

State Of Uttar Pradesh vs Nepal Singh Son Of Ramcharan on 4 January, 2006

Equivalent citations: 2006CRILJ1429

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Bench: V.M. Sahai, Shiv Shanker

JUDGMENT

Shiv Shanker, J.

1. This case was initiated upon a show cause notice issued in Criminal Misc. Bail Application No. 5756 of 2001, Mohan Lal v. State of U.P., by this Court against the contemner Nepal Singh son of Ram Charan.

2. Brief facts, arising out of this case, are that Chhotey Lal son of Jawahar Lal lodged an F.I.R. on 13.2.1998 at 11.25 A.M., at Police Station Bisharatganj, district Bareilly wherein it was stated that his younger brother Net Ram had kept the wife of Har Prasad, who was murdered by his brother Mohan Lal one year ago of the present occurrence. Therefore, due to keeping the wife of Har Prasad, Mohan Lal harboured ill-will. On 12.12.1998, at about 7.30 P.M., Mohan Lal accused reached near Net Ram, who was warming under a tree at his house along with companion, his nephew Prem Pal and others. Mohan Lal and his companion surrounded Net Ram who stood and run away towards his house where Mohan Lal fired two shots upon Net Ram in his court-yard and his companions attacked him with sword. Net Ram consequently died on the spot. Whereafter Smt. Surajmukhi, wife of Net Ram deceased, was taken towards the jungle of the village. Thereafter the case under Sections 302/366 IPC. was registered against the accused.

3. During the course of investigation, the name of accused Bhagwan Das was also come into light on the basis of the criminal conspiracy. The name of Nanhey was disclosed by the prosecution witnesses in this occurrence.

4. Later on the bail application of Nanhey son of Lakhan was allowed by the Sessions Judge granting bail to him. Thereafter bail application was moved by Mohan Lal in the sessions court Bareilly on the ground of parity but the same was rejected by the Sessions Judge, Bareilly finding no case of parity. Thereafter bail application of Mohan Lal was moved before this Court wherein all the facts are mentioned in the bail application. Copy of the F.I.R. was also annexed and the affidavit was sworn by contemner Nepal Singh by filing his affidavit. At the time of hearing the argument in the bail application in this Court, learned A.G.A has pointed out that the copy of F.I.R. (annexure-I) filed on behalf of accused in support of the bail application is fabricated and incomplete copy of the

F.I.R., There is no clear averment that Mohan Lal accused made two fires in the court-yard of the house of deceased which portion of the F.I.R. has been left out deliberately in the copy of F.I.R. (annexure-1). Thereafter the following order was passed by this Court after rejecting the bail application of Mohan Lal accused:-

Let a notice be issued against him fixing 13.4.2001 to show cause why he be not punished for filing false affidavit before the court.

List on 13.4.2001 as part-heard before this court. Office is further directed to keep the record of Criminal Misc. Bail Application No. 5756 of 2001 in a sealed cover.

5. The objection alongwith the affidavit of contemner was filed wherein it was stated that he was Pairokar on behalf of accused Mohan Lal. He contacted the local counsel Sri Raj Kumar Verma, Advocate, Bareilly was doing the necessary Pairvi of the case. And some time in the month of January, 2001, gave him a sum of Rs. 500/- for obtaining copy of the F.I.R., copy of the post mortem report of deceased besides other evidence collected by he Investigating Officer in connection with said criminal case, for the purpose of preparing/moving bail application on behalf of said Mohan Lal.

6. Sri Raj Kumar Verma, Advocate Bareilly obtained all the relevant papers in connection with the case including the copy of the F.I.R. in question dated 13.12.98 and moved a bail application on behalf of Mohan Lal, accused in the court of Magistrate which was rejected then and before the Sessions Judge, Bareilly who rejected the same on 23.2.2001.

7. Since he had no personal contact or communication of his own with any learned counsel at Allahabad for the purpose of moving a bail application on behalf of Mohan Lal before this Court. The relevant documents were given to Sri A.B. Maurya, Advocate. Thereafter, bail application No. 5756 of 2001 was moved by the said Advocate of this Court. The original and written copy of the prosecution documents were still lying with him and he has assured to produce the same before this Court at the time of hearing of the criminal contempt. He is an illiterate and uneducated person and even cannot write his name. Sri A.B. Maurya, Advocate prepared and moved the bail application of Mohan Lal accused before this Court on the basis of the said hand written copies of the prosecution documents which were obtained by Raj Kumar, Verma Advocate, Bareilly. He had only put the thumb marks upon the affidavits and other blank papers. It is further stated that Photostat copy of the F.I.R. available in the record of the case of Mohan Lal before the court below was not visible and, therefore, some part of the F.I.R. was not left out deliberately by the clerk of the above Advocate of the Bareilly. The possibility of inadvertence and unintentional copying/writing mistake having taken place on the part of Sri Raj Kumar Verma, Advocate while copying the said prosecution documents particularly the F.I.R. dated 13.12.1998, can also not be ruled out. In these circumstances, he has not committed any criminal contempt. The only fault of the contemner is that he applied for some documents including the copy of F.I.R. which were obtained from Sri Raj Kumar Verma without ascertaining its genuineness, correctness and authenticity. It is stated that had the deponent been an educated person, he would have definitely checked and verified the genuineness of the said prosecution documents and as such in any view of the matter the contemnor cannot be said to have

deliberately filed the incomplete copy of the F.I.R. dated 13.12.1998 but he regrets for the same and tenders unconditional apology before this Court. Therefore, it is prayed that he may be exonerated of the charge dated 9.5.2005 framed against him by this Court for deliberately filing of the incomplete copy of the F.I.R. in connection with bail application and the contempt proceedings may also be dropped.

8. The contemner was charged by a division Bench of this Court on 9.5.2005 in the following manner:-

why you Nepal Singh, son of Ram Charan residence of village Dhanaiti Kharagpur, Police Station Aliganj, District Bareilly be not punished for having committed criminal contempt of this Court for deliberately filing incomplete copy of the F.I.R. along with affidavit in Misc. Bail Application No. 5756 of 2001, Mohan Lal v. State of U.P. before this Court.

9. Charge was accordingly translated in Hindi and read over to the contemnor who is allowed three weeks time to give reply to the aforesaid charge.

10. Counter and rejoinder affidavits have been exchanged.

11. Heard learned counsel for the contemner and learned A.G.A.. We have also perused the whole record. It is contended on behalf of the contemner that he is illiterate and uneducated person. He is also brother-in-law of the accused Mohan Lal and, therefore, he was doing the parvi of the case on his behalf. He met Sri Raj Kumar Verma, Advocate, Bareilly for doing the parvi of the case on behalf of accused Mohan Lal. He had also given necessary expenses to Sri Raj Kumar Verma, Advocate to obtain the copy of the F.I.R. and other relevant papers for the purpose of moving the bail application and for obtaining relevant documents including the copy of F.I.R. in question. Thereafter, his bail application was moved which was rejected by the Magistrate concerned. Thereafter, the bail application was moved before the Sessions Judge, Bareilly, which was also rejected. Thereafter, he reached at Allahabad and met Sri A.B. Maurya, Advocate, High Court, Allahabad on the recommendation of Sri Raj Kumar Verma, Advocate, Bareilly, all the necessary documents including the copy of the F.I.R. were handed over to Sri A.B. Maurya, Advocate. Thereafter, he has obtained the thumb impression upon several papers and he could not understand as to what was written in it, subsequently the portion of firing by accused Mohan Lal was deleted from the copy of the F.I.R.. It is further contended that the copy of the statements of the prosecution witnesses had been filed along with the bail application before this Court. If the intention of the contemnor was to deceive the Court in filing of the incomplete copy of the F.I.R., the same portion would be deleted from the statement of prosecution witnesses meaning thereby the role of firing made upon the deceased have been mentioned in the statement of the prosecution witnesses. In these circumstances, the deliberate deletion of portion of firing upon the deceased by Mohan Lal was not deliberate in the copy of the F.I.R. by the contemner or by anyone as the copy of the F.I.R. was obtained by the Advocate of Bareilly from the copy of the court and not from the original F.I.R.. In these circumstances the contemner is liable to be exonerated from the said charge.

12. There is no dispute that the affidavit of contemnor along with copy of the F.I.R. was also filed in the above bail application before this Court. There is no dispute that the role of the accused Mohan Lal had been given in the F.I.R. of making two fires upon the deceased. It has been specifically mentioned in the F.I.R. that the said Mohan Lal along with his companion committed the murder of deceased by causing injuries with their respective weapons. The post mortem report of the deceased reveals that one fire arm injury was found on the thigh of the deceased. After receiving such injuries and falling down of the deceased, the other accused inflicted sharp edged injury on the deceased by which the deceased sustained eight incised wounds and one abraded contusion.

13. It is worthwhile to mention here that the F.I.R. is an important document upon which the whole prosecution case stands if the role of firing of the accused is not mention in the F.I.R. and subsequently the role of accused is shown in the statement of the prosecution witnesses therefore, it can be deemed to be a development of the case and in such circumstances the benefit must go in favour of the accused. It is further worthwhile to mention that there are four ingredients of crime firstly intention, secondly preparation, thirdly attempt and fourthly commission. In the present case all the four ingredients are available against the accused contemner. Therefore, it is liable to be deemed that the word of firing from the F.I.R. was deleted from the copy of the F.I.R. in order to obtain bail order from this Court after deceiving and concealing the true and real facts.

14. It is also important to note hear that the affidavit was filed on behalf of the contemner wherein no name of the Advocate of Bareilly was mentioned and ho reason was disclosed. Thereafter, in the counter affidavit the name of Advocate mentioned by the contemner then the names of Advocate of Bareilly has been disclosed in the reply. This all reveals the malafidy intention of the contemner to deceive the Court. In these circumstances, there is no force in the contention and in the reply that he did not omit some portion of F.I.R. deliberately or intentionally.

15. In the case of M.C. Mehata v. Union of India it has held that if a false affidavit or statement is filed, it amounts to criminal contempt. More recently the Apex Court has restated the same position in the case of U.P. Residence Employees Cooperative House Building Society v. Noida . In the present case the contemnor filed a false affidavits in order to obtain bail of his relative accused Mohan Lal by deceiving and concealing the real facts before this Court in creating obstructions in the administration of justice. In the circumstance of the case, the above pronouncement of the Apex Court is fully applicable in the present case.

16. Considering the facts and circumstances of the case as mentioned above, we are of the view that the contemnor has deliberately filed incomplete copy of the F.I.R. in Criminal Misc. Bail Application No. 5756 of 2001, Mohan Lal v. State of U.P. by concealing the true and real facts whereby he obstructed in the administration of justice and is liable to be punished for committing criminal contempt under Section 12 of the Contempt of Courts Act, 1971. In view of this, the charge leveled against the contemner is fully proved and he is liable to be punished for the same.

17. Let a notice be issued to the contemner to address the Court on the quantum of sentence requiring the contemner to be present in Court in person.