

## Ramdeo Prasad vs State on 3 August, 1950

**Equivalent citations: AIR1951ALL415, AIR 1951 ALLAHABAD 415**

### JUDGMENT

Agarwala, J.

1. This is an application in revision against an order dismissing an appeal which was preferred against an order imposing a fine of Rs. 10/- under the provisions of Order 16, Rule 12, Civil P. C. The applicant was a witness in a case which was pending before the Munsif of Basti. He was served with a summons to appear as a witness on 25-2-1946. He did not appear on that date. The defendant whose witness he was, examined part of his evidence and then applied for adjournment of the case because the applicant and another witness were not present on that date. The case was accordingly adjourned by the Court for the next date, i.e. 26-2-1946, and it was also ordered that these two witnesses should show cause for their absence on that date and as to why they should not be dealt with under Order 16, Rule 12, Civil P. C. No proclamation as mentioned in Rule 10 (2) or a warrant or an order for attachment as provided in Sub-rule (3) of Rule 10 were issued, as the defendant himself undertook to produce the witness on the next date. On 26-2-1946, the applicant put in appearance and his evidence was recorded in the case, presumably because, it was material for the decision of the case. He also filed an application against the notice issued to him and gave certain reasons for his absence in Court on the previous date. The learned Munsif did not accept the explanation tendered by the applicant and fined him Rs. 10/-. The applicant appealed against this order to the lower appellate Court. The lower appellate Court was equally dissatisfied with the explanation and upheld the order of the Munsif.

2. In this application for revision, it has been strongly contended before us that the Munsif had no jurisdiction to impose a sentence of fine without going through the procedure provided in Sub-rules (2) and (3) of Rule 10 of Order 16, Civil P. C.

3. The power to impose a fine is vested in the civil Court by virtue of Section 32, Civil P. C. In order to compel the attendance of any person to whom the summons has been issued, the Court may : (a) issue a warrant for his arrest; (b) attach and sell his property ; (c) impose a fine upon him not exceeding five hundred rupees; and (d) order him to furnish security for his appearance and in default commit him to the civil prison. Rules 10 to 12 of Order 16 prescribe the manner of the exercise of the power conferred by Section 32.

4. Sub-rule (2) of Rule 10 empowers the Court to issue a proclamation requiring a witness to attend to give evidence or to produce a certain document. The use of the word 'may' in the rule indicates that it is not obligatory on the Court to do so. The proclamation is to be issued for the only purpose of requiring the witness to give evidence or to produce the document. It is not intended to be issued in order to enable the Court to impose a fine upon him for his failure to have appeared on the date

originally fixed, Sub-rule (3) of Rule 10 makes this clear. It provides that instead of issuing the proclamation or in addition to the issuing of the proclamation the Court may in its discretion issue a warrant for the arrest of such person. It also empowers the Court to make an order for the attachment of his property. Neither the issue of a warrant nor the order or attachment is, however, obligatory on the Court. Rule 11 applies when an order of attachment has been made under Sub-rule (3) of Rule 10. It does not apply when no such order for attachment has been made. Rule 12 contemplates cases in which an order of attachment has been issued and also cases in which an order of attachment has not been issued. It does not speak of a proclamation or a warrant having been issued. Presumably it would apply to a case in which no such proclamation or warrant had been issued. On a reading of these rules, it is clear to us that a Court is not bound to issue a proclamation or a warrant or an order of attachment in every case. There are cases in which it may be wholly unnecessary to do so. For instance, a witness may have appeared at a later stage of the case on the same date or on a subsequent date before any order under Rule 10 was actually passed. It would be futile for the Court to issue a proclamation or a warrant or an attachment of his property when the person concerned is himself present before the Court and offers an explanation for his absence at the time at which he was required to be present. Such was the case in *Chunnilal v. Emperor*, A. I. R. (16) 1929 ALL. 99: (116 I. C. 483) and we may quote the emphatic opinion of a learned Judge of this Court in that connection.

"A witness appeared before Court and was told to produce a document. He did not produce the document, and the excuse put forward by him in person was rejected by the Court. The Court thereupon proceeded to fine him. Learned counsel desires me to hold that according to the terms of the Code of Civil Procedure, the Court ought to have proceeded in this way: The Court ought to have told the witness. "Go out of the room, wait somewhere outside so that I may be able to issue summons to you and, after you disobey the summons, I may issue proclamation and attach your property. Then only can I take advantage of the provisions of Rule 12." This is bad sense, and I am certain that it cannot be good law. All the previous directions of the Code to issue summons, then a proclamation, and then an order of attachment are all given to make sure that the person who was directed to produce a document had information of the direction."

We respectfully agree with these observations.

5. Or, again, it may be that the party whose witness has failed to appear himself undertakes to produce the witness on the date fixed for him to show cause for his failure to appear. The Court may accept the undertaking and may not issue the processes mentioned in Rule 10. This is exactly what happened in the present case. If in pursuance of the undertaking the witness appears and fails to satisfy the Court for his absence on the previous date, has the Court no jurisdiction to impose a fine upon him under Rule 12? It would be anomalous to hold that the Court has no such power. In our opinion, the processes mentioned in Sub-rules (2) and (3) of Rule 10 are not intended to be exhaustive or to be obligatory or as conditions precedent for the exercise of the jurisdiction vested in the Court under Section 32 read with Rule 12 of Order 16. They are intended to give notice to a recalcitrant witness whom the Court considers to be likely to appear in Court otherwise. We are

supported in this view by a decision of the Madras High Court reported in *In re Narasayya*, 48 Mad. 941 : (A. I. R. (12) 1925 Mad. 1217).

6. Learned counsel for the applicant has, however, referred us to a decision of a Division Bench of this Court reported *Hirdey Narain v. Emperor*, A. I. R. (16) 1929 ALL. 850: (123 I. C. 97).: In that case, a witness, who was summoned in a civil suit by the plaintiff, did not attend the Court on the date for which he was summoned. The plaintiff, however, asked the Court to decide the case on a question of law and the Court decided the case without taking any further evidence. It was held that the evidence of the witness not being necessary the Court had no jurisdiction to impose a fine upon him. The facts of that case are, therefore, different from the facts of the present case; but reliance has been placed upon certain observations made in that case. The learned Judges observed that in their judgment the Court could only proceed under Rule 12 when the provisions of Clause (2) or Clause (3) of Rule 10 had been complied with. The reason assigned was that the words "such person" in Rule 12 clearly have reference to the person to whom proclamation has been issued under Clause (2) of Rule 10, or against whom proceedings have been taken under Clause (3) of Rule 10 and who did not appear, or on appearance failed to satisfy the Court that he had lawful excuse for not obeying the summons of the Court. With all due deference to the opinion of the learned Judges, the words "such person" need not necessarily be confined to a person to whom either a proclamation had been issued under Sub-rule (2) of Rule 10 or against whom proceedings have been taken under Sub-rule (3) of that rule. We think that the words can very well refer to a person, who has failed to appear, referred to in Sub-rule (1) of Rule 10. We do not find in the rules anything which might suggest that the exercise of the jurisdiction which has been conferred upon a Court under Section 32 and under Rule 12 of Order 16 is dependent upon the issuing of a proclamation or an order of attachment or a warrant.

7. We are, therefore, of opinion that the learned Munsif had jurisdiction in the present case to impose the fine which he did.

8. Learned counsel has urged that on merits the applicant's explanation should have been accepted. This is a pure question of fact which has been gone into by the two Courts below and we do not consider that there is any question of jurisdiction involved in this matter. We, therefore, dismiss this application with costs.