

Ram Dass vs State on 5 June, 1952

Equivalent citations: AIR1952ALL926, AIR 1952 ALLAHABAD 926

ORDER

1. This is an application by one Ram Dass purporting to be under Section 561A, Criminal P. C. On 1-4-1952, he filed a revision in this Court against his conviction under Section 325, Penal Code, and sentence of one month's rigorous imprisonment and a fine of Rs. 200. At the time of filing this revision he had not surrendered. His learned counsel stated that the applicant was suffering from tuberculosis and was bedridden. He undertook to file a certificate of the Civil Surgeon of the place where the applicant was at that time and for this he was granted a week's time. The case then came up on 9-4-1952 before Dayal J. It was directed that it should be listed on Monday following. The next date was 14-4-1952 when the case came up before P. L. Bhargava J., but it was left out. It was then listed for hearing on 21-4-1952 but was passed over on account of the illness slip of Sri D. C. Asthana. For the same reason it was passed over on 22nd April when it came up before Dayal J. On 23-4-1952 it came up before Desai J. and at the request of the learned counsel for the applicant two weeks' time was allowed to the applicant to file a copy of the judgment of the trial Court. A medical certificate was filed on that date. That certificate was from the Director of the New Delhi Tuberculosis Centre, Dr. B. K. Sikand, M. B. B. S. D. ph. (London). His certificate is to the following effect:

"Certified that Shri Ram Dass M. 891/52 is a case of Pulmonary Tuberculosis and is under treatment of this Centre. He is put on A. P. and is advised not to undertake long journey for a period of three months."

2. The case was then listed in Court no. 6 before Brij Mohan Lall J. In the affidavit filed in support of this application it is stated that the learned counsel for the applicant was ill on that day and he had sent an illness slip to Court No. 6. It so happened, however, that for shortage of work this revision was transferred from Court No. 6 to the Court of Bhargava J., who dismissed the application in revision on the ground that none appeared for the applicant, that the applicant had not surrendered and that he did not file the medical certificate from the Civil Surgeon showing that he was suffering from tuberculosis. It does not appear from the order that the certificate which the applicant had filed before Desai J. on 23-4-1952, was brought to his notice.

3. It is evident that the dismissal of the revision was brought about by two circumstances, (1) because the illness slip of Sri D. C. Asthana was not transferred to the Court of Bhargava J. when the case was transferred to him and (2) the medical certificate which had been filed by the applicant on 23-4-1952, was not brought to the notice of P. L. Bhargava J. when he passed the order dated 12-5-1952.

4. Learned Deputy Government Advocate opposes this application on the ground that this Court had no power to review an order already passed by it. Section 561A, Criminal P. C. provides :

"Nothing in this Code shall be deemed to limit or affect the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

5. In *Sri Ram v. Emperor*, A. I. R. 1948 ALL. 106 it was held that where the High Court is satisfied that in order to secure the ends of justice it was necessary that it should interfere under its inherent powers it ought to do so. In that case the mandatory provisions of law contained in the amended Section 14A, Hoarding and Profiteering Prevention Ordinance (1943) had been overlooked in a trial in respect of an offence under the Ordinance. It was held that the High Court had the power to correct such an error even though a revision had already been decided. Learned counsel contends that the ruling relates to an error of law and it cannot be applied to an error on the question of fact. The section aims to prevent the abuse of the process of the Court or otherwise to secure the ends of justice. In this case when the case was taken up and heard even though the learned counsel for the applicant had sent an illness slip, this fact was not brought to the notice of the learned Judge who disposed of the case. There was an abuse of the process of the Court. If after applying his mind to this aspect the learned Judge had not postponed the case then of course the order could not be subject to revision under Section 561A. Moreover, the learned Judge was under a misapprehension that no medical certificate had been filed while in fact it was on the record and his attention was not invited to it. No distinction has been made in Section 561A or in the decided case between the points of fact and the points of law; where *ex facie* order passed by a Court is factually wrong and it has been passed under a misapprehension of facts I am of opinion that the provisions of Section 561A, Criminal P. C. can be applied and the order can be revised.

6. The order of this Court, dated 12-5-1952 is set aside and the revision is restored to its original number.

7. A copy of the judgment of the first Court has been filed and learned counsel presses this application only on the ground of sentence. The revision is admitted only on the question of sentence although the applicant has not surrendered, because he is suffering from tuberculosis and is confined in a sanatorium at Delhi.

8. The revision shall be listed for final disposal at an early date. Learned counsel states that he does not want the record to be summoned.

9. Let a copy of this order be given to the learned counsel on payment of the necessary charges.