

Jagannath Singh And Anr. vs Bidheshi And Ors. on 14 July, 1955

Equivalent citations: AIR1955ALL712, 1955CRILJ1557, AIR 1955 ALLAHABAD 712

ORDER

James, J.

1. In a case under Section 145, Criminal P. C., Jagannath Singh and another were one contesting party and Bidheshi Chamar and others the other party. The Magistrate held Bidheshi Chamar etc., to be in possession of the disputed property and forbade the other party from interfering with their possession. Jagannath Singh and his colleague went up in revision to the Sessions Judge,' who after hearing the parties and examining the evidence made a reference to this Court recommending that the Magistrate's order be set aside.

The reference came up for hearing before me on 7-3-1955. That day Jagannath Singh and his colleague were duly represented by counsel, but Bidhpshi Chamar etc., were found absent despite personal service, nor was there any counsel to represent them. After examining the Sessions Judge's order of reference and hearing the counsel for Jagannath Singh I held that the reference was a perfectly correct one; accordingly I accepted it.

Subsequently Bidheshi Chamar, etc., through Sri S.N. Misra, Advocate, filed this application praying that the order of 7-3-1955 be recalled, the Sessions Judge's reference restored to its original number and disposed of after hearing the parties.

2. It is this restoration or review application which is now before me for final orders, and the question for decision is whether or not in the circumstances of the case I have power to review my previous order. Mr. S.N. Misra for the applicants has cited a number of rulings to show that I have such power, while Mr. P.C. Chaturvedi relying on some recent rulings has argued that I have not.

After a careful examination of these rulings and also of the decisions mentioned at page 2183 of B.B. Mitra's "Code of Criminal Procedure" (12th Edn.) my view is that in normal circumstances the High Court has no power to review its previous decision in a criminal case but that where a mandatory provision of law has been contravened resulting in abuse of the process of the Court it is entitled to correct an obvious error.

3. It should here be stated that it appears that on notice of the Sessions Judge's reference being given to the parties Bidheshi Chamar, etc., engaged Mr. Misra and accordingly he filed his 'parcha' in the office. But through some mistake the parcha was not brought on the record, with the result

that Mr. Misra's name was omitted from the cause List. This was the reason why he was unable to appear when the reference was taken up by me on 7-3-1955.

Accordingly Mr. Misra contends that since it was through no fault of his that Bidheshi Chamar, etc., remained unrepresented at the hearing an abuse of the process of the Court has taken place, which I should now remedy under Section 561A, Criminal P. C.

4. I am prepared to concede that had this been an appeal by a convicted man there would have been force in Mr. Misra's argument, for such a man has a right to be heard before his appeal is decided and any decision without hearing him would be in breach of a mandatory provision or the law.

5. Further, even in a revision no order can be made to the prejudice of the accused person unless he has had an opportunity of being heard either personally or by counsel in his own defence -- Vide Section 439 (2). Criminal P. C. But in the present case Bidheshi Chamar, etc., are neither convicted men nor accused persons, while Section 440, Criminal P. C., clearly lays down that no party has any right to be heard either personally or by pleader before any Court when exercising its powers of revision.

It is manifest that Mr. Misra's clients in the Reference had no right to be heard by this Court either personally or through him. It follows that if the Reference was decided without hearing them no contravention of any mandatory provision of the law took place. On the other hand, the order of Reference, which incidentally gives all the facts in detail, was carefully considered before final orders were passed on 7-3-1955.

6. In these circumstances I am firmly of opinion that I am not entitled to review my order of that date. This application must therefore be dismissed.

7. Leave is refused.