Bachchoo Lal

Vs

State of Uttar Pradesh & Anr.

Criminal Appeal No. 126 of 1961

(Raghuvar Dayal, J. R. Mudholkar, K. Subha Rao JJ)

25.04.1963

JUDGMENT

RAGHUBAR DAYAL, J. –

Raja Kamlakar Singh of Shankargarh, U.P. took a lease from the District Board, Allahabad, with respect to the realisation of bayai and bazaar dues on the sale of commodities in the bazaar of Shankargarh. Bachchoo Lal was his employee to collect these dues. On April 13, 1959, Bahadur Singh, a peon of the Raja Sahib, asked Shyam Lal Kurmi, P.W. 2, who had sold two bullock load of linseed to Mewa Lal, respondent 2, in that bazaar, to accompany him to the Munim in order to pay the bayai dues there. Mewa Lal asked Shyam Lal not to pay those dues. The peon, however, took Shyam Lal to Bachchoo Lal, appellant, at the grain godown. Mewa Lal, armed with a lathi, came there and on Bachchoo Lal's asking him as to why he was creating obstruction in the realisation of the dues, filthily abused him and threatened to break his hand and feet and kill him. Bachchoo Lal, thereafter, instituted a complaint against Mewa Lal, on obtaining sanction of the District Magistrate for prosecuting Mewa Lal for an offence under s. 107 of the United Provinces District Board Act, 1922 (U.P. Act No. X of 1922), hereinafter called the Act.

The trial Magistrate, the II Class Tashildar Magistrate of Karchana, convicted Mewa Lal of the offences under ss. 504 and 506, I.P.C., and also of an offence under s. 107 of the Act. On appeal, the Sessions Judge, Allahabad, acquitted Mewa Lal holding that proper authority in favour of Bachchoo Lal for prosecuting Mewa Lal under s. 107 of the Act had not been proved, that the Magistrate had no jurisdiction to try an offence under s. 506, part II, I.P.C. which was triable by a Magistrate of the I Class, and that the prosecution case under s. 504 I.P.C., was suspicious. Bachchoo lal filed an appeal against the acquittal of Mewa Lal, after obtaining the permission of the High Court under sub-s. (3) of s. 417 of the Code of Criminal Procedure, hereinafter called the Code. The High Court dismissed the appeal repelling the contentions for the appellant to the effect that the appellant, being the complainant and therefore a party to the criminal case against Mewa Lal, ought to have been given notice of the appeal by the Sessions Judge and also ought to have been given an opportunity to be heard and that such notice and opportunity of hearing were necessary on the principles of natural justice and in view of the fact that s. 417(3) of the Code conferred a substantive right of appeal on the complainant. The High Court further held that though the Sessions Judge was wrong in holding that the sanction required by s. 182 of the Act had not been proved, the sanction was in the name of Raja Sahib of Shankargarh and not of Bachchoo Lal and therefore the complaint was not a valid complaint and that the Raja Sahib could not collect Tah Bazari through his agents. It also held that the acquittal of the accused of the offence under s. 506 I.P.C., was justified and that the acquittal of the offence under s. 504 I.P.C. could not be said to be erroneous and that in any case the matter was too petty for interfering with an order of acquittal even if it had taken a different view of

facts from the one taken by the Sessions Judge. The High Court, accordingly, dismissed the appeal. Bachchoo Lal has preferred this appeal after obtaining the requisite certificate from the High Court under Art. 134(1)(c) of the Constitution. The State of U.P. is the first respondent and Mewa Lal, the accused, is respondent No. 2.

Three questions have been raised on behalf of the appellant. One is that the Assistant Sessions Judge ought to have issued a notice of the hearing of the appeal to the appellant on whose complaint Mewa Lal was convicted by the Magistrate and against which order of conviction he had filed an appeal. No such notice was issued to him and therefore the order of the Assistant Sessions Judge acquitting Mewa Lal was not a good order. The second contention is that the High Court was wrong in holding that the Raja of Shankargarh could not collect the Tah Bazari dues through his agents. The third contention is that Bachchoo Lal had requisite sanction under s. 182 of the Act for prosecuting Mewa Lal and, therefore, the finding to the contrary is wrong.

The third contention is correct. The requisite authority under s. 182 of the Act is in favour of not only the Raja of Shankargarh, but also in favour of several of his employees including Bachchoo Lal, the appellant.

We need not express an opinion on the second contention as we do not know the terms of the lease executed by the District Board in favour of the Raja of Shankargarh and as we are not concerned with the civil rights with respect to the manner of collecting the dues which he could collect under the lease. We are, however, of opinion that s. 107 does not make obstruction or molestation of an employee of the person under contract with the Board an offence.

Section 107 of the Act reads :

> "Whoever obstructs or molests a person employed by, or under contract with, the Board under this Act in the performance of his duty or in the fulfilment of his contract, or removes a mark set up for the purpose of indicating any levels or direction necessary to the execution of works authorised by this Act, shall be liable on conviction to a fine which may extend to fifty rupees."

The section speaks to the obstruction or molestation of two classes of persons. One class of persons consists of persons employed by the District Board under the Act. The Raja of Shankargarh or Bachchoo Lal is not an employee of the District Board. The second class of persons consists of those who are under contract with the Board under the Act. Surely, the person under contract with the Board is the Raja of Shankargarh and not Bachchoo Lal. Bachchoo Lal is only an employee of the Raja.

We did not hear the learned counsel on the merits of the case under s. 504 of the Code and accept the finding of the courts below.

In view of the considerations mentioned, no interference is possible with the acquittal of the respondent No. 2 on merits. It is, therefore, not necessary to decide the first question raised for the appellant.

We accordingly dismiss the appeal.

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