

Ajodhia Prasad vs State Through Ram Rakhu on 10 July, 1950

Equivalent citations: AIR1951ALL472, AIR 1951 ALLAHABAD 472

ORDER

Sapru, J.

1. This is an application by a complainant for transfer of a case which is pending; before Shri M. D. Agarwal, Special Magistrate, first class, Jhansi, and which he has brought against the opposite party under section 500, Penal Code. The complaint was filed by the applicant on 30-7-1948. The case of the complainant was that the opposite party had defamed him, by calling him a communist and a sponsor of labour strikes. Whether on the facts allegect in the complaint a prima facie case of defamation has been made out is a question into which it is unnecessary for me to enter in this case. The complainant's case is that he is not a communist but an orthodox Congress worker who feels that the ideology and the principles for which the Congress stands are fundamentally opposed to communism. Whether again it is defamation to describe a congressman as a communist or by any other political label is a matter on which it is unnecessary for me to express any opinion. The learned Magistrate will doubtless bear in mind the relevant law on the questions raised by the complaint.

2. The case has had a chequered career; After having been transferred from one Court to another, it finally came to be tried by Shri M. D. Agarwal, a Magistrate of the first class, Jhansi. The applicant has applied for a transfer of the case on grounds which I shall now proceed to notice.

3. The first ground on which the applicant seeks to have the case transferred from the Court of Shri M. D. Agarwal is that Shri Agarwal belongs to the party, of Shri K. B. L. Shivani while the applicant belongs to a party headed by Shri Pangoria who also, I understand from para. 5 of the affidavit, is a staunch Congressman. Shri K. B. L. Shivani is appearing as counsel for the accused. The learned Magistrate, in a very frank and straight forward explanation for which he is to be commended, has stated that it is a fact that he was, before he became a Magistrate, an earnest Congress worker and that Shri Shivani is a friend of his. He, however, adds that the fact that he is on terms of friendship with Shri Shivani, in no way affects the fair and impartial trial of the case. In the circumstances of this case, I am clear in my mind that no importance can be attached to the fact that Shri Agarwal happens to be an old friend of Shri Shivani who is one of the counsel for the defence. No objection was taken by the applicant to the case being heard by Shri Agarwal at the time it was originally transferred to him. From the admitted facts of the case, it would appear that Shri Shivani has been appearing in the case from the very time the case was started by the complainant against the opposite party. I cannot understand why, if the applicant had some reasonable apprehension in his mind that he would not get a fair trial on account of the fact of Mr. Shivani being a personal friend of the Magistrate, he did not apply for a transfer of the case when it first came to be taken up by the learned Magistrate.

4. From the facts as narrated in the affidavit it would appear that the first grievance that the complainant has against the learned Magistrate is in regard to a certain order which he passed on 10-8-1949. On that date, an application for adjournment was moved by the applicant. This application was opposed by the opposite party. Adjournment was, however, granted on payment to the opposite party of Rs. 20 as damages and 23-12-1949 was fixed for the recording of the statements of prosecution witnesses. I do not think that the damages awarded by the learned Magistrate were heavy. The opposite party is a resident of Delhi and he and his counsel had to be present in Court on the date on which the adjournment was sought and it strikes me that the learned Magistrate did not act improperly in awarding damages to the opposite party. I am, therefore, not prepared to say that the applicant has any reasonable or legitimate grievance against the learned Magistrate in regard to this matter.

5. It appears that on 23-12-1949, when the case was taken up at about 2-30 P. M., the accused moved for a short adjournment in order to enable his counsel who were busy elsewhere and this adjournment was granted by the Court. Actually the case was taken up that very day at 3 P. M. On that date an application was moved claiming damages on the ground that the adjournment granted by the learned Magistrate had resulted in a loss to the complainant as his counsel's time had been wasted by it. This application was not granted by the Court. The learned Magistrate has explained that no damages were awarded by him to the complainant, as actually No question of damages was raised before him by the complainant. I accept the explanation of the learned Magistrate and find that there is no force in this allegation against the learned Magistrate. I do not think, that by not awarding any damages which apparently were not even claimed by the complainant for the very short adjournment which the learned Magistrate had allowed to counsel for the accused, the Magistrate had showed any bias or partiality to the accused.

6. Stress has, however, been laid upon the fact that in the explanation submitted by the learned Magistrate to the learned Additional District Magistrate of Jhansi the following sentences occur:

"I am not aware if Shri Ajodhia Prasad is a member of the Congress committee. As far as I know he has not been a Congress worker. I am not aware of any party in the Congress headed by Shri Pangoriaji and the applicant belongs to that party."

7. It is not for a Court to import any personal knowledge on matters of which he is seized. A Court of law decides cases not on personal knowledge but on the evidence before it. It is always embarrassing for a Court to try a case of the facts of which it has some personal knowledge.

8. I now come to another grievance which has been ventilated by the complainant in his affidavit. The learned Magistrate was, before he became a Magistrate, a keen Congress worker and I understand that as an Honorary Magistrate he is continuing to exercise his right of participating in public affairs. It is well-known that it is not open to a permanent official or a member of the judiciary to have, during the period that he serves as a permanent civil servant or as a judicial officer, any political affiliations. This rule has obviously no application to those who, like Honorary Magistrates, are assisting the administration of justice. It is, however, important for all those who are engaged in the task of administering justice to remember that it is incumbent on them to forget

their party affiliations in their judicial work. The rule that Judicial Officers shall not have any political affiliations is vital for the preservation of public confidence in the impartial administration of justice. Courts of law owe no allegiance to any political party. Their function is to administer justice impartially and without any political, social or economic bias. The frank manner in which the learned Magistrate has given expression to what his political creed was and continues to be before and after he became an Honorary Magistrate has impressed me very much. After reading his explanation, I feel No doubt that he has intelligence and character enough to bear in mind the vital considerations which I have enunciated above. I feel reasonably certain that he will bring to bear upon his work an impartial mind. Had I felt that the applicant in this case has a genuine apprehension that he will not have a fair and impartial trial at the hands of the learned Magistrate because of the knowledge that he possesses of the inner working of the Congress in certain parts of the province, I should have had no hesitation in transferring the case from his Court to the Court of some other Magistrate. But on a careful examination of the entire record, I am satisfied that the complainant has, since the case started, been pursuing, for one reason or another, a strategy calculated to prolong the trial. I cannot, therefore, look upon this application as a bona fide application for transfer on the ground that the applicant has any real or genuine apprehension that he will not have a fair and impartial trial at the hands of the learned Magistrate. For this reason, I have come to the conclusion that I shall not be justified in directing any transfer of this case to any other Court.

9. For the reasons given, this application is rejected.