

Bir Singh And Ors. vs State Through Basdeo on 23 November, 1950

Equivalent citations: AIR1952ALL610, AIR 1952 ALLAHABAD 610

JUDGMENT

P.L. Bhargava, J.

1. This application in revision has been filed under the following circumstances. On 30-8-1949, Basdeo filed a complaint against Bir Singh & 12 other persons, charging them with offences punishable under Section 147 & Sections 323 & 325 read with Section 149, Penal Code, in the Court of the Sub-Divisional Magistrate, Sadabad, in the Mathura district. The allegations in the complaint were that, on 21-7-1948, while the complainant was returning from the jungle, with his cattle, & passed by the house of Bir Singh, the latter asked him not to pass in front of his house; that the complainant went away towards his house saying that there could be no objection to his passing over a public thoroughfare; & that thereafter Bir Singh & the other accused persons came to the house of the complainant, wanted to drive away the cattle to the cattle-pound & when they were stopped from doing so, they attacked the complainant & his brother with lathis, causing them simple & grievous hurt.

2. The Sub-Divisional Magistrate took cognizance of the offences, complained of, & after the examination of the complainant, under Section 200, Cri. P. C., decided to inquire into the case, & directed the complainant to produce evidence, under Section 202 of the Code. The complainant produced a copy of the first information report, lodged with the police, & the injury reports showing injuries said to have been inflicted upon the complainant & his brothers during the incident. Then the case was transferred to the Court of Shri C.S. Sharma, a Magistrate of the second class at Sadabad, for disposal.

3. On 20-9-1949, Shri C.S. Sharma issued processes to the accused persons; & they were directed to appear on 5-10-1949. On the last mentioned date, the accused appeared & filed an application wherein they stated that on three previous occasions Basdeo had filed similar complaints against them, & those complaints had been dismissed for want of prosecution or evidence; that the previous complaints & the present one had been filed to harass them; & that the fourth complaint was in law not maintainable & it ought to be dismissed. The Magistrate rejected the application on the ground that he had no power to refuse to entertain or proceed with the complaint.

4. Bir Singh & other accused then filed a revision, in the Court of the Sessions Judge of Mathura, challenging the Magistrate's order rejecting their application. The learned S.J. has, in his order, referred to the previous complaints filed by Basdeo against Bir Singh & others. He has pointed out

that the first complaint was filed on 18-12-1948, about five months after the incident, which was said to have taken place on 21-7-1948. That complaint was dismissed in default on 26-1-1949, as the complainant failed to appear on the date fixed for hearing. Thereafter, another complaint was filed, which ended similarly. The third complaint was filed on 18-8-1949 "and this was dismissed in default of the complainant" on 25-8-1949. The present complaint was the fourth relating to the same incident. The learned Judge had no doubt in his mind that the complainant was causing harassment to the accused; but he refused to interfere in revision as, in his opinion, there was no legal bar against the filing of one complaint after the other. Hence Bir Singh & others have now filed this revision.

5. On behalf of the applicants, it has been contended, in this revision, that in order to prevent abuse of the process of Court & to secure the ends of justice, this Court may exercise its inherent powers under Section 561-A, Criminal P. C. Learned Assistant Govt. Advocate has, on the other hand, contended that the Magistrate having taken cognizance of the offences complained of & there being no illegality in the procedure adopted by him, there is no occasion for the exercise of inherent powers of this Court, under Section 561A of the Code.

6. It is true that the Magistrate has taken cognizance of the offences complained of & so far there has been no illegality which vitiates the proceedings; but this Court is not called upon to quash the proceedings on that ground. The contention put forward on behalf of the applicants is that the filing of successive complaints by one person to harass another person amounts to a gross abuse of the process of Court; & that as the present complaint has been filed with a similar object & the process of the Court is being abused, the Court may in exercise of its inherent powers prevent the same.

7. What are the facts in the present case ? The incident, which is the subject-matter of the complaint, took place on 21-7-1948. The offences complained of were cognizable & they were reported to police, who, however, did not start any prosecution. The complainant moved the Court after five months; but evidently failed to produce any evidence in support of the prosecution & the accused were discharged. Two subsequent complaints ended similarly. The third complaint was filed on 18-8-1949; & it was dismissed on 25-8-1949. In less than a week thereafter, on 30-8-1949, the fourth complaint was filed. The incident was said to have taken place about 13 months before the last complaint was filed; but in that complaint it was stated that the incident had taken place about five months before. It would thus appear that the present complaint was a copy of the first one; & it seems to have been filed with the same object in view. The complainant had an opportunity to appear before this Court & to offer an explanation as to why his previous complaints were dismissed; but he failed to appear in spite of notice of this revision having been served upon him.

8. A person who complains of an injury has certainly got the right to seek remedy in a Court of law; but he is not entitled to move the Court simply to harass another person. In this case, in the complaint, thirteen persons were named as accused; & each time a process was issued against them, they had to appear before the Court, which was situate away from their village. When the complainant moved the Court to issue a process against the applicants on three occasions without intending to prosecute the same, he clearly intended to abuse the process of the Court; & there is no guarantee he will not behave similarly on this occasion.

9. Learned Assistant Govt. Advocate has not disputed that the filing of successive complaints, without any intention to prosecute them, amounts to an abuse of the process of Court; & in the circumstances which have been narrated above, there can be no doubt that the complainant when he filed the previous complaints intended to abuse the process of Court, & the present complaint, which is fourth of the series, has been filed with a similar intention.

10. Another argument advanced by the learned Assistant Govt. Advocate was that at this interlocutory stage the proceedings may not be quashed in exercise of the inherent powers of the Court. The inherent powers of the High Court can be exercised at any stage & in any case where it is necessary to give effect to any order under the Code of Criminal Procedure, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. Ordinarily, the High Court will not interfere at an interlocutory stage of any proceedings pending before a subordinate Court, but in exceptional cases it may become necessary to do so for the reasons just mentioned. In view of the circumstances mentioned above, the present case is such an exceptional case : The applicants had on three previous occasions been subjected to unnecessary harassment, & a similar attempt is being made again. The applicants had intimated to the trial Court what had happened on the previous occasions at the earliest opportunity--as soon as they appeared in obedience to the summonses issued against them--& when they were unsuccessful in the Courts below, they have come up to this Court. As the successive complaints were filed with the obvious intention of causing harassment to the applicants & there had been abuse of the process of the Court on as many as three occasions, the sooner the proceedings are terminated the better in the interest of justice.

11. A similar view was expressed by the Chief Court of Avadh in Abdul Wali v. Emperor, A. I. R. (20) 1933 Avadh 387. In that case it was observed :

"Ordinarily, the High Court will not interfere at an interlocutory stage of criminal proceedings in a subordinate Court, but it seems to me the High Court is under an imperative obligation to interfere in order to prevent the harassment of a subject of the Crown by an illegal prosecution. It would also interfere whenever there is any exceptional & extraordinary reason for doing so. One of the tests to apply in order to determine whether any particular case is of that exceptional nature or not is to see whether a bare statement of the facts of the case should be sufficient to convince the High Court that it is a fit case for its interference at an intermediate stage : Choa Lal Das v. Anant Prasad, 25 Cal. 233. Another test to be applied is to see whether in the admitted circumstances of the case it would be mock trial if the case is allowed to proceed Gokul Prasad v. Debi Prasad, A. I. R. (12) 1925 All. 311....."

In the same case, it was further observed :

"Broadly speaking however it may be stated that the High Court will generally interfere in the interests of justice & to stop abuse of process of law."

12. Accordingly, in order to prevent the abuse of the process of Court, under Section 561A, Cri. P. C., I quash the proceedings, started on the complaint filed by Basdeo on 30-8-1949, & pending in the

Court of Shri C.S. Sharma, Magistrate, second class, Sadabad. As the Magistrate had taken cognizance & the applicants had been summoned, they are hereby discharged.