

Queen-empress Vs. Ramasami

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Court : Chennai

Decided On : Dec-11-1900

Reported in : (1901)ILR24Mad321

Judge : Davies and ;Benson, JJ.

Appellant : Queen-empress

Respondent : Ramasami

Judgement :

Benson, J.

1. The facts of the case are stated by the Sessions Judge in paragraph 4 of his letter of reference as follows:

The facts of the present case seem to be these--Ramasami, the present accused, was originally charged by the Police with being one of a band of dacoits whose crime was committed on the night of 3rd February 1900 at Egattoor. He is said to have made a confessional statement to the Stationary Sub-Magistrate of Trivellore on the 15th -February 1900 (exhibit A). Pardon was tendered to him by the Stationary Sub-Magistrate under the District Magistrate's order (not sent to this Court, but vide Sub-Magistrate's proceedings, dated 15th March). Subsequently, on 7th March 1900 he was examined by the same Sub-Magistrate as fifth prosecution witness at a preliminary enquiry into the dacoity held. under chapter

XVIII, Criminal Procedure Code. He then (vide exhibit B) retracted his former statement, protested that he knew nothing about the crime, and asserted that he had made the statement, exhibit A, in consequence of police torture.

At the trial in this Court (Calendar Case No. 12 of 1900) before my predecessor Mr. O'Farrell and a Jury, he was not put into the witness box as a prosecution witness, nor was his evidence heard at that trial, which ended on 26th April 1900 in the acquittal of the twelve men, who were then tried for the crime.

The Police applied on 7th May 1900 to the District Magistrate for withdrawal of the pardon tendered to Ramasami, and on 22nd August 1900 the District Magistrate' in his proceedings', Dis. No 756-M of 1900, passed the following order: 'Ramasami having withdrawn and contradicted his first statement, the pardon tendered to him under Section 337 is hereby withdrawn.

Thereupon the police have charged Ramasami before the same Sub-Magistrate for having been one of the dacoits, and Ramasami now stands committed by the Sub-Magistrate for trial by this Court.

2. The Sessions Judge considers the commitment illegal and recommends that it be quashed on two grounds. The first is that Section 337 (2), Criminal Procedure Code, requires that every person accepting a tender of pardon 'shall be examined as a witness in the case,' and that the words 'in the case' mean before the Sessions Court and are not satisfied if the witness is examined only in the preliminary enquiry, as in the present case.

3. I do not think that this view is correct, I think who words 'in the case' are purposely used so as to include the preliminary enquiry and do not refer to the trial only. There are many cases in which there would be no need to examine the approver as a witness before the Court of Sessions, e.g., where the Magistrate discharges the accused, or where the accused dies before the trial, or where the accused pleads guilty before the Sessions Court and is convicted on the plea. Could it be held that if the approver in these cases, when examined at the preliminary enquiry, kept back material evidence within his knowledge, the pardon could not be withdrawn, and that the witness must go scot-free though guilty of the

offence of which he had been pardoned on condition-of marking a full disclosure? I can see no reason for such a conclusion. The case relied upon by the Sessions Judge *Queen-Empress v. Nattu* I.L.R. 27 Calc. 137 is not an authority which supports his view, for in that case the commitment was quashed for other reasons. The Judges, no doubt, considered that the person to whom tender of pardon was made ought to have been made available for examination before the Sessions Court and gave that as an additional reason for quashing the commitment, but it was not the primary reason. Moreover, in the present case the man was sent up as a witness to the Sessions Court and was available as a witness though not, in fact, examined by either side. On the other hand in *Queen-Empress v. Brij Narain Man* I.L.R. 20 All. 529 the Court clearly was of opinion that failure on the part of the approver to fulfil the conditions of the pardon when examined at the preliminary enquiry before the Magistrate was a sufficient reason for at once revoking the sanction and committing the witness to stand his trial for the offence originally charged against him.

4. It may, perhaps, be doubted whether the opinion of the Judges in that case that the approver might be at once committed to stand his trial with those who were originally his co-accused is correct. The better opinion seems to be that beyond revoking the pardon nothing should be done against him until after the trial of the other accused is over, and that his trial should then proceed *de novo* *Queen-Empress v. Bhau* I.L.R. 23 Bom. 493 and cases there quoted.

5. This is exactly the procedure observed in the present case.

6. The Sessions Judge is of opinion that the man should have been given an opportunity of earning his pardon in the Sessions Court, and says that, if he had, he might, in that Court, have complied with the conditions on which pardon was granted. I do not think that this view is correct. The man having failed to comply with the conditions of his pardon when examined on oath before the Magistrate, there was no reason for the prosecution to think that he would give other evidence before the Sessions Court. There was, in my judgment, no reason why the prosecution should, in the Sessions Court, put forward as a witness for the prosecution a man who they had every reason to think would give false evidence.

He was bound over and was available for examination if the Court or the accused wished to examine him, but I do not think that there was any duty on the prosecution to examine him, Even if he were examined in the Sessions Court and gave the evidence originally expected from him when pardoned, his evidence would be of little or no value in consequence of his previous contradictory evidence before the Magistrate, In fact, if the prosecution was bound to follow the course proposed by the Sessions Judge, the provisions of the law which aim at securing convictions by the grant of pardons would become nugatory for the approver could always save himself without materially assisting the prosecution, It would only be necessary for him to give false evidence before the Magistrate, and reserve the truth for the Sessions Court. The latter would 'earn his pardon,' while the former would deprive the latter of any weight it might otherwise have in favour of the prosecution. When a pardon has been tendered and has been accepted, the utmost good faith must be kept on both sides. Good faith is broken if the witness does not disclose the truth to the Magistrate, and, in my opinion, the conditional pardon may be at once withdrawn as soon as good faith has been broken.

7. The second objection to the commitment taken by the Sessions .Judge is on the ground that the District Magistrate had no power to withdraw the pardon after the Sessions trial was over, and that such power rested with the Sessions Court alone. The Criminal Procedure Code does not specify by whom a pardon may be withdrawn. Ordinarily the authority which makes an offer has power to withdraw it, and in the case of *Queen-Empress v. Manick Chandra Sarkar* I.L.R. 24 Calc. 492 it was expressly ruled that the proper authority to withdraw a pardon is the authority which granted it (in that case the Joint; Magistrate) even after the trial has been held in the Sessions Court, I am of opinion that that ruling is correct.

8. Lastly, it was suggested in the course of the argument that the District Magistrate has given no sufficient reason for withdrawing the pardon, that the withdrawal is therefore illegal, and, as a consequence, that the commitment is also illegal. This is not a ground taken by the Sessions Judge, and, in my opinion, there are no materials before us from which we can say that the withdrawal was not made until after the conclusion of the Sessions trial when all the facts of the case and the evidence must have been before the District Magistrate. There is no

appeal before us against the order of the District Magistrate, nor is there any application before us to revise it. I think we must take it that the District magistrate was satisfied that the approver when he withdrew and contradicted his first statement was giving false evidence or was wilfully concealing essential facts. If he was so satisfied, he had power under Section 339, Criminal Procedure Code, to withdraw the pardon.

9. I would inform the Sessions Judge that the commitment is not illegal and that he should proceed with the trial according to law.

Davies, J.

10. I concur.

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