Hira Singh And Anr. vs State Through Mathura Das on 22 September, 1953

Equivalent citations: 1954CRILJ492

Author: V. Bhargava

Bench: V. Bhargava

JUDGMENT

V. Bhargava, J.

1. I have heard learned Counsel for the applicants and find that there is no force in this transfer application,

2. The main ground taken is that the learned magistrate, Kumari Bimla Goel, in whose court the case is pending, first passed an order exempting Shrimati Parvati applicant no. 2 from personal attendance in court during the trial of the case but, subsequently, cancelled that order on an application presented by the counsel for the complainant and this raises an apprehension in the minds of both the applicants that they would not receive proper justice in her court. Learned Counsel, in this connection, has drawn my attention to an order of my learned brother Gurtu, J. passed on the 3rd of September, 1952, in this very case when the applicants had come up to this Court for transfer of this very case from another court. Gurtu, J. in that order, held that the circumstances in which the order cancelling the exemption granted was passed, might have raised an apprehension in the minds of the applicants that they would not receive justice in that case. He further found another ground that a non-bailable warrant had been unjustifiably issued by the magistrate. On these two grounds, the case was transferred from the court of that magistrate.

3. It is to be noticed that Gurtu, J. did not arrive at any clear finding that the cancellation of the exemption did actually raise a reasonable apprehension in the minds of the applicants. He only went to the extent of expressing his opinion that it "may raise an apprehension". It is not necessary for me to consider whether, in the circumstances in which the case came up before Gurtu, J., an apprehension did or did not arise that Justice would not be meted out to the applicants in that court. I am only concerned with the circumstances in which the applicants have come up in this second application for transfer. In the affidavit filed in support of this transfer application, the allegation is that, after Kumari Bimla Goel had granted exemption to Shrimati Parvati applicant no. 2 from personal attendance in court, an application was moved by counsel for the complainant indicating that the presence of applicant no, 2 was necessary for a proper trial of the case on the date on which the prosecution witnesses were to be examined. That such a need can exist is clear. It might have been necessary for the prosecution to examine witnesses about the identity of applicant no. 2.

4. Section 205 of the Code of Criminal Procedure gives a discretion to a magistrate to grant exemption from personal attendance to the accused person. Such discretion is to be exercised judicially. The mere fact that an accused is a 'par-dahnashin' lady does not entitle her to remain exempted all the time even if her presence is required for a proper conduct of the case. Learned Counsel has referred to me three cases of this Court, in two of which, viz., in the matter of the petition of Rahim Bibi, - '6 All 59 (A)' and - 'Mt. Tirbeni v. Mst. Bhagwati' AIR 1927 All 149 (B), it was held that, ordinarily, exemption from personal attendance should be granted to a 'pardahna-shin' lady unless a strong 'prima facie' case was made out against her. These two cases are not applicable to the case before me because the applicants have come up to this Court by way of a transfer application and not as in those cases in revision against the order cancelling the order of exemption from personal attendance.

5. The third case relied upon by learned Counsel is - 'Bhajan Lal v. Emperor' AIR 1947 All 13 (O). In that case, there were serious allegations against the magistrate that he had shown favour to two particular lawyers and it was as a result of that favour that the order cancelling exemption was passed and a non-bailable warrant had also been issued for the arrest of the 'par-dahnashin' ladies. The learned Judge, after reciting these facts, remarked that he was satisfied that the applicants in that case had not made out any case against the integrity and fair-mindedness of the magistrate, nor was he satisfied that the magistrate was guilty of excess of zeal, let alone an act of indiscretion in the orders which he passed. The learned Judge, however, felt that, on a consideration of all the facts in that case, he was justified in arriving at the view that there was a reasonable apprehension in the minds of the accused that they would not get justice at the hands Of that particular magistrate. What were those other facts, which led the learned Judge to that view, have not been made clear in his judgment and it is, therefore, not possible to apply that case to the facts of this case.

6. It is obvious that the mere cancellation of an order of exemption from personal attendance cannot be allowed in all cases to become a ground of transfer. If the magistrate is given a discretion under Section 205 of the Code of Criminal Procedure, the law intended to give that discretion with the specific object that, in appropriate cases, exemption should be granted and, in appropriate cases, the magistrate may withdraw that exemption. It is only if a magistrate withdraws the exemption without proper reasons that the Court may be justified in holding that a reasonable apprehension may arise that that particular magistrate would not do justice in that case. If the order of exemption is cancelled on sufficient grounds, no such apprehension should arise. If it be held that apprehension arises even after the order granting exemption is withdrawn on sufficient grounds in a proper case, it would mean that the discretion of the magistrate to enforce attendance even where justice requires it would be completely taken away.

7. This would lead to the interpretation that once exemption has been granted under Section 205 of the Code of Criminal Procedure or the accused happens to be a 'pardahnashin' lady, the court is bound to continue or grant the exemption and can never cancel that exemption, even though it may not be possible to try the case properly in the absence of the person seeking exemption. Clearly, therefore, the question of a reasonable apprehension has to be judged on the standard of the order cancelling the order of exemption being a proper or improper order or being in the exercise of Judicial discretion or arbitrary power. In the present case, there is nothing in the affidavit to show

that the presence of applicant no. 2 was not necessary on the particular date for which her attendance was directed to be enforced by the learned magistrate, Kumari Bimla Goel, and, in these circumstances, this can be no ground for transfer of the case from her court. Allowing this transfer application on this ground would only have the effect of giving the applicants the idea that hereafter applicant no. 2 can always refuse to attend the court during the trial of this case even if it is found that her presence is needed in that court.

8. The second ground urged by learned Counsel is that a reasonable apprehension was raised in the minds of the applicants that they would not receive proper justice in the court of Kumari Bimla Goel because she did not adjourn the case under Section 526(8) of the Code of Criminal Procedure when the applicants communicated to her their intention to move this Court for transfer of that case. The affidavit filed on behalf of the applicants shows that 11th June, 1953 was fixed for hearing of the case. On that date, applicant no. 2 was required to attend taut she did not appear and thus she disobeyed the direction of the court to be present on that date. It was in these circumstances that the application under Section 526(8) of the Code of Criminal Procedure was presented before the learned magistrate. The magistrate naturally wanted an explanation for the absence of applicant no. 2 and, therefore, directed that a medical certificate be filed as also an affidavit on the 15th of June, 1953.

9. The record is not here and it is not possible to find out what exactly transpired as a result of which the medical certificate was demanded but it is clear that it must have been demanded because some plea was put forward on behalf of applicant no. 2 that she had failed to attend the court on the 11th of June, 1953, because of illness. The case had to be adjourned for four days for the purpose of enabling applicant no. 2 to give an explanation for her absence on the 11th of June, 1953, when she had been required to attend the court personally and it was for this adjournment that ten rupees were awarded as costs to the complainant. On the 15th, of June, 1953, after this matter was settled, the learned magistrate granted three weeks' time to the applicants to move this Court for transfer and this order was not conditional, in paragraph 6 of the affidavit, where a mention is made about the grant of this time of three weeks, a sentence has been added that applicant no. 1 was also ordered to pay Rs. 10/- as costs to the complainant on the 9th of June, 1953. This, at first, conveyed an idea that these costs were directed to be paid as a condition to granting time for three weeks to move this Court for transfer but, as a matter of fact this is not so. Rs. 10/- as costs mentioned in the last sentence of this paragraph were awarded on the 9th of June, 1953, and not on the 15th of June, 1953, when the case was adjourned to enable the applicants to move this Court for transfer.

10. The only other point argued by learned Counsel for the applicants is that, after the order of Gurtu, J., dated the 3rd of September, 1952, transferring the case, the applicants were summoned twice unnecessarily in two different courts and this resulted in harassment. It is clear that harassment, if any, was not the result of any act on the part of the particular magistrate who is now trying the case, nor is it possible to hold that enforcement of attendance of applicant no. 2 on those two dates was a deliberate act on the part of the district authorities to harass the applicant.

11. In these circumstances, there is no ground at all in this transfer application which is dismissed.

12. Learned Counsel has asked for a certificate under Article 134(1)(c) of the Constitution that it is a fit case for appeal to the Supreme Court but I am unable to grant the certificate as this case raises no such question of law as would justify grant of that certificate.