

Chogmal Seraogi Vs. Emperor

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Court : Kolkata

Decided On : Jan-15-1919

Reported in : 50Ind.Cas.981

Judge : Richardson and ;Shamsul Huda, JJ.

Appellant : Chogmal Seraogi

Respondent : Emperor

Judgement :

1. This Rule relates to an order made by the Munsif of Jangipur sitting as a Judge of the Small Cause Court by which he sentenced the petitioner to pay a fine of Rs. 50 for the contempt of Court. The contempt charged consists in this, that the petitioner had disobeyed an order of the Court.

2. It appears that the petitioner and another person had instituted a suit against two defendants in the Court of Small Causes for the recovery of money due on a hand-note. The suit was decreed with costs on the 12th July 1918. On the following day the defendants applied for a revival or re-trial of the suit. The application, which was in the nature of an application for. review of judgment, was put on the ground that the suit was a fraudulent suit and that the defendants had come to know of certain account-books belonging to the petitioner which contained entries showing that the claim was unfounded. Upon that the Munsif issued a notice upon the petitioner in the following terms: 'You are hereby informed that the

defendants in the above suit have prayed for a re-trial of the above case. You are, therefore, ordered to appear with the Kuncha Pucca Rockor and Khatian books of your shop on the 26th July 1918 and give your depositions, failing which the suit will be decided against you on the said day.'

3. Our attention was invited by the learned Pleader for the petitioner to the fact that the notice speaks of the retrial of the suit and does not mention review of judgment. The wording is clumsy but for the present purpose it is not material to consider either the form of the notice or its substance and effect. It may be that having the application for review before him, the Munsif had jurisdiction to issue some such directions. Whatever may be said as to that, the petitioner did not comply with the terms of the notice. He did not appear before the Munsif on the 26th July and he did not produce his account-books. In that state of things, if the notice was a good notice and if it was shown that the petitioner had duly received it, it was open to the learned Munsif to deal with the matter in the petitioner's absence. But that is not the course which the Munsif took. Instead he called upon the petitioner to show cause why he should not be fined for his disobedience.

4. The petitioner accordingly showed cause by a petition filed on the 3rd August, pleading among other things that the Court had no jurisdiction to issue notice upon him to appear with his documents. The matter was taken up on the 7th September. On that date the Munsif made the order complained of, part of which runs as follows:

The plaintiff was served with a notice by the Court to appear for a certain reason. He did not obey the Court's order and was again asked to show cause why he should not be fined for contempt of Court. He filed an application showing cause but is absent to-day and the case is going on ex parte. I fine him Rs. 50 for contempt of Court for disobeying the Court's order.

5. Mr. Orr has appeared in this Rule to show cause why the order so made should not be set aside. He has referred us in the first place to Section 151 of the Civil Procedure Code. That provision saves the inherent powers of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court. However wide the language may be, the section does not

give the Court a blank cheque or an absolute discretion to make any order it pleases. It certainly does not confer upon any Court a summary jurisdiction, which it does not otherwise possess, to punish contempts by fine or imprisonment. It may be worth while to say that, but it would be unjust to Mr. Orr to leave it to be supposed that he went to that length. He cited the section, as I understand, for the purpose of supporting the Munsif's first order, directing the petitioner to produce his books. If that order requires such support and if anything turned on the point, the argument might deserve consideration.

6. Mr. Orr has next referred us to Section 175, Indian Penal Code, a section which is to be found in Chapter X of the Penal Code, headed 'Of Contempt of the Lawful Authority of Public Servants.' Under that enactment if a person legally bound to produce or to deliver up a document to a public servant as such intentionally omits so to do, he commits an offence for which he may be punished. It is argued, therefore, that the petitioner's disobedience amounted to a contempt, punishable as an offence. If so, it was open to the Munsif to take steps for the petitioner's prosecution before a Magistrate in the ordinary way and by the regular procedure. The Penal Code again confers no summary jurisdiction to fine or imprisonment for contempt.

7. Then we come to Section 480 of the Criminal Procedure Code, which is, no doubt, the section which the learned Munsif had in his mind, though it may be doubted whether he had the words of the Statute before him when he made the order in question. The section says: 'When any such offence as is described in sections 175, 173, 179, 180 or Section 223 of the Indian Penal Code is committed in the view or presence of any Civil, Criminal or Revenue Court, the Court may cause the offender, whether he is an European British subject or not, to be detained in custody and at any time before the rising of the Court on the same day may, if it thinks fit, take cognizance of the offence and sentence the offender to fine', and so forth. It is clear that the summary power so conferred only extends to offences in the nature of contempt committed in the view or presence of the Court.

8. In the present case the petitioner has been summarily punished for refusing or neglecting to appear with his books on the 26th July. That was not a contempt

committed in the view or presence of the learned Munsif. Neither on the 26th July nor on the 7th September when the fine was imposed was the petitioner before the Court. On neither day could the Munsif have carried out the procedure contemplated by Section 480 or Section 482.

9. The summary power in question may extend to contempts committed in the precincts or offices of the Court Rasic Lal Nag In re 38 Ind. Cas. 980 : 44 C. 689 at p. 648 : 24 C.L.J. 190 : 20 C.W.N. 1284 : 18 Cr.L.J. 420 but it does not extend to such a case as that now before us.

10. In our opinion the order complained of was made without jurisdiction and the Rule must be made absolute. The order is set aside and the fine, if paid, will be refunded.

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