Ranjit Singh

Vs

The State of Punjab

Criminal Appeal No. 19 of 1957

(Syed Jafar Imam, J. L. Kapur JJ)

21.04.1959

JUDGMENT

KAPUR, J. -

This is an appeal by special leave against the judgment and order of the High Court of PEPSU passed in revision. The appellant was a sub-Inspector of Police who at the relevant time was the Station House Officer-in-charge Shehna police station in the erstwhile PEPSU State. He was convicted under s. 193, Indian Penal Code, by a First Class Magistrate and his appeal to the Sessions Judge, Patiala, was dismissed except as to sentence. He took a revision to the PEPSU High Court but that was also dismissed.

This appeal has arisen in the following circumstances : One Surjit Singh, s/o Risaldar Waryam Singh, was arrested on September 25, 1953, at Barnala in PEPSU State by the Police Inspector Jaswant Singh. He was kept in the lock-up at Barnala and on the following day his custody was handed over to the appellant and he was taken to Shehna and was kept in custody - it is not clear under what section - in the police station lock-up at Shehna. Surjit Singh was there kept in custody from September 26, 1953, till October 10, 1953, when at about 10 p.m., he was surreptitiously removed to Police Station Dialpur and then to Police Post Hamirgarh and from there was taken to Police Station Baga Purana in Ferozepur District, of the then Punjab. An application under s. 491 of the Criminal Procedure Code and under Art. 226 of the Constitution was made for a writ of Habeas Corpus and Mandamus in the High Court of PEPSU. In that petition it was alleged that Surjit Singh was being kept in unlawful custody without any charge being made and without obtaining a remand by a Magistrate. In reply to this, an affidavit dated October 13, 1953, was filed by the appellant in which he stated that Surjit Singh had association with notorious dacoits; that he, the appellant, had never taken him into custody at any time; that the said Surjit Singh was absconding and had not been arrested in spite of the best efforts of the police; that at the time of the making of the affidavit he was not in the appellant's custody and that it was incorrect that Inspector Jaswant Singh had ever entrusted Surjit Singh to his (appellant's) custody. He also stated that no petition had been brought to him nor had he received any telegram in connection with the custody of Surjit Singh. This affidavit was affirmed as follows :-

> "I solemnly affirm that the facts stated from paras Nos. 1 to 7 are true to the best of my knowledge and belief and nothing which is relevant to this case has kept back from this Hon'ble Court".

As both the parties admitted before the High Court that Surjit Singh was not in the custody of the appellant the petition was dismissed. On November 9, 1953, the brother of Surjit Singh made an

application under s. 476, Criminal Procedure Code, for the prosecution of Inspector Jaswant Singh and the appellant for perjury under s. 193, Indian Penal Code, in that they had filed false affidavits. This matter was heard by another learned Judge of that Court who ordered the prosecution of the appellant and directed the Registrar of the High Court to file a complaint which was filed.

The complaint was taken cognizance of by the First Class Magistrate at Patiala who convicted the appellant and sentenced him to nine months' imprisonment and a fine of Rs. 300/- and in default to undergo simple imprisonment for two months. The appellant took an appeal to the Sessions Judge, Patiala, who confirmed the order of conviction but reduced the sentence to one of three months' simple imprisonment and a fine of Rs. 50 and in default one months' simple imprisonment, a revision against this order was dismissed in limine by the Chief Justice although he gave reasons for dismissing it. The appellant then obtained special leave from this Court.

On behalf of the appellant the first contention raised was that the appellant was not bound to file an affidavit and therefore he could not be convicted under s. 193, Indian Penal Code, because his case did not fall under s. 191, Indian Penal Code. In support of his contention he relied upon the Rules of the PEPSU High Court framed for the purpose of proceedings under Art. 226 and s. 491(2), Criminal Procedure Code, for the issuing of writs of Habeas Corpus. He also referred to the Rules made by that Court for the issuing of writs of Mandamus, Prohibition, Quo Warranto and Certiorari under Art. 226 and submitted that there was no Rule in the former, i.e., for writ of Habeas Corpus requiring a return to be made on behalf of the respondent to be supported by an affidavit whereas in the latter, i.e., issuing of writs of Mandamus etc. an affidavit was necessary and therefore it was submitted that s. 191 was inapplicable. Rule 2 of the Rules of the Court required that when a Judge was of the opinion that prima facie case had been made out for granting the application a rule nisi was to issue calling upon the person or persons against whom the order was sought, to appear before the Court and to show cause why such an order should not be made. As has been pointed out in Greene v. Home Secretary [[1942] A.C. 284, 302.] which was a case under Reg. 18-B of the Defence of the Realm Act the whole object of proceedings for a writ of Habeas Corpus is to make them expeditious, to keep them as free from technicality as possible and to keep them as simple as possible."The incalculable vale of Habeas Corpus is that it enables the immediate determination of the right to the appellant's freedom" (Lord Wright). When there is no question of fact to be examined or determined no affidavit is needed. As soon as there emerges a fact into which the Court feels it should enquire the necessity for an affidavit arises. Ordinarily an affidavit may not be necessary in making the return if the detention is under orders of the detaining authority in exercise of its plenary discretion as in Liversidge v. Anderson [[1942] A.C. 206.] and in Greene's case [[1942] A.C. 284, 302.] or a person is detained under the orders of a Court. But where the detention is, as it was in the present case, it becomes necessary for the detaining authority to justify its action by disclosing facts which would show to the satisfaction of the Court that the custody is not improper. Where the prisoner says "I do not know why I have been detained, I have done no wrong", it is for the detaining authority to justify the custody. When issues of fact are raised and the actions of the police officers, as in the present case, are expressly challenged and facts are set out which if unrebutted and unexplained would be sufficient for the writ to issue, an affidavit becomes necessary. It cannot be said therefore that in the present case the appellant was not legally bound to place facts and circumstances before the Court to justify the detention of Surjit Singh and this could be done by an affidavit.

Section 4 of the Oaths Act lays down the authority to administer oaths and affirmations and it prescribes the courts and persons authorised to administer by themselves or by their officers empowered in that behalf oaths and affirmations in discharge of the duties or in exercise of the

powers imposed upon them and they are, all courts and persons having by law the authority to receive evidence. Section 5 prescribes the persons by whom oaths or affirmations must be made and they include all witnesses, i.e., all persons who may lawfully be required to give evidence by or before any court. These two sections show that the High Court or its officers were authorised to administer the oath and as the appellant was stating facts as evidence before the High Court he had to make the oath or affirmation and was bound to state the truth. Section 14 of that Act is in the following words :

S. 14. "Every person giving evidence on any subject before any Court or person hereby authorised to administer oaths and affirmations shall be bound to state the truth on such subject".

As the appellant was giving evidence on his own behalf in that he was denying the allegation made in the affidavit of the brother of Surjit Singh he was bound to state the truth on the subject on which he was making the statement. The contention therefore that under s. 191 of the Indian Penal Code the relevant portion of which is :

S. 191. "Whoever being legally bound by an oath or by an express provision of law to state the truth..... makes any statement which is false and which he either knows or believes to be false or does not believe to be true, is said to give false evidence."

the appellant was not legally bound by oath to state the truth cannot be supported. On the other hand at the stage of the proceedings in the High Court where it was being alleged that Surjit Singh was being detained by the appellant illegally it was necessary for the appellant to make an affidavit in making a return and therefore if the statement is false, as it has been found to be, then he has committed an offence under s. 193.

The opening words of s. 191 "whoever being legally bound by an oath or by an express provision of law to state the truth... " do not support the submission that a man, who is not bound under the law to make an affidavit, can, if he does make one, deliberately refrain from stating truthfully the facts which are within his knowledge. The meaning of these words is that whenever in a court of law a person binds himself on oath to state the truth he is bound to state the truth and he cannot be heard to say that he should not have gone into the witness-box or should not have made an affidavit and therefore the submission that any false statement which he had made after taking the oath is not covered by the words of s. 191, Indian Penal Code, is not supportable. Whenever a man makes a statement in court on oath he is bound to state the truth and if he does not, he makes himself liable under the provisions of s. 193. It is no defence to say that he was not bound to enter the witness-box. A defendant or even a plaintiff is not bound to go into the witness-box but if either of them chooses to do so he cannot, after he has taken the oath to make a truthful statement, state anything which is false. Indeed the very sanctity of the oath requires that a person put on oath must state the truth. In our opinion this contention is wholly devoid of force and must be repelled.

It was then contended that the officer before whom the appellant swore the affidavit, i.e., the Deputy Registrar of the High Court of PEPSU was not authorised to administer oaths. That officer as a witness for the prosecution has stated that he could administer an oath and therefore this contention of the appellant is also without any force and must be repelled.

It was also argued that the affidavit filed by the appellant was affirmed as being true to the best of knowledge and belief and therefore it could not be said as to which part was true to the appellant's knowledge and which to his belief. We have read the affidavit which consists of 7 paragraphs and

each paragraph relates to affirmation of a fact which, if true, could only be so to the appellant's knowledge. But even belief would fall under Explanation 2 to s. 191 which is as under :

Explanation 2 to s. 191. "A false statement as to the belief of the person attesting is within the meaning of this section, and a person may be guilty of giving false evidence by stating that he believes a thing which he does not believe, as well as by stating that he knows a thing which he does not know".

The appellant relied upon a judgment of the Allahabad High Court in Emperor v. Lachmi Narain [I.L.R. 1947 All. 155.]. But unless there was something peculiar in the facts of that case it cannot be considered to be good law. It does not even take into consideration Explanation 2 of s. 191.

Lastly it was urged that the procedure adopted by the Magistrate was erroneous in that he did not hold an enquiry as required under ss. 200 and 202, Criminal Procedure Code, the former of which is expressly mentioned in sub-section 2 of s. 476, Criminal Procedure Code. That contention is equally untenable because under s. 200, proviso (aa) it is not necessary for a Magistrate when a complaint is made by a court to examine the complainant and neither s. 200 nor s. 202 requires a preliminary enquiry before the Magistrate can assume jurisdiction to issue process against the person complained against.

In our opinion the appellant has been rightly convicted and we would therefore dismiss this appeal.

Appeal dismissed.

</html