

T.R. Pratt Vs. Emperor

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SooperKanoon Citation : sooperkanoon.com/860839

Court : Kolkata

Decided On : Jan-22-1920

Reported in : 57Ind.Cas.97

Judge : Asutosh Chaudhuri and ;Newbould, JJ.

Appellant : T.R. Pratt

Respondent : Emperor

Judgement :

1. We think that this Rule ought to be discharged. There were materials before the Magistrate upon which an order under Section 94 could properly be made, and was properly made. A point was made by Mr. Pratt that he had authorised Mr. McLean to take over the books. He says that almost simultaneously he gave a direction to his officer Mr. Quayle to remove the books after Mr. McLean had taken them over. It is difficult to understand why this farther order was made. It had the effect of misleading the Court. The Court made an enquiry at the time as to who was the person to give a receipt and take the books and Mr. McLean was one of the persons named. Immediately thereafter though authority was given to Mr. McLean to remove those books and to sign a receipt for them, Mr. Pratt by an order which was not made known to the Court authorised another person to take over the books from Mr. McLean. The order under Section 94 was accordingly made on Mr. McLean who was going to fake delivery of the books and who was going to give a receipt for them, and it was not known to the Court at that time that

Mr. Quayle was authorised in the manner aforesaid. If the Court knew that, there would have been no difficulty in the matter. The order would have been on him to produce. We think that the order under Section 94 was properly made and the books which were taken charge of ought to be in the custody of the Magistrate in the circumstance of the case.

2. We must say that the charges made against the Magistrate in paragraphs Nos. 14 and 17 of the petition are altogether unfounded. They certainly ought not to have been made. It is to be noted that both these paragraphs are merely based upon belief. The charges have been made on belief, but in his affidavit Mr. Pratt swears that they are true to his knowledge. What he means it is impossible to understand Paragraph 14th of the petition runs thus:-- 'That your petitioner believes and charges that the giving directions to the said Mr. Armstrong as aforesaid to bring the books to the Court of the Chief Presidency Magistrate and the serving of the said notice were acts done in furtherance of a scheme planned in concert by the Chief Presidency Magistrate and the said Mr. Armstrong to render nugatory the orders of this Court and he further charges that the said scheme was mala fide, in the following circumstances.'

3. It is merely a charge upon belief, the grounds for such belief are not stated, no facts are given and we are strongly of opinion that a charge of that character should never have been introduced in the application. Learned Counsel undoubtedly made his observations basing them upon the affidavit, but when charges of this character are made in Court by learned Counsel, I do not think that it will ever be disputed that it is his duty to see upon what the charges are based before he makes them. It seems to us that the learned Counsel was misled by the paragraph as worded. He did not carefully examine the wording. We do not think that any case has been made out of mala fides against the Magistrate. The charges are altogether improper and unjust. Even if we come to the conclusion that the books were not strictly, properly or lawfully obtained from Quayle, we would certainly not have directed the books to be returned but simply directed the issue of an amended notice to be served upon Mr. Pratt for the production of those books and Mr. Pratt could not then have avoided producing them. Learned Counsel appearing for the petitioner is quite justified in putting before us the

circumstance that all the books which were taken by the Police under the search warrant, which has been declared by this Court as illegal, have again been taken possession of by the Magistrate. The way in which it was done rather indicates that it was not sufficiently considered at the time as to how many of these books were necessary for purposes of the investigation. That undoubtedly is a matter of complaint, and just complaint. But we think that in the circumstances of this case an enquiry now would sufficiently safeguard the interests of the petitioner. The learned Advocate General appearing for the prosecution says that he is prepared to have such an enquiry made in the presence of the other side, and we direct the Chief Presidency Magistrate to have that enquiry as quickly as possible in the presence of the other side and to determine which of the books are necessary to be kept. He must in this connection take into consideration any undertaking which may be given by the petitioner or his Attorney for the production of the books as required but which the Magistrate may now direct to be returned. We need hardly point out that only such books as may be urgently required for purposes of the case ought to be kept and no more. Mr. Pratt complains that his business has been seriously prejudiced and the retention of current books interferes with his work. The learned Advocate-General says that he is prepared to give him facilities for carrying on his business and will help him to get such books as may be necessary. This matter also ought to be taken into consideration by the Magistrate.

4. Then there is a further matter, about the method of inspection of the books, which may be kept. We direct the Magistrate to give definite instructions as to when and where the inspection is to be held and by which officer. It is conceded that such inspection ought to be made in the presence of the petitioner. We direct that to be done. With these directions we discharge the Rule.

5. Mr. Langford James wants it to be added that he takes the fullest responsibility for the observations which were made by him based upon paragraphs 14 and 17. Since he takes the responsibility we have nothing further to say. We only wish to emphasize what we have already said that charges of this character ought not to be made except on facts and then only after due consideration. We hope the profession will bear that in mind.

