

Baij Nath Prasad vs Madan Mohan Das on 29 August, 1951

Equivalent citations: AIR1952ALL108, AIR 1952 ALLAHABAD 108

JUDGMENT

Malik, C.J.

1. This is an application filed by one Baijnath Prasad that proceedings for contempt of Court be taken against the opposite-party, Madan Mohan Das who is an Honorary Magistrate in Chunar. Madan Mohan Das made two reports in the police station Chunar against Baijnath Prasad and others on 26-2 and 27-2-1950, and allegations were made that Baijnath Prasad and others were guilty of offences under Sections 332/ 353, Penal Code, and that action be taken against them under Section 107/117, Criminal P. C. The Station Officer made enquiries and on 13-4-1950, he reported to the Sub-Divisional Magistrate that the persons mentioned in the reports should be proceeded against. This challan does not appear to have reached the Court of the Magistrate and was probably lost in transit. After waiting for some time, the opposite party wrote a letter to the Magistrate on 9-6-1950, to which exception has been taken by the applicant. In this letter the applicant set out the facts and then said;

"I request that suitable steps be taken on the recommendation of the S.O. Chunar and if it cannot be traced a copy of the same may kindly be had from him and necessary steps taken thereon."

The last sentence in the letter was "I am sure that people who take the law in their hands will not be allowed to do so with impunity."

I remain Yours sincerely, Madan Mohan Prasad."

The Sub-Divisional Magistrate, Chunar, to whom the letter was addressed, treated this as a complaint and placed it on his file and started proceedings on its basis. In the affidavit filed in support of the application it is stated that this letter is likely to influence the mind of the Magistrate and, therefore, amounts to contempt of Court.

2. The grounds were taken in the counter affidavit, firstly, that there was not pending case at the time when the letter was written to the Sub-Divisional Magistrate, Chunar. It could not, therefore, be said that the letter was sent to the Magistrate in a pending case and the opposite party could not be said to be guilty of contempt. The other ground taken was that this was not a private communication to the Sub-Divisional Magistrate, but was an information sent to the Magistrate in his official capacity. The latter fact is attempted to be proved by the treatment meted out to this letter by the Sub-Divisional Magistrate to whom it was addressed. Neither of these two contentions

is, in our view, sound. The fact that the Sub Divisional Magistrate treated this communication as a complaint can be no proof of the fact that the applicant intended it to be anything other than a private communication. The manner in which he had subscribed his name at the end and the form and contents of the letter leave no room for any doubt that it was intended to be a private communication to the Sub-Divisional Magistrate. The other contention that there was no pending case, as we have said above, is also not sound. The mere fact that the papers were lost does not mean that there was no pending case. A report was sent by the Station Officer, Chunar, and the fact that it did not reach the Sub-Divisional Magistrate does not matter. If in anticipation of a case, a party writes a letter to the Court in advance it cannot be said that he has not tried to influence the mind of the Court. 3. It is not, however, necessary for us to go into this matter in greater detail as Sri Madan Mohan Das, the opposite party, was present in Court and he tendered unqualified apology to the Court for his conduct.

4. There is a mention in the counter-affidavit that the learned Sub-Divisional Magistrate in his report to the District Magistrate on the application for transfer said that:

"It is not unusual that such letters are addressed in great numbers by the general public to the District Magistrate and Sub-Divisional Magistrates, embodying all sorts of complaints and it is also not unusual that inquiries are set up on such letters . . ."

5. The Code itself provides for action by a Magistrate on information received from the public. There is, however, a distinction to be made between a Magistrate's 'judicial capacity' and his 'executive capacity.' In his executive capacity, a Magistrate can have information from any source he likes, but once a matter has come before a Magistrate in his judicial capacity the proper course for a party is to move the Court in the ordinary way, that is by means of a formal application. In the administration of justice, all parties are equal and nothing should be allowed to be done to give rise to a feeling that one party has a position superior to that of the other. A letter like the one addressed by the opposite-party to the Court is likely to give rise to a feeling that he has familiarity with the presiding Magistrate and the complainant may not have justice at his hands. Such a feeling should be strictly guarded against. Private communications or communications in the form of private letter are totally out of place in Courts. The well-recognised formal ties of procedure of Courts must be observed. It is, therefore, very necessary that no Demi-Official letters or private letters be written to, or be entertained by, Courts, and all communications must be in the usual way by means of applications made publicly in Court. The opposite party having, however, tendered unqualified apology to the Court, we do not think that anything more than severe admonition is called for in this case.

6. Learned counsel for the applicant has asked for costs. We, however, notice that the letter in question was written on 9-6-1950 and was immediately on its receipt placed on the file. The application was not made to this Court till 14-5-1951. In the circumstances this application does not appear to have been made bona fide in the interest of justice. We, therefore, direct the parties to bear their own costs.