Ejaz Ahmad vs Kunwar Maheshwar Bakhsh Singh And Anr. on 26 September, 1951

Equivalent citations: AIR1953ALL257, AIR 1953 ALLAHABAD 257

JUDGMENT

Beg, J.

1. This is a reference by the learned Sessions Judge of Hardoi recommending that an order dated 21st March 1950, passed by Sri Huzur Uddin Ahmad, Magistrate, Eirst Class, Hardoi, discharging the accused in a case launched against him under Section 188, Penal Code, be set aside.

2. The facts necessary for the appreciation of the point involved in this case may be briefly stated as follows :

3. In 1933 Kunwar Maheshwar Bakhsh Singh sold certain zamindari to Sri Krishna Das. After that sale, Maheshwar Bakhsh Singh got ex-proprietary rights in plots NOS. 689, 764, 1568, 870 and 763 situate in village Samodha. In execution of some decree for arrears of rent the vendee Sri Krishna Das was delivered possession over these plots and Kunwar Maheshwar Bakhsh Singh was dispossessed from them. On 5th February 1947, one Ejaz Ahmad, an agent of Sri Krishna Das filed a complaint under Section 145, Criminal P. C., against Kunwar Maheshwar Bakhsh Singh, Chhedi and 16 others. On 6th March 1945, the Sub-Divi. sional Magistrate, Sandila, in whose Court the said case was pending, passed a preliminary order under Section 145, Criminal P. C. This order was duly promulgated as provided in Section 145 (3), Criminal P. C. The Magistrate after recording the evidence of the parties ultimately passed the final order under Section 145 (6) on 9th June 1947, declaring the applicant to be entitled to possession of the property until evicted therefrom in due course of law and forbidding all disturbance of such possession until eviction.

Maheshwar Bakhsh Singh and Chhedi are alleged to have disobeyed the said order of the Sub-Divisional Magistrate of Sandila and accordingly he directed their prosecution under Section 188, Penal Code. The complaint made by the Sub-Divisional Magistrate was eventually sent to the Court of Sri Huzur Uddin Ahmad for trial and disposal.

4. The learned Magistrate started taking the evidence of the prosecution. Before the evidence of the first witness was finished, an objection was taken on behalf of the accused that in view of the fact that the final order under Section 145 (6) was not promulgated, the case against the accused was bound to fail. The learned Magistrate entertained this objection, heard the arguments and agreeing with the contention put on behalf of the accused passed an order of discharge on 21st March 1950,

Sri Ejaz Ahmad filed a revision against the said order before the learned Sessions Judge of Hardoi, who has made a reference to this Court for setting aside the order of the Magistrate discharging the said accused.

5. On behalf of the accused, their learned counsel has argued that a condition precedent to conviction of an accused under Section 188, Penal Code, is that the order of the public servant which was alleged to have been disobeyed must have been duly promulgated. As there was no promulgation in the present case, the conviction of the accused under Section 188 was not possible. A large number of authorities were cited by the learned counsel appearing on either side, but none of them seems to be on all fours with the present case. A perusal of Section 188 indicates that the following ingredients are essential to the offence under that section : 1. Promulgation of an order by a public servant lawfully empowered to promulgate it. 2. Knowledge of such order by the person alleged to have disobeyed it. 3. That result of this disobedience being obstruction, annoyance, danger to human life or other consequences mentioned in that section.

The learned Magistrate held that the last two conditions were fulfilled in the present case. He was, however, of opinion that the said order was not duly promulgated and therefore a conviction under Section 188, Penal Code, was not possible. The word "promulgation" is, not defined anywhere in the body of the Criminal Procedure Code. According to "Webster's Dictionary the word "promul. gate" means"to make known by open declaration as laws, decrees, or tidings," or "to make known to public the terms of (a proposed law)". The word "promulgation" according to the same dictionary means "publication" or "open declaration". In the present case we are of opinion that the delivery of the judgment in the case under Section 145, Criminal P. C., would constitute promulgation within the meaning of Section 188, Penal Code. It is significant to note in this connection that whereas Section 145 has prescribed a mode of promulgation for the preliminary order, it has prescribed no such mode for the final order under Sub-section (6) of the said Section.

It may be that the reason for this difference between the preliminary order and the final order is that whereas the preliminary order is not pronounced in open Court, the final order is actually so pronounced. The preliminary order being an interlocutory order, is merely recorded on the file of the case and neither the parties nor the public have therefore an opportunity of hearing it in open Court. Hence the Legislature perhaps thought it proper to prescribe a particular form of promulgation for such an order. On the other hand, as the final order is pronounced in open Court, that itself was considered to constitute sufficient promulgation. When a judgment or order is passed in open Court, it constitutes a formal declaration to the public of the decision of the Court in the case in which the order is given or the judgment is passed. The learned counsel appearing for the accused argued that in order to constitute promulgation under Section 188, Penal Code, there must be an affixation of the order on the spot or on the property which is the subject-matter of dispute or the promulgation of the order by a beat of drum. If this interpretation of Section 145 were to be accepted, then it is obvious that there can never be any prosecution under Section 188 for an offence of disobeying an order under Section 145 (6), Criminal P. C., as the section itself makes no provision for the promulgation of the final order in any manner suggested by the learned counsel.

The result of such an interpretation would be that whereas a contravention of the preliminary order would be punishable, a contravention of the final order would not be punishable at all, though in fact the final order is more important than the preliminary order. We are of opinion that the word "promulgation" is not used in any narrow or technical sense in Section 188. The question whether the requirement of promulgation prescribed in Section 188 has been complied with would depend on the particular circumstances of each case. In some cases a proclamation by a beat of drum might be considered to be a proper mode of promulgation of orders passed by Magistrates not in open Court but framed in their office. Such for example would be orders under Section 144, Criminal P. C. The public would he unaware of such orders unless they are announced in some form in some open place either by beat of drum or by some other form of proclamation. In other cases the requirement might be satisfied by affixing the order on some conspicuous place or by publishing the same in the Gazette or some other paper. It seems to us that word promulgation as used in Section 18, C. P. Code (sic) is an elastic term and is deliberately not denned in the Penal Code. So long as an order is openly declared for the purpose of notifying it to the public or any section of the public the requirement of law relating to promulgation would be satisfied.

In the present case it is admitted that the Magistrate passed the order in open Court. This Court was open to the public. It is also admitted that the accused got knowledge of the said order. Under the above circumstances, we have no doubt that the requirement of promulgation was fully satisfied. We may also mention that although this specific point has not arisen previously, there are a large number of cases in which the conviction of the accused under Section 188, Penal Code, for disobedience of the final order passed under Section 145 has been sustained by the Courts : vide Satya Charan v. Emperor, A. I. R. 1930 cal. 63 and Goluck Chandra v. Kali Charan 13 cal. 175. The question regarding promulgation has really arisen in connection with cases where the law has prescribed a definite mode of promulgation. In such cases, where there has not been a strict compliance with the mode prescribed for the order, an argument has been raised on behalf of the accused that in the absence of compliance with the exact form of promulgation prescribed, the order itself is bad, and, therefore", the conviction of the accused illegal.

An instance of such a case is to be found in Parbutty Charan v. Queen-Empress, 16 cal. 9, in which it was held that "the terms of Section 134 of the Code, and the notification made by Government thereunder as to promulgation and issue of an order, are directory, but an omission to follow strictly such direction, though it is an irregularity, does not invalidate the order, where therefore it is shown that the order has been brought to the actual knowledge of the person sought to be affected by it, such omission does not prevent the case coming within Section 188, Penal Code" (vide head-note).

Thus even where a definite mode of promulgation is prescribed, the Courts have not hesitated to construe the word "promulgation" in Section 188, Penal Code, liberally for the purpose of determining whether there has been sufficient compliance with the aforesaid requirement.

6. In view of the above consideration, we are of opinion that the learned Magistrate was wrong in discharging the accused at a preliminary stage on the ground that the requirement of promulgation is wanting in the present case.

7. We accordingly accept this reference, set aside the order passed by the learned Magistrate, and direct that the accused be tried according to law.