

## Chhanga vs State on 4 June, 1954

**Equivalent citations: AIR1955ALL105, 1955CRILJ281, AIR 1955 ALLAHABAD 105**

ORDER

Mukerji, J.

1. This is an application in revision by Chhanga against whom the Additional District Magistrate (Judicial), Mr. S. P. Jindal, has made a complaint under SB. 193/199, Penal Code.

2. Chhanga made applications for transfer of two cross-cases pending in the Court of a certain Magistrate before the District Magistrate. These applications were heard by the Additional District Magistrate, Mr. Jindal. In these applications certain allegations were made against one Mr. Jatan Swarup to the effect that the opposite parties to the application were friendly with Mr. Jatan Swarup and that they had given a thousand rupees to Mr. Jatan Swarup in order that he may influence the trying Magistrate who was an intimate friend of Mr. Jatan Swarup, and that by that means the opposite parties had assured their success in the case.

3. The Additional District Magistrate, when he had the transfer application, before him, and when he saw the aforementioned allegations in the affidavit, resorted to a rather out of the common procedure, of summoning the oath commissioner who had verified the affidavit, the person who had identified the deponent before the oath commissioner and examining them as also of summoning and examining Mr. Jatan Swarup. Mr. Jatan Swarup denied having had anything to do with this matter, much less, having taken money and having tried to influence the trying Magistrate. After the Additional District Magistrate had recorded all this evidence, he dismissed the transfer application and immediately thereafter made a complaint against the applicant about which I have already referred.

4. An appeal was preferred by the applicant to the learned District Judge under Section 476B of the Code of Criminal Procedure. Before the learned Judge it was contended that since the Magistrate had proceeded in an irregular fashion in regard to this matter, the appellate Court should direct the withdrawal of the complaint. It was further argued before the Judge that when the Additional District Magistrate decided to take evidence in regard to the allegations that had been made in the affidavit, and to controvert those allegations, then it was incumbent on the Additional District Magistrate to give the applicant an opportunity to meet that evidence or, at any rate, the applicant should have been given an opportunity to cross-examine the witnesses that were called so that the applicant could show that their evidence was not necessarily reliable. The learned Judge repelled both these contentions.

It is not necessary for me to go into the arguments which the learned Judge has employed in order to repel the applicant's contention, for, in my view, it is sufficient for me to say that most of the reasoning that had been employed by the Judge for repelling the applicant's contention was not sound. It is no doubt true that it is not obligatory for any Court, under the law, to have a preliminary enquiry in a case before it decides to make a complaint, but it has been consistently held in this Court and in other High Courts that it is desirable that there should be such an enquiry, before a Court decides to make a complaint, unless the perjury was absolutely clear on the face of the record. In a case where a Court decides to take further evidence in order to determine whether or not the allegations contained in the affidavit are false, then, in my view, it is but fair to give the accused an opportunity of either meeting that evidence when it is being taken, or if such an opportunity has not been: given, then to give him an opportunity, as envisaged by Section 476, Criminal P. C. In this particular case the Additional District Magistrate did neither of these two things and, therefore, it cannot be said that the applicant has had a fair deal in the Court below in regard to this matter. He has been prejudiced by the Additional District Magistrate receiving evidence against the applicant without giving him any opportunity of meeting it. The argument that the applicant will have full opportunity of meeting all that evidence when it is produced against him at the trial is not sufficient reason for denying him the opportunity of meeting that evidence at the preliminary stage. It is a serious matter for anyone to have to face a criminal trial and if the law contemplated giving an opportunity to the accused of meeting the case at an earlier stage than the trial itself, then such an opportunity should not be denied.

5. The applicant has been charged with a serious offence, and it is also clear on the circumstances of this case that it would be in the interests of justice that if 'prima facie' the allegations made by the applicant were false, then he should be prosecuted for perjury. But, even then, I am of the opinion that he should be given an opportunity to show cause before a complaint is actually made against him in a Court, for it may be that, if given an opportunity, the applicant may be able to substantiate his allegations or may be able to show that the allegations were not necessarily false.

6. In the result, I direct that the Additional District Magistrate do withdraw the complaint dated 24-12-1952, that he made against the applicant under Sections 193/199, Penal Code, and that he should thereafter issue a notice to the applicant to show cause why he should not be so prosecuted.

The Additional District Magistrate shall, after the necessary enquiry, either make a complaint if he is satisfied, 'prima facie', that there has been perjury, or discharge the notice if he is satisfied, 'prima facie', that there has been no perjury. The record of the case shall be sent down to the Court below forthwith so that the learned Additional District Magistrate may give effect to my order.