In Re: Ram Chand vs Unknown on 4 March, 1953

Equivalent citations: AIR1953ALL712

ORDER

Kidwai, J.

1. Ram Chand is a partner in the firm Jethanand and Sons which carries on the work of Government Contractors. In 1947 the firm took three contracts for the supply of stone ballast to the U. P. P. W. D. at Shankargarh and Lohagra in the Allahabad district. We are not concerned with the third of these contracts. The first two were entered into on the 20th of March and the 27th of May and are evidenced by bonds Nos. 359 and 45 respectively. Deliveries were made under these contracts to P. W. D. overseers on the 22nd March (2,62,420 cu. ft.) and on the 25th May (2,95,157 cu. ft.) by Ram Chand and an agent of his firm, Chetanand, respectively. Very shortly afterwards bills signed by Ram Chand for the price of this ballast were passed and payments were made to Messrs. Jethanand and Sons.

2. At first there was no trouble about the matter but later, when an enquiry was made by Mr. Sahney, Executive Engineer on 22-12-1947 the Overseer J. P. Mittal on 22-1-1948, sent a report which indicated that there was some confusion about the ownership of the ballast although ail of it which had been measured still lay at the spot. This report was forwarded by Mr. Shiam Lal, Assistant Engineer along with his own note and he thought something like fraud had been committed by Jethanand & Sons in getting this ballast measured since their right to it was extremely doubtful. He recommended that Messrs. Jethanand and. Sons should be asked to get the matter cleared up; otherwise the police should be approached and legal action taken. Shortly after the Collector and the Superintendent of Police of Allahabad were approached.

3. A Sub-Inspector of police was deputed and he investigated into the matter, purporting to do so in respect of an offence under Section 420, I. P. C. During the course of this investigation, in July 1948, delivery of the ballast was again made, this time to Mr. Shyam Lal, Assistant Engineer, in the presence of the Police Sub-Inspector, and Narotam Singh, Tara Chand and Anu Singh, who were said to have been removing it on an assertion of title and also in the presence of the agent, of the Raja of Bara and Messrs. Meomal from whom Messrs. Jethanand had admittedly purchased most of the ballast.

4. The Sub-Inspector reported this settlement and added that if the P. W. D. Officers were not satisfied and still wished to proceed under Section 420, I. P. C. they could take criminal action at Lucknow where the accused lived and carried on business and where the contract had been settled.

5. Mr. Shyam Lal was, however, not satisfied and he reported on 10-9-1948 that, although Ram Chand had again delivered possession, and matters had been quiet for some time, it again appeared

that he had delivered ballast not belonging to him.

6. Some more correspondence took place and Jethanand and Sons made representations directly and also through friends, to the Minister concerned about the matter. Eventually on 17-11-1950 a regular first information report was lodged at police station Hazratganj, Lucknow, under Section 420, I. P. C.

7. The police investigated the case and prosecuted Ram Chand and Chetan Das. Subsequently, however, the trial of the two accused persons were separated at the request of the prosecution.

8. Eventually on 10-11-1951 the learned Magistrate framed charges in respect of the first and second contracts but not in respect of the third contract and proceeded to try the case himself although he might, if he so chose, have committed the accused to the Court of Session.

9. On 20-11-1951 Ram Chand applied for quashing proceedings and also applied that, pending the decision of his application under Section 561A, Cr. P. C., the trial should be stayed. The two applications were directed to be put together.

10. For the applicant Mr. Niamat Ullah contended that there was no evidence on the basis of which it could be said that even a prima facie case had been made out and that, therefore, further proceedings were an abuse of the process of the Court. He further, urged that, in any case, the whole record having now been placed before this Court. I should look into and if I found that the conviction of the applicant was not possible even if it were only by reason of the benefit of the doubt--I should not allow proceedings to continue.

11. On the other hand Mr. Asghar Husain, who conducted the case before the Magistrate and appeared with the Government Advocate, contended that the guilt of the accused was fully established and that there was no occasion for the exercise of this Court's powers under Section 561A, Criminal P. C.

12. The powers possessed by this Court under Section 561-A, Cr. P. C. are very wide but as I have had occasion to point out more than once, the very plenitude of the power requires from the Court great caution in the exercise of it. The High Court will not allow a prosecution to degenerate into persecution nor will it permit the processes of the criminal law to be abused in order to attain ulterior objects e. g. it will not allow a criminal prosecution to be held in terrorem in order to right a civil wrong, even though a technical breach of the criminal law eventually be found to have been established. At the same time it will not stiffle a legitimate prosecution nor will it transform itself into a Court of original criminal jurisdiction in a round about way and take upon itself the responsibility of a first hand appraisement of evidence recorded by another Court in respect of which that other Court has had no opportunity of expressing its opinion.

13. In the present case I have heard the learned Advocates at considerable length and have perused much of the evidence but, since I have come to the conclusion that proceedings should not be quashed, I have not gone into the details of the evidence and think it inadvisable to make any

comments about it. This decision does not indicate that I consider the prosecution evidence of such force as to justify the conviction of the applicant nor, obviously, does it indicate that I consider that evidence worthless.

14. While refusing to quash proceedings I, however, accede to the request of the applicant that this is a fit case in which to direct the Magistrate trying it not to proceed with the trial but to commit it to the Court of Session.

15. It appears from the application and the affidavit accompanying it that some of the witnesses were allowed seats on the dias. It is true that some high officials were among the witnesses but that is no ground for allowing them to sit near or, even on the same level as the Magistrate, when they are giving evidence. Respect is shown to a Court Sitting to try a case not in its personal capacity but because it represents the Majesty of the law and is exercising the judicial functions of the Sovereign State. It should be no respector of persons and should treat all who appear before it in exactly the same manner. Otherwise, a feeling might be created in the mind of a person who is in the delicate position of a party, particularly in a criminal case, that the Court attaches greater importance to the evidence of some witnesses than it does to those of others, even without hearing that evidence. All persons, however high, who appear in order to participate in the proceedings of a Court of Law are bound to show their respect in the usual manner i.e., by standing when addressing the Court. This is not meant to be derogatory to their own position or status. No lawyer, however eminent, ever dreams of addressing a Court while seated. There is no reason why a person who appears to give evidence should consider it either right or proper to be allowed a seat merely because of his high position as a servant of the State. Of course if it is a hardship for a person, either on account of his age or physical condition to be called upon to remain standing he may well be allowed to sit, but even then he should be seated either in the witness-box or at some other convenient place. In no case should he be seated near the Presiding Officer in Such a position as even to appear to be sharing that officer's high prerogative of being the master of his own Court.

16. I have felt it necessary to make these remarks because the practice of allowing seats on the dias to witnesses is increasing, particularly in Magistrate's Court, and this practice is highly undesirable and should stop. It is because this has been allowed to happen in this case that I have deemed it proper in exercise of my powers under Section 561-A, Cr. P. C. to direct the Magistrate to commit the case to the Court of Session.