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In Re: Abdool Sobhan

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Court : Kolkata

Decided On : Jul-07-1881

Reported in : (1882)ILR8Cal63

Judge : Richard Garth, C.J.

Appellant : In Re: Abdool Sobhan

Judgement :

Richard Garth, C.J.

1. This was an application made to me by Mr. Branson on Tuesday last, in the case of The Empress v. Moulvie Abdool Sobhan.

2. The prisoner is charged with bribery; and his case stands for trial at the nest Criminal Sessions at Patna. A rule had been obtained on his behalf in this Court, calling upon the Crown to show cause why his case should not be transferred for trial, either to the High Court in its original criminal jurisdiction, or to any other Court of Sessions where the jury system prevails.

3. The ground upon which this rule was obtained (stated shortly) was, that there was such a strong feeling and prejudice existing against the prisoner in the Patna district, that he could not secure a trial there by fair and unprejudiced jurors or assessors.

4. This rule came on to be heard before the Criminal Bench on the 27th instant (last Monday). Mr. Jackson appeared in support of it, and I find from the affidavits that he stated to the Court the nature of his application, and the grounds upon which he relied in support of it; that a discussion then ensued, in which the learned Judges appear to have expressed a view against the application; and upon Mr. Jackson proposing to read his affidavits in extenso, they declined to hear them, and informed Mr. Jackson that his application was refused.

5. Mr. Branson then applied to me on the following morning, as the Chief Justice of this Court, to appoint another Bench to hear the rule, upon the ground that, in point of law, there had been no hearing before the Criminal Bench. He contended that the Judges were bound to allow Mr. Jackson to read his affidavits, and that they could not possibly know the facts without ascertaining what the affidavits contained; and that as they had not done so, the decision ought to be treated as a nullity, and that I, as Chief Justice, had the power to refer the case for trial to another Bench.

6. In support of this view he cited two precedents, to which I shall presently refer, where, as he contended, a similar power had been exercised by the Chief Justice of this Court.

7. I was strongly of opinion at the time that I had no power at all to interfere, but having regard to the novelty and importance of the question, I took time to consider my Judgment.

8. Having done so, I am more than ever satisfied that I have no such power, and that the precedents referred to by Mr. Branson have no application to the present case.

9. The first of these occurred in the early part of the year 1869.

10. A Criminal Bench of this Court, consisting of two Judges, had been appointed by the Chief Justice in the usual way, for the purpose of hearing criminal appeals; instead of sitting together to hear these appeals, the Judges thought proper to hear them separately,--that is to say, one Judge sitting alone heard some of them,

and the other sitting alone heard the rest; but the judgments in all the cases were signed by both Judges. Upon this being represented to the Chief Justice, he considered that, in point of law there had been no hearing at all of these appeals, because they had not been heard by a legally constituted Court, and one Judge sitting alone had no jurisdiction to hear them. He, therefore, ordered the same Criminal Bench to hear them again; and upon the Judges of that Bench declining to do so upon the ground that they had been already judicially decided, the Chief Justice sent them to another Division Bench, by whom they were finally determined.

11. In this view of my learned predecessor I entirely agree. It is the province and duty of the Chief Justice, under Section 14 of the High Courts Act, to determine what Judge or Judges shall decide each case; and if two Judges are appointed by him to hear an appeal, it is quite clear, I think, that no single Judge has any jurisdiction to hear it.

12. But here there was no question of jurisdiction. The rule was disposed of by a Court of two Judges duly constituted by myself for that purpose; and the only complaint is, that those Judges, having heard the case up to a certain point, decided it without allowing Mr. Jackson to read certain affidavits.

13. If they erred at all in this, their error was simply one of law in the course of dealing with a matter which was clearly within their jurisdiction. There is no pretence for saying, as it seems to me, that their decision was a nullity, or that the Chief Justice of this Court has any right to question its legality.

14. The other precedent referred to by Mr. Branson is The Queen v. Zuhiruddin I.L.R. 1 Cal. 219. In that case a prisoner was committed to take his trial at Patna. On the application of the District Magistrate by letter to this Court, the Judge in the English Department made a summary order transferring the case for trial to Shahabad.

15. The prisoner then applied to this Court for a rule calling on the Crown to show cause why the order of transfer should not be rescinded, upon the ground that it had been made without notice to him, and that the Judge in the English

Department had no power to make it.

16. This rule was heard by a Full Bench, of which the Judge of the English Department was a member, and with his entire concurrence the rule was made absolute.

17. That case, it is clear, has no application at all to the present. It only decides that the transfer of a criminal case from one District Court to another can only be made by the High Court in its judicial capacity.

18. The reason, as I have already mentioned to Mr. Branson, why the learned Judges in the present case declined to hear the affidavits read, was because they were under the impression that Mr. Jackson had already explained the reasons upon which his application was founded; and because they were led to believe, from what Mr. Jackson himself had stated, that his client's objection was, not to the trial taking place at Patna, but to its being tried before the Sessions Judge there. Mr. Jackson, as I understand, had offered to withdraw his rule, if his client could only be tried by another Judge at Patna, Mr. Tweedie. Under these circumstances, it did seem to the Judges an unnecessary waste of time to have the affidavits read. But if the prisoner's counsel think otherwise, and desire now to be re-heard upon the affidavits, they have only to make a proper application for that purpose.

19. If the Judges were under a wrong impression as to what Mr. Jackson said or intended, they are willing to be set right; and I can only say that, in expressing their readiness to hear the case again, they have done, as it seems to me, all that they could reasonably do, and what I certainly should have done myself under similar circumstances.

20. Then Mr. Branson has suggested that I should send the case to be tried by another Bench, on the ground that, before the same Bench the case would not be heard without some bias. But in the first place, I think that I have no power to do this; and in the next place, if I had, I should not exercise it. I find nothing in the case, as it has been presented to me, which would justify either Mr. Branson or myself in supposing that the matter, if heard again, would not be dealt with in perfect fairness.

21. I would observe, in conclusion, that Mr. Branson seemed to be under the impression, that a criminal case of this kind cannot be reconsidered. But in point of fact no judgment has yet been signed; and even if it had, in my opinion an interlocutory order in such a matter is not necessarily final. It is clearly not a res judicata, but may be reconsidered or reviewed, or a similar application may be entertained, as often as the Court in its discretion may think proper.

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