

Manoharlal Kanodia vs Sri S.N. Verma And Ors. on 31 March, 1955

Equivalent citations: AIR1955ALL705, AIR 1955 ALLAHABAD 705

ORDER

Mehrotra, J.

1. This is a petition under Article 226 of the Constitution praying that a writ of prohibition be issued to the opposite party No. 1 restraining him from delivering the judgment in Criminal Case No. 412 of 1949 (State versus Manoharlal Kanodia and others). The petitioner along with others were prosecuted of an offence under Section 7, Essential Supplies (Temporary Powers) Act 1946, read with Clause 24, Cotton Textile Control Order 1948.

The opposite party No. 1, who was the Additional District Magistrate, Rural Areas, Kanpur, tried the case, heard the evidence but could not deliver the judgment for he was transferred to Tehri Garhwal as District Magistrate. He handed over the charge to the opposite party No. 2 on 9-9-1954 and thereafter the case was fixed for 8th December for delivery of judgment. An application was moved by the petitioner that he was unable to attend the court on account of illness.

On that an order was passed directing the applicant to appear before the court on 14-9-1954, and file a fresh bail bond and give an undertaking not to leave Kanpur without the permission until the judgment was pronounced. The opposite party No. 1 thereafter fixed 28-9-1954 for delivery or judgment in the case. On this fact the present petition was filed in which it is alleged that after handing over charge, the opposite party No. 1 ceased to be the magistrate of Kanpur and had no right to pronounce the judgment in the case referred to above.

Notice has been issued to the other side. Counter-affidavit has been filed along with which a copy of the notification issued by the State Government on 25-9-1954, has been filed. The said notification has been issued under Section 10, Sub-section (2), Criminal P. C., by which the opposite party No. 1, Sri S.N. Verma, District Magistrate, Tehri Garhwal, was appointed as the Additional District Magistrate, Kanpur in addition to his own duties and that he was to have all the powers of a District Magistrate under the said Code.

It is contended by the State Counsel that from the date of the notification he had jurisdiction to deal with the case and he had the power to pronounce judgment.

2. Mr. Dwivedi who appears for the petitioner has urged that he should be permitted to challenge the validity of the notification issued by the State Government investing Sri S.N. Verma with the powers of the Additional District Magistrate, Kanpur, in addition to his duties as District Magistrate,

Tehri Garhwal. The contention of Mr. Dwivedi is that the State Government under Section 10 (2), Criminal P. C., has no power to appoint a magistrate to act as Additional District Magistrate of a district in addition to his duties as a District Magistrate of another district. Section 10, Sub-section (2), Criminal P. C., reads as follows :

"The State Government may appoint any Magistrate of the first class to be an Additional District Magistrate and such Additional District Magistrate shall have all or any of the powers of a District Magistrate under this Code or under any other law for the time being in force as the State Government may direct."

Section 6 of the Code of Criminal Procedure reads thus :

"Besides the High Courts and the courts constituted under any law other than this Code for the time being in force, there shall be five classes of Criminal Courts in India, namely :

1. Courts of Sessions:
2. Presidency Magistrates:
3. Magistrate of the first class:
4. Magistrate of the second class:
5. Magistrate of the third class.

It is, therefore, clear that the courts recognised under the Code of Criminal Procedure are the five courts enumerated above and the Additional District Magistrate and the District Magistrate when exercising their functions as a court, are only the magistrates first class appointed by the State Government to act either as a District Magistrate or as Additional District Magistrate.

There is nothing in Section 10 which debars a person, acting as a District, Magistrate, to be appointed as an Additional District Magistrate in another district.

3. Reliance has been placed by the petitioner on Section 12 of the Code which provides that:

"the State Government may appoint as many persons as it thinks fit, besides the District Magistrate, to be Magistrates of the first, second or third class in any district outside the presidency towns and the State Government or the District Magistrate subject to the control of State Government may, from time to time, define local areas within which such persons may exercise all or any of the powers with which they may respectively be invested under this Code".

4. The contention of the petitioner is that in this section all magistrates are to be appointed as first, second or third class magistrates besides the District Magistrate, but the word "Additional District Magistrate", is not added along with the District Magistrate in the said section. . It is, therefore, urged that the Additional District Magistrate is to be appointed out of the Magistrate of first, second or third class in the district.

I do not think there is any force in this contention of the petitioner. Section 12, Cr. P. C., gives power to the State Government to appoint first, second or third class Magistrate in a particular district. The appointments of the Additional District Magistrates are made under Section 10 (2). There are no limitations placed under Section 10 by which only the magistrate in the district can be invested with the powers of the first class magistrate and in any case under Section 10 it is not laid down that the District Magistrates of other districts cannot be invested with the powers of the Additional District Magistrate in a different district.

5. My attention was drawn to the language of Section 9, Sub-section (4) which provides that :

"A Sessions Judge of one sessions division may be appointed by the State Government to be also an Additional Sessions Judge of another division, and in such case he may sit for the disposal of cases at such place or places in either division as the State Government may direct."

The contention of the petitioner is that if the Legislature intended to invest the District Magistrate of one district with the powers of Additional District Magistrate of another district, one would have found in Section 10 the language similar to that of Section 9, Sub-section (4).

To my mind, this argument has no force. If the Legislature intended to limit the power of the State not to invest the District Magistrate of one district with the powers of Additional District Magistrate of another district, the Legislature could have used clear language in Section 10, Sub-section (2). There is no force in this contention of the petitioner.

6. So far the State Government has issued a notification under Section 10 (2) investing Sri S.N. Verma with the powers of the Additional District Magistrate of Kanpur in addition to his duties as District Magistrate, Tehri Garhwal, and prima facie it cannot be said that such a notification could not be issued under Section 10 (2) of the Cr. P. C. Sri S.N. Verma had jurisdiction when the trial started before him and the evidence was recorded by him and he completed the trial.

Under those circumstances a writ of prohibition cannot be issued at this stage restraining him from delivering the judgment.

7. A fundamental distinction between a writ of certiorari and a writ of prohibition is that they are issued at different stages of the proceedings. When an inferior court takes up for hearing a matter over which he has no jurisdictions the person against whom proceedings are taken can move the superior court for a writ of prohibition in which an order will follow forbidding the inferior court to continue the proceedings. If the court has heard the case and given decision, a writ of certiorari will

go to quash the decree.

There may be cases where an order has been passed not completely disposing of the case, in that event both the writs will go. A writ of certiorari quashing the order and a writ of prohibition forbidding the court from continuing with the case will stand. As has been observed by their Lordships of the Supreme Court in -- 'Hari Vishen Kamath v. Ahmad Syed Isak', (S) AIR 1955 SC 233 at p. 241 (A). "A writ of prohibition will lie when the proceedings to any extent are pending".

According to the case of the petitioner the court of Sri S.N. Verma is no longer in existence and no case is pending before him. Under these circumstances no writ of prohibition can issue against the opposite parties not to continue the case before Sri S.N. Verma.

8. If after the judgment has been delivered, the petitioner is advised that the order is without jurisdiction he may approach this Court for a writ of certiorari quashing the order passed by him. In my opinion no writ of prohibition can be issued at this stage restraining Sri S.N. Verma from delivering the judgment.

9. The next point which was urged by the petitioner was that the petitioner is entitled to a de novo trial even if the case is taken after the notification by Sri S.N. Verma for delivery of judgment. It is open to the petitioner to raise this question before him and it will be for Mr. Verma to decide this question on the provisions of the Code of Criminal Procedure. It is not necessary for this Court to give any decision on this question at this stage.

10. There is therefore no force in this petition and it is accordingly rejected.