

Jagat Raj And Ors. vs The State on 29 September, 1955

Equivalent citations: AIR1956ALL117, 1956CRILJ179, AIR 1956 ALLAHABAD 117

ORDER

Oak, J.

1. This revision application arises out of a prosecution under Sections 427 and 506, I. P. C. Sunehra brought a complaint against Jagat Raj and three others with these allegations. The complainant had sown brinjal crop in Ms plot. On 6-11-1952, the complainant noticed that the four accused had been damaging his brinjal crop. Jagat Raj and Bhawania accused were uprooting the crop and throwing it into the river.

Mathura and Haria accused were ploughing the field. When the complainant protested, the four accused threatened to kill him. All the four accused pleaded not guilty, and said that they have been falsely implicated due to enmity.

2. The case was originally on the file of a Tahsildar Magistrate. On 24-12-1952 he submitted a report to the Sub-Divisional Magistrate to the effect that, he had no jurisdiction to try the case, as it fell under part I of Section 506, I. P. C. The Tahsildar probably meant that, the case fell under para (2) of Section 506. I. P. C., and so the case could not be tried by a second class Magistrate. On 27-12-1952 the Sub-Divisional Magistrate wrote to the Tahsildar that, as he had already framed charges, he had better continue the trial.

Accordingly, the Tahsildar continued the trial. On 16-3-1953, he transferred the case to the Judicial Magistrate of Hamirpur as suggested by the Sub-Divisional Magistrate in his order dated 27-12-1952. The Judicial Magistrate questioned the accused whether he wanted a 'de novo' trial. The accused replied in the negative.

The learned Judicial Magistrate thereupon heard arguments on behalf of the parties, and delivered judgment on 29-6-1953, convicting the four accused under Sections 427 and 506, I. P. C. Each accused was sentenced to rigorous imprisonment for nine months under Section 427, I. P. C. and rigorous imprisonment for six months under Section 506, I. P. C. An appeal filed by these four persons was dismissed by the learned Sessions Judge of Hamirpur. Jagat Raj and others have, therefore, come to this Court in revision.

3. It will be noticed that the learned Judicial Magistrate did not record evidence in the case. He acted upon the evidence recorded by the Tahsildar, and delivered judgment. It was urged on behalf of the applicants that, the procedure adopted by the learned Magistrate was illegal.

4. Reference was made to Section 346, Cr. P. C. The marginal note of Section 346 is:

"Procedure of State Magistrate in cases which he cannot dispose of."

Sub-section (1) of Section 346 states:

"If, in the course of an inquiry or trial before a Magistrate the evidence appears to him to warrant a presumption that the case is one which should be tried or committed for trial by some other Magistrate in such district, he shall stay proceedings and submit the case to any Magistrate to whom he is subordinate"

Sub-section (2) states:

"The Magistrate to whom the case is submitted may, if so empowered, either try the case himself, or refer it to any Magistrate subordinate to him having jurisdiction, or commit the accused for trial."

Learned counsel for the applicants urged that, the case was transferred by the Tahsildar under Sub-section (1) of Section 346, Cr. P. C. So, upon transfer, the learned Judicial Magistrate was bound to try the case as laid down in Sub-section (2) of Section 346, Cr. P. C.

5. On the other hand Mr. Kapur appearing for the State urged that, the case was transferred, not under Section 346, Cr. P. C., but under Section 349, Cr. P. C. The marginal note to Section 349 is:

"Procedure when a Magistrate cannot pass a sentence sufficiently severe."

It will be seen that Sections 346 and 349 deal with different situations. Section 346 applies where a Magistrate finds that he cannot dispose of the case. Section 349 applies where a Magistrate cannot pass a sentence sufficiently severe. The Tahsildar did not mention either on 4-12-1952, or on 16-3-1953, whether the transfer of the case was needed under Section 346 or under Section 349, Cr. P. C. But each time he emphasized that, he had no jurisdiction to try the case, as the case fell under the latter part of Section 506, I. P. C. That offence could not be tried by a second class Magistrate. Thus it is clear that, the case was transferred under Section 346, Cr. P. C. and not under Section 349, Cr. P. C.

6. The ordinary rule is that a Magistrate has to record evidence himself. Section 358, Cr. P. C. lays down an exception to that general rule. Section 350 permits one Magistrate to act upon the evidence recorded by another Magistrate. But Sub-section (2) of Section 350, Cr. P. C. makes it clear that, nothing in Section 350 applies to cases in which proceedings have been stayed under Section 346, Cr. P. C. So, the learned Judicial Magistrate could not in the present case take the aid of Section 350, Cr. P. C. for acting upon the evidence recorded by the Tahsildar.

7. In -- 'Sashti Gopal v. Haridas', AIR 1938 Cal 415 (A), it was held by Divisional Bench of Calcutta High Court that "When a case has been transferred under the provisions of Section 346, Cr. P. C. the

Magistrate is bound to hold a 'de novo' trial."

8. The learned Judicial Magistrate was, therefore, wrong in basing the conviction of the accused upon the evidence recorded by the Tahsildar. Mr. Kapur urged that the accused waived his right for a 'de novo' trial. The question of waiver might arise in a case governed by Section 350, Cr. P. C. But I have already shown that, Section 350, Cr. P. C. is not applicable to the present situation. If the trial was illegal, the defect cannot be cured by the consent given by the accused. The trial remains illegal in spite of such consent.

9. As the trial before the learned Judicial Magistrate was illegal, the applicants' convictions and sentences must be set aside. I have considered the question whether re-trial should be ordered. The learned Magistrate passed sentences of imprisonment for the two offences. It appears that the applicants have already spent two months in jail.

The principal alleged offence consisted of causing damage to crop worth about Rs. 200/-. The alleged offences were committed more than three years ago. Considering the nature of the alleged offences, and the period already spent by the applicants in jail it does not seem necessary to order a re-trial.

10. The revision application is allowed. I set aside the convictions and sentences of Jagat Raj, Bhawanaia, Haria and Mathura under Sections 427 and 506, I. P. C. and acquit them of the two charges. Their bail bonds are discharged.