

Radhashyam De Vs. State

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Court : Kolkata

Decided On : Mar-07-1967

Reported in : 1970CriLJ1046

Judge : A.K. Das, J.

Appellant : Radhashyam De

Respondent : State

Judgement :

ORDER

A.K. Das, J.

1. This revisional application is directed against a complaint lodged by a Magistrate of Vishnupur under Section 476 of the Criminal Procedure Code.

2. The facts are as follows:

3. On 10th February 1965 a proceeding under Section 144, Criminal Procedure Code, was instituted in the Court of the Sub-divisional Magistrate, Vishnupur. The first party claimed that he purchased the disputed lands of Chaitanya and Radheshyam by a kobala dated 22nd December 1964 and the remainder share of Amulya from the heirs of Amulya by another kobala dated 2nd January 1965. The second party did not admit the execution of the kobalas. They claimed that

Radheshyam, son of Ram Charan, inherited sixteen annas share of the property from his grandfather, Makhan Lal De and this Radheshyam settled the land on 16th April 1962 to Dhanraj by virtue of an unregistered amalnama and Dhanraj produced two pieces of paper purported to be receipts for rent and salami granted by Radheshyam. The learned Magistrate held that the case of the second party had no foundation at : all and : that Radheshyam made a misrepresentation on either of the two occasions. He held that he must have made a false statement in the affidavit dated 13th February 1965 or in the registered kobala dated 22nd December 1964. The learned Magistrate, therefore, directed that a miscellaneous case be started against him separately and asked him to show cause by April 15, 1965 why he should not be legally prosecuted for intentionally giving a false statement before a public servant either on February 13, 1965 when he swore an affidavit before B. C. Bhattacharjee, Magistrate, 1st class, Bishnupur, or on December 22, 1964, when he admitted the kobala before the Sub-Registrar, Bishnupur.

4. Mr. Palit, the learned Advocate for the petitioner, has raised two points and they are as follows:

(1) That the order is bad in view of Sub-section 479A of the Code of Criminal Procedure : and

(2) in the absence of a clear statement of the complainant as to which portion of the evidence is false, the complaint is bad in law and the learned Magistrate should not have taken cognizance.

5. Point No. 1 : Section 479A (6) pro-vides that no proceeding shall be taken under Sections 476 to 479 inclusive for the prosecution of a person for giving false evidence, if in respect of such person proceedings may be taken under this section. Section 479A (1) says that notwithstanding anything contained in Sections 476 to 479 inclusive, for initiating a prosecution for perjury the Court shall, at the time of the delivery of the judgment or final order disposing of such proceeding, record a finding that the witness has intentionally given false evidence in any stage of the judicial proceeding and that, for the eradication of the evils of perjury and in the interests of justice, it is expedient that such witness should be prosecuted for

the offence which appears to have been committed by him. This view is supported by the Supreme Court decision in Sabir Hossain's case : AIR 1963 SC816 . There is no such finding in the present case but only a direction for starting a miscellaneous case for the purpose. In a later decision of the Supreme Court in Kuppa Goundan v. M.S.P. Rajesh : 1966 CriLJ1503 it has been held that the bar of Clause (6) will not apply to a case where perjury is detected not merely with reference to evidence adduced at the trial but with reference to evidence in some other distinct proceeding, not then brought before the Court. That decision, however, will not apply to the facts of this case. It was, therefore, incumbent on the learned Magistrate to record a finding at the time of delivery of the judgment in the Section 144 Criminal P. C. case that for the eradication of the evils of perjury and in the interest of justice it was expedient that such witness should be prosecuted for the offence which appeared to have been committed. The complaint is presumably not under Section 479A, Criminal P. C, as the provisions of that section have not been complied with and it is therefore bad in law and should be quashed.

6. Point No. 2 : The learned Magistrate has not stated which portion of the evidence is false. He has merely referred to certain contradictory statements. But that does not satisfy the ingredients of an offence of giving false evidence and on that ground also this complaint is bad in law.

7. In the result, this application succeeds and the proceeding now pending before the learned Magistrate is quashed.

8. The rule is made absolute.

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