

Mehar Chand Vs. the State

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Court : Himachal Pradesh

Decided On : Aug-21-1952

Reported in : AIR1953HP3

Judge : Chowdhry, J.C.

Acts : Contempt of Courts Act, 1926 - Section 3; ;[Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 369 and 561A

Appeal No. : Criminal Review No. 53 of 1951

Appellant : Mehar Chand

Respondent : The State

Advocate for Def. : S.N. Sethi, Govt. Adv.

Advocate for Pet/Ap. : K.C. Pandit, Adv.

Judgement :

ORDER

Chowdhry, J.C.

(1) This is an application for review of the judgment of this Court passed on 20-8-1951 whereby, although seven other persons were discharged on their tendering unconditional apologies, the present petitioner was sentenced to a fine of Rs. 100/- under Section 3 of the Contempt of Courts Act, 1926. The petitioner was

treated differently from the others because he did not put in appearance in this Court on the date of hearing. He had sent a telegram asking for adjournment on the ground of sickness, but it was disregarded because no communication relating to a judicial matter can be acted upon unless made formally. An application for adjournment supported by a medical certificate was received from the petitioner subsequently, but that was too late because received after the judgment.

(2) In the present petition for review of the said judgment, although the petitioner seeks in the first instance to explain that he had no complicity in the matter interpreted as amounting to a contempt of the Court, he tenders an unconditional apology at the end of the petition. Such an apology not being unqualified, might not have been accepted as satisfactory, but the learned counsel for the petitioner did not seek at all to justify the conduct of the petitioner but contented himself with merely offering an unconditional apology on behalf of his client for the conduct in respect of which proceedings were taken against him.

(3) Two objections were, however, taken by the Government Advocate. The first was that this Court has no power to review the judgment delivered by it on 20-8-1951. And in support of this contention he cited the following rulings: -- 'Kunhahamad Haji v. Emperor, AIR 1923 Mad 426; Arumuga Padayachi In re, AIR, 1926 Mad 420; -- 'Banwari Lal v. Emperor', AIR 1935 All 468, and -- 'Laxmanrao Parashram v. Emperor, AIR 1938 Nag 74. These cases lay down that the High Court has no inherent power under Section 581A, Cr. P. C., to review its judgment. In none of these cases, however, was review sought of a judgment delivered under the provisions of the Contempt of Courts Act, 1926. This Act lays down a special procedure, as I shall presently show, and therefore the above rulings have no application in the present case.

(4) The special provision just referred to is contained in the first proviso to Section 3 of the Act. The Section and the first proviso are to the following effect:

'Save as otherwise expressly provided by any law for the time being in force, a contempt of Court may be punished with simple imprisonment for a term which may extend to six months, or with fine, which may extend to two thousand rupees, or with both:

Provided that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the Court.' It is clear from a perusal of the section and the proviso that even after punishment has been awarded to an accused under the Act, he may be discharged or the punishment remitted in case he makes an apology to the satisfaction of the Court. In other words, the proviso gives the Court a power of re-viewing its judgment awarding punishment to an accused under the Contempt of Courts Act in a case where the accused offers an apology to the satisfaction of the Court. The above provisions do not appear to have been the subject-matter of decision in any reported ruling; in any case, none was cited before me by the learned counsel. The language of the proviso is however plain, and the conclusion I have arrived at seems to follow clearly from it.

(5) Section 484, Cr. P. Code, is a provision analogous to the proviso to Section 3 of the Contempt of Courts Act, 1928, for it also provides that when any Court has adjudged an offender to punishment it may remit the punishment on the offender tendering an apology to the satisfaction of the Court. In -- 'Kunji Lal v. Emperor', AIR 1935 All 60, while holding that the High Court had no inherent power under Section 561A Cr. P. C. to review a judgment already passed in exercise of its revisional jurisdiction, Bennet J. mentioned Section 484 of the Code amongst those covered by the words 'save as otherwise provided by this Code' in Section 339.

The power of review may however be granted not only by the Code but also 'by any other law for the time being in force', as further laid down in Section 339. The first proviso to Section 3 of the Contempt of Courts Act, 1926, is one such other law for the time being in force, within the purview of Section 339 of the Code, which permits review. I therefore find support for my view from the just cited 1935 Allahabad ruling relating to an analogous provision and hold that this Court has the power to review the judgment in question dated 20-8-1951.

(6) The power of review is discretionary, and the other contention of the learned Government Advocate was that it should not be exercised in this case regard being had to the conduct of the petitioner in not putting in appearance in this Court on 20-8-1951. His argument was that the petitioner should have applied for

adjournment according to law through a counsel or some other duly appointed agent. That is no doubt a counsel of perfection, but I do not think the petitioner should be penalised for not following it in the circumstances of this case. The medical certificate filed by him is to the effect that he had taken ill with amoebic dysentery on 19-8-1951 & was unable to move.

The petitioner therefore fell ill just on the eve of the date of hearing, and it would be putting too hard a construction on his conduct if it were to be held that in the short time at his disposal he should have acted in the ideal manner suggested by the learned Government Advocate. It was suggested that such medical certificates are easily procured. But such medical certificates are also genuine, and there is nothing to show that the one filed by the petitioner was not such. It was granted by the medical officer in charge of the Government Dispensary at Solan and is supported by the petitioner's affidavit.

(7) For the reasons therefore that the petitioner had sufficient cause for non-appearance on 20-8-1951, and that he has tendered an unqualified apology to the satisfaction of this Court, I hold that this is a fit case for reviewing the order dated 20-8-1951 and remitting the punishment awarded by that order. Accordingly, the apology is accepted, the sentence of fine awarded by the said order is set aside and the petitioner is discharged. If the fine has already been paid by the petitioner, it will be refunded to him. The order requiring the petitioner to pay Rs. 20/- as costs will, however, stand.

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