

Sessions Judge, Meerut vs F.S. Fanthome, City Magistrate, Meerut on 6 September, 1954

Equivalent citations: AIR1955ALL161B, 1955CRILJ436, AIR 1955 ALLAHABAD 161

Author: Raghubar Dayal

Bench: Raghubar Dayal

JUDGMENT

Agarwala, J.

1. A case under Section 324, I.P.C., was pending before Sri P. S. Fanthome, City Magistrate, Meerut. An order convicting the accused Vijay Pal Singh in the case was passed by the learned Magistrate on 3-5-1954. Two days later, Vijay Pal Singh made an application to the learned Magistrate praying that certain garments, which were material exhibits in the case, viz., a shirt and a banyan, which were alleged to be stained with the complainant's blood be sealed with the court seal in the presence of the learned Magistrate and the parties so that there might be no chance of their being tampered with later on. The learned Magistrate rejected this application with a short order, which is quoted below in full:

"The state of the garments has received mention in the judgment. No need to seal them now."

Sd. P. S. Fanthome.

5-5-1954.

The accused then filed an appeal in the Sessions Court at Meerut on the 6th of May and on the same day made an application to that court stating vthat an appliction had been made in the court of the City Magistrate requesting him to seal the aforesaid garments under the seal of the court, but the application was rejected. The accused as-

serted in the application that the state of garments did not find mention in the judgment in the manner in which it was emphatically and repea tedly pressed before the lower court and that the court did not at all take into consideration what the defence had argued regarding the blood stains on the clothes. The prayer in the application was that Exs. 1 and 2 might be sealed under the court seal in the interest of justice and equity. The.

learned Additional Sessions Judge, who was then acting for the Sessions Judge, directed the learned Magistrate "to place these clothes material Exs. 1 and 2 under a sealed cover. He must get them placed under a sealed cover after fully examining and noting their condition and in his own presence".

2. The learned Magistrate instead of complying with this order returned the order with the following remarks :

"R. I. O. (returned in original) with the request that the law under which "this directive is issued may kindly be communicated.

It is respectfully submitted that the condition of these material exhibits has already received specific mention in the judgment passed by this Court. The accused has also had an order on this very subject from this Court. So far as this Court is aware no revision has been moved against that order."

The learned Sessions Judge, who had now taken over charge, considered that this was a clear and open defiance of the orders of the Court passed on the 6th of May and constituted a contempt of that Court. He, therefore, brought this matter to the notice of this Court with a prayer that this Court might take such action as it may deem proper. The matter was put up before a Bench of this Court who, considering that as a 'prima facie' case was made out against Sri F. S. Fanthome, issued notice to him to show cause why he should not be punished for contempt of Court.

3. In answer to the above notice Sri F. S. Fanthome appeared before us on 2-8-1954. A statement was made by him before us in which he stated that the exhibits had already been sealed with the court seal immediately after he had delivered his judgment on 3-5-1954, and the condition of the garments had already been described in his judgment convicting the accused.

4. The explanation of Sri F. S. Fanthome as to why he did not comply with the order of the learned Addl. Sessions Judge and as to why he wrote in that manner to him is that he thought that the fact that the exhibits had been sealed by him already must have been not known to the learned Addl. Sessions Judge when he passed the aforesaid order and that he also wanted to be certain whether the learned Additional Sessions Judge desired him to reopen the bundle and then to note something in addition to what he had already noted about the garments in his judgment. He further states that he never intended to question the authority of the learned Additional Sessions Judge or to disobey him. He stated that he believed it was his duty to make unquestioning compliance with the order issued by the superior court. He expressed regret to have sent a reply that could be construed as refusal to comply with the order. He promised that he would not repeat the mistake again.

5. The action of Sri Fanthome in writing the note to the order of the Additional Sessions Judge and in not carrying out that order undoubtedly makes him guilty of contempt of that court. He had no business to enquire about the law under which the order was passed. The learned Additional Sessions Judge was seized of the appeal against the order convicting the accused and sentencing him to imprisonment, and as such had perfect jurisdiction to pass the order which he did. No revision

against the order of the Magistrate of 5-5-1954, was necessary to give the learned Additional Sessions Judge jurisdiction to pass the order of 6-5-1954. It was the clear duty of Sri Fanthome to comply with that order.

6. It is not for the superior courts to say under what law they have issued the directive. The subordinate courts should presume for the time being, unless the contrary appears, that the order is lawful. If it appears to them that the order is without jurisdiction, they may not comply with it but this will be at their own peril. If it turns out that the order was passed within jurisdiction they will be disobeying it at the cost of being punished for contempt of court. Even when they refuse compliance with an order passed without jurisdiction, they must do so in courteous language. Any discourtesy shown by them to a superior court is again bound to involve them in proceedings for contempt. No subordinate court is entitled to demand of the superior court the law under which the order has been passed before complying with it. They must find the law for themselves if they intend to question the order; otherwise they should strictly comply with it both in letter and in spirit. It must be understood by all concerned that any discourtesy or disobedience shown to the orders of superior courts will be visited by this Court with the severest penalties. We hope that no such disobedience of orders of superior courts, as has been shown in this case, will occur in future. We would have taken a very serious view of the case but for the fact that Sri Fanthome has expressed his regret before us for what he did in the present case and has also held out a promise that he will not repeat the mistake in future. We, therefore, consider that a warning to him to behave properly in future would meet the ends of justice.

7. We, therefore, discharge the notice with the aforesaid warning. Sri Fanthome will, however, pay the costs of the Assistant Government Advocate which we assess at Rs. 80/-.