

Chajoo Ram

Vs

Radhey Shyam and Another

Criminal Appeal No. 195 of 1968

(I. D. DuaP. Jagmohan Reddy JJ)

23.03.1971

JUDGMENT

DUA, J. -

1. This appeal by special leave is directed against the judgment and order of a Division Bench of the Allahabad High Court, dated March 13, 1968 affirming the order of a learned Single Judge of that Court directing that a complaint be filed against the appellant for his prosecution for making a false statement in Para 10 of his affidavit, dated July 6, 1960, to the effect that he had not been acting as Sarpanch till December 7, 1957.

2. The relevant facts necessary for understanding the controversy may now be briefly stated. Chajoo Ram, appellant, was elected Sarpanch of the Nyaya Panchayat of Risia Bazar, Tehsil Nanpara, District Bahraich at the election held for that office on October 29, 1956. Radhey Shyam (respondent in this Court) who was defeated in that election filed an election petition an injunction was issued restraining the appellant from functioning as a Sarpanch. That order remained to force from December 3, 1956, to December 10, 1957. After the dismissal of the election petition, the appellant started functioning as Sarpanch. Several complaints also seem to have been made by Radhey Shyam and some others to the District Magistrate, alleging irregularities to have been committed by the appellant. As no action was taken on those complaints Radhey Shyam, respondent, filed a writ petition (W.P. No. 89 of 1960) in the Allahabad High Court praying for a mandamus directing enquiries into the allegations contained in his complaint against the appellant. This writ petition was allowed on September 4, 1961 and a writ of mandamus was issued directing the District Magistrate and the Sub-Divisional Magistrate to hold an enquiry against the appellant but the question of determining whether it was in public interest to hold an enquiry was left to those authorities. In the course of the writ proceedings several affidavits were filed in the High Court by the contesting parties. We are, however, only concerned with Para 10 of the affidavit, dated July 6, 1960 filed by the appellant. That paragraph reads :

"That the deponent was not acting as a Sarpanch till 7th December, 1957, when he was given over charge of the office of Sarpanch by opposite party No. 4 Chhotey Lal, Sahayak Sarpanch. Except the cases mentioned below none were entrusted to the benches by the deponent but were entrusted by the Sahayak Sarpanch opposite party No. 4 who was acting in place of the deponent under the orders of the court after the petitioner had filed election petition. The cases mentioned below were dealt with by the deponent under the old procedure in the absence of any directions issued to him".

Then four cases are mentioned which had been filed in November, 1956. In order to fully appreciate

the contents of this paragraph it is necessary too reproduce Paras 9 and 10 of Radhey Shyam's affidavit, dated March 28, 1960 to which the appellant's affidavit, dated July 6, 1960 was a reply :

"9. That the Sarpanch (opposite party No. 3) referred many cases to the Special Bench constituted by him. 21 cases out of the first list of 22 cases were allotted to his Special Bench by him. Further out of 62 criminal cases and 35 Civil cases instituted in the year 1956-57 the Bench consisting of the deponent as a Panch (Bench No. 1) was allotted only 16 criminal an 8 civil cases whereas, it should have been allotted 21 criminal and 12 civil cases.

10. That in many cases the deponent was not informed of the dates of the hearing fixed by Sarpanch and many a time he could not, therefore, present himself in the Bench and the cases were decided in his absence. Sarpanch who was not a member of this Bench, participated in the proceedings of this Bench".

In reply to Para 9 of this affidavit the appellant had stated in his affidavit of July 6, 1960 :

"There is no dispute with regard to the procedure laid down in this paragraph. It is a new amendment."

There was a rejoinder affidavit, dated July 15, 1960 filed by Radhey Shyam in which reply to Para 10 of the appellant's affidavit, dated July 6, 1960, is contained in Para 8 and it reads as follows :

"Regarding Para 10 - it is false and denied that Chajoo Ram, did not act as Sarpanch till the 7th December, 1957. As a matter of fact he was acting as Sarpanch throughout in violation of the stay order passed against him. It is also denied that other cases except those mentioned by Chajoo Ram in this para were not referred to the Benches by him. Chajoo Ram was throughout acting as Sarpanch and he in that capacity referred cases to benches according to his choice. The procedure followed by Sri Chajoo Ram opposite party No. 3 was in violation of the procedure laid down in the Panchayat Raj Act and the Rules framed thereunder. The rest of the contents of this para are denied".

The appellant filed a counter-affidavit, dated July 24, 1960, to this rejoinder. As we are only concerned with the contents of Para 10 in the appellant's affidavit, dated July 6, 1960, we need only refer to the relevant assertions in this counter-affidavit. In Para 1 the deponent stated that he had not been acting as a Sarpanch on July 6, 1957 and with regard to Annexure 34 it was submitted that the entire document had been written by Shri B. P. Joshi, Mantri whose duty it was to see that the provisions of the Panchayat Raj Act and rules and by-laws made thereunder and all orders issued or authorised by the Government or prescribed authority were complied with by the Gaon Panchayat and Nyaya Panchayat and to bring to their notice any irregularity or omission on their part. Shri Chhotey Lal, Sahayak Sarpanch had gone out on June 3, 1957 and had asked the deponent to do ministerial work which he could do under the Act. Radhey Shyam, respondent, filed a further rejoinder to this counter affidavit on he same day, viz. July 24, 1960, but in this rejoinder nothing new was stated on this point.

3. On December 10, 1962, Radhey Shyam, respondent, moved in the High Court an application under Section 476, Cr. P.C. for the appellant's prosecution. The learned Single Judge directed by his order, dated January 27, 1964, that a complaint be made against the appellant in respect of two

courts, one of them, which survives for our consideration, being that he had made a false statement in Paragraph 10 of his affidavit, dated July 6, 1960 to the effect that he had not been acting as Sarpanch till December 7, 1957. On Chajoo Ram's appeal before a Division Bench it was urged on behalf of Radhey Shyam as a preliminary point that the appeal was premature. This point was referred to a Full Bench, which answered the reference negating the preliminary objection. When the appeal came back to the Division Bench it was argued on behalf of the appellant that in view of the provisions of Section 479-A, Cr. P.C. no prosecution could be taken under Section 476 of the Code. This contention was repelled and it was held that a person filing an affidavit on court could not be considered to have appeared as a witness before that court as contemplated by Section 476-A. Dealing with the merits the Division Bench of the High Court observed that the respondent had placed on the record four receipts (Nos. 39 to 42) and "a copy of the report supposed to have been submitted by the appellant as Sarpanch to the Panchayat Raj Officer" indicating that the appellant had acted as Sarpanch between June 4 and June 6, 1957. The appellant's explanation, that Chhotey Lal, Sahayak Sarpanch was on leave from June 4 to June 11, 1957 and that the appellant had merely worked for Chhotey Lal in those days, was not accepted for the reason that this explanation was neither included in the affidavit filed by the appellant in reply to the application under Section 476, Cr.P.C. nor in a supplementary affidavit filed by him in connection with some other matter. The fact that Radhey Shyam, respondent, was prompted by considerations of malice in initiating these proceedings was considered to be immaterial. With respect to the second statement, which was also the subject-matter of the learned Single Judge's direction, the Division Bench held that charge to be unsustainable and the order of the single Judge directing a complaint to be filed with respect to that charge was set aside. The appeal was accordingly allowed in part and in regard to Para 10 of the affidavit, dated July 6, 1960 it was dismissed. It is this order which is assailed before us.

4. The first point which was pressed before us relates to the effect of Section 479-A, Cr.P.C. This section was added to the Code of Criminal Procedure by Act 26 of 1955, with the object of eradicating the evils of perjury. It overrides the provisions of Sections 476 to 479. In sub-section (6) it is expressly provided that no proceedings shall be taken under Sections 476 to 479 (inclusive) for the prosecution of a person for giving or fabricating false evidence if in respect of such a person proceedings may be taken under this section. The question to be seen, however, is if Section 479-A applies to the present case. Sub-section (1) of this section, so far as relevant, lays down that notwithstanding anything contained in Sections 476 to 479 (inclusive) when a civil, revenue or criminal court is of opinion that any person appearing before it as a witness has intentionally given false evidence in any stage of judicial proceedings or his intentionally fabricated false evidence for the purpose of being used in any stage of the judicial proceedings it may, after complying with the other conditions contained in this section, make a complaint in writing and forward the same to a magistrate. The crucial point to be noticed in this section is that it is only a witness who has appeared before the court who can be proceeded against. Now, the appellant quite clearly did not appear as a witness before the court. We undoubtedly filed sworn affidavits but it is possible to hold that by doing so he could be said to have appeared as a witness. Section 479-A, Cr.P.C. is, therefore, inapplicable and it cannot operate a bar to the proceedings under Section 476, Cr.P.C.

5. Before dealing with the merits of the case we consider it proper to refer to the proceedings before the District Magistrate, Bahraich pursuant to the order of the High Court, dated September 4, 1961. An enquiry, it appears, was got made by the District Magistrate through the Sub-Divisional Magistrate (Shri Nageshwar Singh). According to the report of the Sub-Divisional Magistrate, dated January 4, 1963 Chajoo Ram, appellant, was only found to have committed some irregularities in disposing of the cases but without any dishonest motive on his part. In the opinion of the Sub-

Divisional Magistrate, no action was called for against the appellant. It appears that the District Magistrate on February 17, 1963 desired a further probe into the matter. Shri K. P. Mathur, S. D. O. after going through the records of the Nyaya Panchayat once again endorsed the report of his predecessor observing :

"I also agree with Shri Nageshwar Singh that the allegations had no mala fide intention, the irregularities that had been found were due to inexperience or ignorance and are mostly commonly found in all Nyaya Panchayats not only in this district but in other districts also. Shri Chajoo Ram does not appear to have abused his position in any way".

It appears that in those proceedings also the appellant had filed an affidavit on December 8, 1961, affirming that he had not acted as Sarpanch for one year and that Chhotey Lal, Sahayak Sarpanch looked after the work of the Sarpanch during the period. Radhey Shyam, respondent, presented an application under Section 476, Cr.P.C. in the court of the District Magistrate also praying for the appellant's prosecution under Sections 193/181/182, I.P.C. for having deliberately filed a false affidavit. The matter was enquired into by the District Magistrate and after going through the entire material placed before him he came to the conclusion that the explanation given by Chajoo Ram was quite plausible and it was "doubtful to deduce" from the material placed before him "whether he had really acted as a Sarpanch of the Nyaya Panchayat or only as a Panch". The District Magistrate specifically referred to the files of some cases on which Radhey Shyam had relied in support of his allegation that the appellant had acted as Sarpanch but the District Magistrate was unable to uphold this allegation. Four receipts Nos. 77 and 59 to 61 were also relied upon by Radhey Shyam in support of his allegation but here again the District Magistrate was unable to hold that the appellant had acted as Sarpanch. As a result of the preliminary enquiry the District Magistrate held that the case of swearing a false affidavit was not made out against the appellant and the notice issued to him was discharged on May 4, 1964. Radhey Shyam took the matter on appeal to the Court of the Sessions Judge assailing the order of the District Magistrate, dated May 4, 1964, but without success. That court also came to the conclusion that the appellant was not shown to have acted as Sarpanch during the period in question. The final conclusion of the Sessions Judge was expressed in these words :

"The Court has also to consider whether after filing a complaint there is a possibility of conviction. The laches pointed out on behalf of the appellant committed by Chajoo Ram can be explained easily in law courts. I agree with the learned counsel for the respondent that the possibility of the conviction of the respondent appears to be quite remote. The learned court below after carefully considering all the facts and circumstances of the case came to the conclusion that it is not a fit case in which a complaint should be filed, and I agree with the view of the learned lower court.. All the circumstances have been fully explained by Chajoo Ram."

We are informed at the bar that a revision to the High Court against the order of the Session Judge was also dismissed but that order is not included in the printed records.

6. Before us reliance has been placed on four receipts, viz. receipt Nos. 59 and 60, dated June 4, 1957, for 12 P. as price of application form, receipt No. 61, dated June 6, 1957 on account of price of application form and receipt No. 77, dated June 4, 1957 for 53 P. on account of summons fee which is said to have been received by the appellant. On these days, according to the appellant, the Sahayak Sarpanch was on leave. There is nothing to suggest that this explanation is false and we do

not think that on the basis of these three receipts the appellant can be said to have acted as a Sarpanch. It is not shown that this was the function only of the Sarpanch and a panch could in no circumstances sign a receipt. The next document on which reliance is placed is a kind of a report to the Panchayat Raj Officer, dated June 6, 1957, informing him that some Panchas had not attended since the establishment of the Panchayat. In this document the appellant's signatures and the signatures of the Secretary, B. P. Joshi, both appear below the endorsement forwarding this report to the Panchayat Inspector for information and necessary action. This was explained by the appellant in his affidavit where he stated that the Secretary had inserted the word "Sarpanch" and on the appellant's objection to the use of this word, the Secretary had replied that this was a formal matter. From this document also we do not think it is possible to hold that the appellant intended to act as Sarpanch on June 6, 1957.

7. The prosecution for perjury should be sanctioned by courts only in those cases where the perjury appears to be deliberate and conscious and the conviction is reasonable, probable or likely. No doubt giving of false evidence and filing false affidavits is an evil which must be effectively curbed with a strong hand but to start prosecution for perjury readily and to frequently without due care and caution and on inconclusive and doubtful material defeats its very purpose. Prosecution should be ordered when it is considered expedient in the interests of justice to punish the delinquent and not merely because there is some inaccuracy in the statement which may be innocent or immaterial. There must be a prima facie case of deliberate falsehood on a matter of substance and the court should be satisfied that there is reasonable foundation for the charge. In the present case we do not think the material brought to our notice was sufficiently adequate to justify the conclusion that it is expedient in the interests of justice to file a complaint. The approach of the High Court seems somewhat mechanical and superficial : it does not reflect the requisite judicial deliberation : it seems to have ignored the fact that the appellant was a Panch and authorised to act as such and his explanation was not implausible. The High Court further appears to have failed to give requisite weight to the order of the District Magistrate which was confirmed by the Sessions Judge, in which it was considered inexpedient to initiate prosecution on the charge of alleged false affidavit that the appellant had not acted as Sarpanch during the period of the stay order. The subject-matter of the charge before the District Magistrate was substantially the same as in the present case. Lastly, there is also the question of long lapse of time of more than ten years since the filing of the affidavit which is the subject-matter of the charge. This factor is also not wholly irrelevant for considering the question of expediency of initiating prosecution for the alleged perjury. In view of the nature of the alleged perjury in this case this long delay also militates against expediency of prosecution. And then by reason of the pendency of these proceedings since 1962 and earlier similar proceedings before the District Magistrate also the appellant must have suffered both mentally and financially. In view of all these circumstances we are constrained to allow the appeal and set aside the order directing complaint to be filed.

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