Ramnath vs State on 20 February, 1952

Equivalent citations: AIR1953ALL59, AIR 1953 ALLAHABAD 59

ORDER

P.L. Bhargava, J.

1. This is an application in revision, which is directed against an order, dated 3-11-1950, made by a Magistrate of the first class of Pargana Rath, in the district of Hamirpur, and confirmed on appeal by the learned Sessions Judge of Hamirpur. The facts and circumstances which have given rise to this revision are these :

2. As against the applicant, Ramnath, and certain other person, proceedings under Section 107, Criminal P. C., were pending in the Court of the Magistrate. In connection with the said proceedings, the applicant appeared in the Magistrate's Court. It is said that when the applicant appeared before the Court he was "badly drunk and could not control himself" and that "he was talking irrelevant thereby causing insult and interruption to the Court's work." The Magistrate being of the opinion that the applicant had by his conduct and behaviour committed contempt of Court, punishable under Section 228, Penal Code, took cognizance of the offence under Section 480, Criminal P. C. He immediately served upon the applicant a notice calling upon him to show cause, why proceedings for contempt of Court, be not taken against him.

In the notice, it was stated that the applicant had appeared in Court in connection with the case of Dhaniram v. Bamnath, under Section 107, Criminal P. C., and that he was badly drunk and talked irrelevant causing insult and interruption in Court. In reply to the notice, the applicant filed a writtten statement, saying that he had intentionally committed no wrong and that if he had committed any mistake, he might be excused. The Magistrate recorded the statement of the applicant, wherein he denied being drunk and his having uttered anything irrelevant. There is nothing else on the record, besides the order passed by the Magistrate.

3. In the order which is on the record, the Magistrate has stated :

> "Ramnath .... appeared today in my Court as a accused in the case, Dhaniram v. Ramnath under Section 107, Criminal P. C. He was badly drunk and could not control himself. He was talking irrelevant thereby causing insult and interruption to the Court's work."

Thereafter the learned Magistrate has stated that he took cognizance of the offence, called upon the applicant to show cause and ho denied being drunk. Then he has observed :

> "I am fully satisfied from his talk, way of walking and the smell coming from his mouth from a distance that ha is badly drunk. He also interrupted the Court's work and also caused insult by his irrelevant and out of the point talk."

4. In regard to the question whether the applicant had intentionally committed contempt, the learned Magistrate has pointed out that the fact that the applicant had taken the liquor of his own free will, before coining to the Court, was a direct proof of his committing the offence in-tentionally. Accordingly, the Magistrate convicted the applicant for contempt of Court and sentenced him, under Section 480, Criminal P. C., to pay a fine of Rs. 51 or in default of payment of fine to undergo 15 days' simple imprisonment. The applicant went up in appeal before the Sessions Judge of Hamirpur, who has upheld the conviction and the sentence.

5. In this revision, it has been contended on behalf of the applicant that the Magistrate did not comply with the mandatory provisions of Section 481, Criminal P. C., inasmuch as he did not "record the facts constituting the offence," and the record of the Magistrate does not "show the nature and stage of the judicial proceedings, in which the Court interrupted or insulted was sitting, and the nature of the interruption or insult." It has been pointed out that the mere statement that the applicant was talking irrelevant was not sufficient, and the record should have shown the words actually uttered by him.

6. In my opinion, the record of this case does contain record of the facts constituting the offence. The important fact which, in the opinion of the Magistrate, constituted the offence of contempt was that the applicant had appeared in Court in a drunken state. He was unable to control himself and was neither talking nor behaving like a normal man. The statement of the applicant was duly recorded and the order made by the Court contains the finding and sentence. Therefore the provisions contained in Sub-section (1) of Section 481, Criminal P. C. were duly complied with.

7. As far as the provisions of Sub-section (2) of Section 481, Criminal P. C. are concerned, the record does not show "the nature and stage of the judicial proceedings in which the Court interrupted or insulted was sitting, and the nature of the interruption or insult."

All that appears from the record is that the applicant had appeared before the Court in the case, Dhaniram v. Ramnath, under Section 107 of the Code, but it does not appear whether at the time when the alleged offence is said to have been committed the case was up for hearing before the Court. It also does not appear from the record at what stage of any judicial proceedings the offence was committed and what was the nature of the interruption or the insult. Learned counsel holding the brief of the Government Advocate has not been able to show that the procedure laid down in Sub-section (2) of Section 481 of the Code was duly complied with.

8. Learned counsel for the applicant has contended that the failure of the Magistrate to follow the mandatory provisions of Sub-section (2) of Section 481, Criminal P. C. is an illegality, which vitiates the entire proceedings and the conviction of the applicant ought to be quashed. On the other hand, learned counsel holding the brief of the Government Advocate has urged that the omission was a mere irregularity, which, in the absence of any prejudice to the applicant, is curable under Section

537 of the Code.

9. In a trial for an offence, of which cognizance has been taken under Section 480, Criminal P. C., the 'omission to record proceedings, in the manner laid down in Section 481 of the Code, is, in my opinion, fatal to the proceedings. It is not merely an irregularity but an illegality in the mode of trial. The reason is obvious : Section 480 of the Code prescribes a summary procedure for trial of direct contempt of Court. In view of the summary nature of the trial, and in order to safeguard the interests of the persons dealt with in a summary manner, who are given a right of appeal, the proceedings must show the nature and stage of judicial proceedings in which the Court interrupted or insulted was sitting and the nature of the interruption or insult to prove the essential ingredients of the offence, under Section 228, Penal Code.

The section provides punishment for an offender who intentionally offers any insult, or causes any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding. If the particulars required by Sub-section (2) of Section 481 of the Code are not recorded, the important evidence to show whether the offence had or had not been committed would be wanting.

10. I find that a similar view was expressed in Ramlal v. Emperor, 32 Cri. L. J. 1221 (Nag) where it was held :

> "In the case of proceedings for contempt of Court under Section 228, Penal Code, the record must show the nature and the stage of the judicial proceedings in which the Court interrupted or insulted was sitting and the nature of the interruption or insult, and omission to set forth the parti-culars as required by Section 481(2), is not merely an irregularity which could be corrected by the application of Section 537 but is fatal to the proceedings."

11. In this case it was, no doubt, stated that the applicant had appeared before the Court badly drunk and talked irrelevant; but the nature of interruption or insult had to be established to make him liable for contempt of Court. A man may appear in Court drunk but he may not behave in a manner so as to cause interruption or: insult to the Court, and when questioned he may give irrelevant replies. Some persons, when they appear before the Court, do talk irrelevant, but it does not necessarily cause interruption in Court work.

Moreover, unless the actual words uttered were recorded it would be difficult to say that they were insulting. Consequently, the behaviour of the applicant and nature and details of the irrelevant talk should have appeared from the record. The record, however, only shows that he was badly drunk and talked irrelevant; and from that fact alone, it does not necessarily follow that he was behaving so as to cause interruption or insult. If the case in connection with which the applicant had been summoned, was before the Court at the time when the alleged interruption or insult was offered, evert then, apart from the fact that he was in a drunken state, the record should have shown how the applicant had acted or what the applicant had stated caused interruption or amounted to insult. That, however, does not appear from the record.

12. In regard to the question whether the applicant had intentionally offered any insult or caused any interruption to any public servant the learned Magistrate has pointed out that the very fact that he took liquor of his own free will before coming to the Court is a direct proof of his committing the offence intentionally. The presumption is unwarranted as there is nothing on the record to show that the applicant had taken liquor of his own free will before coming to Court. He might have fallen in a bad company while coming to Court and induced to drink liquor. Consequently, it could not be presumed that he had deliberately taken liquor out of his free will before coming to Court. If he was drunk, he could not have known what he was doing or saying. In the circumstances, I find it difficult to hold that the applicant had intentionally offered any insult to or caused any interruption in the Magistrate's work, while sitting in any stage of a judicial proceeding.

13. In view of the fatal defect in the procedure, in the absence of the particulars required by Sub-section (2) of Section 481, Criminal P. C. and in the absence of anything to show that he had intentionally done anything, the conviction of and the sentence imposed upon the applicant cannot be upheld. The revision is, accordingly, allowed and the conviction and the sentence imposed upon the applicant are set aside. The fine, if paid, will be refunded.