

SUPREME COURT OF INDIA

Bunna Prasad

Vs.

State of U.P.

Crl.A.No.112 of 1965

(S. M. Sikri, J. M. Shelat and V. Bhargava, JJ.)

24.04.1968

JUDGEMENT

SIKRI, J.:-

1. This appeal by special leave is directed against the judgment of the Allahabad High Court adjudging the five appellants guilty of contempt of court and sentencing each of them to pay a fine of Rs. 1,000 and further ordering that in case of default they shall undergo simple imprisonment for two weeks. The High Court held that the five appellants had disobeyed an order of stay passed by it staying proceedings pending before the Nyaya Panchayat, Jokha Khas, District Deoria.

2. The relevant facts are these. On September 2, 1963, Yashoda, son of Raj Kumar, filed a complaint before the Nyaya Panchayat, Jokha Khas against Jagdeo, Mahabir and Laxmi alleging that he had been abused and belaboured and his property worth Rs. 40 damaged. On September 10, 1963, the Nyaya Panchayat assembled and evidence was led before it. The case was adjourned to December 25, 1963. On October 11, 1963, Mahabir, accused, made an application under S. 85 of the U. P. Panchayat Raj Act, 1947 to S. D. M. Deoria, to transfer the proceedings on the ground that

the complainant Yashoda was father of Bunna Prasad, Sarpanch of Nyaya Panchayat, Jokha Khas. On November 28, 1963, the S. D.M. rejected this application. On December 13, 1963, a notice was issued to the five members of the Panchayat to assemble on December 25, 1963, and hear the case. On December 20, 1963, Mahabir moved an application under Article 227 of the Constitution challenging the order of the S. D. M. dated November 28, 1963, and on the same day the High Court admitted the application and stayed further proceedings before the Nyaya Panchayat. An urgent copy of the order was applied for and obtained on that very day and the counsel sent a telegram in the following words:-

"Allahabad HC 20

Baldeopd cashier Trust

Sdr GR

Mahabir application admitted stay granted Banwarilal."

3. It is alleged on the side of the applicant, Mahabir, that immediately after the receipt of the telegram an application accompanied by an affidavit and the telegram of his counsel in the High Court was presented before the Nyaya Panchayat with the prayer to stay further proceedings but the Sarpanch refused to take it. This fact was denied and the High Court seems not to have relied on this fact in its Judgment. It seems to us that it is not proved on the evidence here that any such application was made before the Nyaya Panchayat. No application dated December 21, 1963, which was not accepted by the Nyaya Panchayat, has been produced.

4. On December 23, 1963, Mahabir submitted an application in the Court of Shri R. Singh, S. D.M., Deoria, alleging that "writ petition has been admitted and a stay order has been issued. But notwithstanding my informing the Panchayat Adalat of that, I am not getting any hearing there, and when an application is made there, it is not entertained." He prayed that the Panchayat Adalat be directed to postpone proceedings pending the receipt of the stay order. He produced the telegram received from the Advocate before the S. D. M. In the affidavit accompanying the application, however, no mention was made about Mahabir having informed the Panchayat Adalat of the stay order or the fact that the order and the application was not being entertained by the Adalat. It happened that the S. D. M. was absent on December 23, 1963, and papers were put up before Shri S. K. Srivastava, Additional Sub-Divisional Magistrate, who issued the order "Put up with records". Apparently he did not take any further action till December 26, 1963. But as the notice against Shri Srivastava has been discharged by the High Court, we need not give any further details about his various orders.

5. On December 25, 1963, the Nyaya Panchayat met and proceeded to hear the case. The order sheet reads thus :

"Put up today the 25th December, 1963. The complainant and the accused are present. The statements of the complainant and his witnesses, Bhabhuti and Damri, are recorded. The accused refused to make statements and put down their signatures. Today, the 25th December, 1963, Mahabir has made an application to the Court and signed it before it (?) Hence judgment shall be given on 25th December, 1963."

This order was signed by three Panchas, Phagu Parasad, Jagat Dubey and Badri Yadav. On the same day a final order was made holding the accused guilty and imposing a fine of Rs. 3 each on accused Nos. 1 and 3, and Rs. 9 on accused No. 2. The application of Mahabir referred to in the order, reads thus :

"Sir,

It is submitted that I have filed a writ petition in the above case, in the High Court. It has been admitted by the High Court which has stayed proceedings also in this case.

It is, therefore, prayed that the proceedings in this case may be stayed."

A document purporting to be an affidavit was also attached, in which it was stated:

"I make oath and say that in the above case I have filed a writ petition in the High Court, that it has been admitted, and that proceedings in the case have been stayed by the High Court. "

6. We looked at this so-called affidavit and found that it has not been sworn to before any person authorised to administer oaths.

7. On May 21, 1964, Mahabir filed an application under Ss. 4 and 5 of the Contempt of Courts Act, 1952, against the five appellants and S. K. Srivastava, A.S.D.M. The main allegation apart from

reciting the facts which we have already detailed above, was that "in spite of the knowledge of the interim stay dated 20th December, 1963 passed by the Hon'ble High Court the Sarpanch, the Opposite Party No. 1 and the members of the Bench, Opposite Parties Nos. 2 to 5 disobeyed the order of the Hon'ble High Court and disposed of the case on 25th December, 1963 and thus they committed contempt of the Hon'ble High Court". Affidavits were filed in the High Court by Baldeo Prasad, pairokar of Mahabir, Bunna Prasad, the Sarpanch, and Mahabir, and statements of Phagu Prasad and Bunna Prasad were recorded on oath. Bunna Prasad in his affidavit stated that as the Nyaya Panchayat was not satisfied for want of evidence by way of proper affidavit, etc., the Nyaya Panchayat proceeded with the case. Phagu Prasad, in his statement, stated :

"As the paper of Mahabir's application and affidavit was not good, we had asked him to get them written on a proper paper obtained from the Tehsil. We had also told him to get the affidavit verified before some Tahsil authority. We had told Mahabir as above before we had read the application and affidavit presented before the Nyaya Panchayat. Mahabir told us that he is not prepared to go to Tahsil, but is presenting before the Panchayat whatever he has got in his possession."

Phagu Prasad further stated that "no other affidavit had ever been filed before us, but we knew that in the law Courts the affidavits, which are filed, are verified by some authority". He further added that "the reason why we did not believe the affidavit of Mahabir was that it did not contain any date of the High Court's stay order" Bunna Prasad, in his statement, stated that he had told Mahabir to bring the affidavit on a good quality paper of full size, and Mahabir thereupon told him that he would present whatever he had. According to him, the Panches did not tell Mahabir that his affidavit was not proper; they, however, told him to get it verified in Tehsil and that it should be duly sealed.

8. The High Court, on examination of the evidence, came to the conclusion that it was the Sarpanch who had initially declared that the affidavit of the applicant was not proper and that the latter should file a proper affidavit in support of his allegations, though the Sarpanch had admitted in his deposition that he had no authority to tell Mahabir that his affidavit was not proper. It appeared to the High Court that "the Sarpanch first wanted to avoid the petitioner's affidavit being brought on the record by declaring that it was not proper because it did not fully evidence the fact that the High Court had passed an order staying proceedings before the Nyaya Panchayat." The High Court further held that "the Nyaya Panches faithfully accepted the objections raised by the Sarpanch and dittoed him about the impropriety of the petitioner's affidavit and inadequacy of the evidence contained therein regarding the stay order alleged to have been passed by the High Court." The High Court disbelieved the explanation of the Panches given before it because no mention of these was made in the order sheet dated December 25, 1963. The High Court held :

"There was no reasonable ground for the Panches to have doubted the averments made in the application and affidavit of Mahabir that the High Court had stayed further proceedings before the Panchayat, nor is there anything in the order sheet to show that the Panches did not believe the contents of the application and affidavit of Mahabir. However, if they wanted to ascertain the matter, they should have at best stayed the proceedings for a short while and should have asked the

applicant to produce a certified copy of the stay order. In the alternative, they should have verified from the Sub-Divisional Magistrate whether Mahabir had really filed an application and affidavit before him along with the original telegram received from his counsel at Allahabad saying that the High Court had already stayed the proceedings before the Nyaya Panchayat. But the Panches did nothing of the kind. The action of the Nyaya Panches in not doing so was obviously not bona fide and amounts to wilful disobedience of the High Court's order."

9. The learned counsel for the appellants, Mr. Chari, says that no contempt of court has been established because a Court is entitled not to act on an application which is not accompanied by an affidavit properly sworn to or a certified copy of the order. He urges that the Nyaya Panchayats exercised judicial powers and, even if the Panches erred in not staying proceedings, before finding them guilty of contempt of court it should be definitely proved that the order was passed deliberately to by pass the order of the High Court.

10. This Court quoted with approval the following passage from Oswald's Contempt of Court, in Hoshiar Singh v. Gurbachan Singh, 1962 Supp (3) SCR 127 at p. 138 = (AIR 1962 SC 1089 at pp. 1093-1094) :

"The judgment or order should be served on the party personally, except in the following cases: (1) prohibitive orders, the drawing up of which is not completed :

In order to justify committal for breach of a prohibitive order it is not necessary that the order should have been served upon the party against whom it has been granted, if it be proved that he had notice of the order aliunde, as by telegram, or newspaper report, or otherwise, and knew that it was intended to be enforced, or if he consented to the order, or if he was present in Court when the order was pronounced, or when the motion was made, although he left before the order was pronounced."

We need not consider whether it makes any difference in law if the order has been drawn up. We will for the purpose of this case assume that it does not make any difference. It is also clear that in such matters those who assert that a person had knowledge of the order must prove this fact beyond all reasonable doubt. If there is any doubt, the benefit ought to be given to the person charged with contempt of court. If a person bona fide comes to the conclusion on the material placed before him that the source of information is not authentic he cannot be held guilty of contempt of court for disobeying the order.

11. The question then arises whether the Sarpanch and the Panches had knowledge of the existence of the order of the High Court dated December 20, 1963. The only material before them was the application dated December 25, 1963, which was not supported by any affidavit sworn to before a person authorised to administer oaths. Further, the application did not contain the date of the order; even a copy of the telegram was not attached to the application and the application seems to have

been made after the proceedings on that date had commenced and evidence taken. We are unable to appreciate how on this material the bona fides of the Panches can be doubted if they refused to accept the mere statement of the party that the High Court had stayed proceedings before them. It seems to us that the High Court did not appreciate that the so-called affidavit which was filed before the Panches was in fact not an affidavit at all. It had not been sworn to before any person authorised to administer oaths. It was no part of the duty of the Panches to enquire from the S. D. M. about the filing of the application before him. At any rate, he has apparently no jurisdiction to stay proceedings before the Nyaya Panchayats when no proceeding is pending before him. It is true that in certain cases proceedings can be adjourned to enable the parties to file better proof, but a judicial officer is not bound to do so and, if he bona fide does not in his discretion adjourn proceedings, it cannot be said that he has committed contempt of court. It must also be borne in mind that Panches are not well-versed in law and procedure and the records maintained by them should not be judged in the same manner as that of ordinary courts. With respect, the High Court should not have drawn an adverse inference from the fact that the reasons for not accepting the prayer for stay were not recorded. Contempt of court is a serious matter and a High Court should be chary of finding a judicial officer guilty of contempt of court for disobeying its orders unless there is unimpeachable evidence that the judicial officer had knowledge of the order of the High Court. In our opinion, there is no such evidence in this case.

12. The learned counsel for the State contends that we should not reappreciate the facts, but, with respect, it seems to us that the High Court, while dealing with the evidence, has not kept in mind the principles which we have mentioned above.

13. In the result, we allow the appeal and set aside the judgment and order of the High Court.

Appeal allowed.