that the tone of the accused might have been a little harsh, or after he had been asked by the Magistrate to stop making the complaint for the time being he might have pressed before the court that his complaint was true and some action was necessary against the clerk. If the complaint made by the accused was true, then he was certainly justified in pressing before the court that some action might be taken which might deter the clerk of the court from either deliberately or negligently acting in a way which might unnecessarily delay the hearing of the cases. If he was a little more enthusiastic than he ought to have been in pressing the matter, it cannot be said that he intentionally offered any insult to the Magistrate or he intentionally interrupted the business pending before the Magistrate.

In their zeal, the counsel appearing before the court might sometimes annoy a particular court by their insistence upon a particular thing, but a judicial officer should not be too sensitive and too ready to take offence where none is intended. The law allows some latitude to a member of the Bar acting bona fide in the discharge of his professional duty so long as his conduct is not clearly vexatious so as to lead to the inference that his intention is to insult or interrupt the Court. The learned Magistrate has not placed any facts on the record from which it could be gathered that the conduct of the accused was clearly vexatious. Simply because some heat was caused during the proceedings, it cannot be said that the accused committed an offence under Section 288, I. P. c. I do not think that the conviction and sentence passed by the Magistrate were proper.

5. The reference is accepted, the conviction and sentence passed by the Sub-Divisional Magistrate, Baran are set aside, and the accused Shri Mustafa Khan is acquitted. The fine, if paid, shall be refunded.

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