

K. M. Singh

Vs

Secretary, Association of Indian Universities and others

Special Leave Petition (Civil) No. 10436 of 1991

(S. R. Pandian, K. Jayachandra Reddy, Yogeshwar Dayal JJ

21.04.1992

JUDGEMENT

YOGESHWAR DAYAL, J.:-

1. This Special Leave Petition filed by Sh. K. M. Singh, who was a finance officer of the Association of Indian Universities, AIU House, 16 Kotla Marg, New Delhi, is against the judgment dated 26th April, 1991 passed by the learned single Judge of the High Court of Delhi in Civil Revision No. 359 of 1989.
2. In the revision petition the petitioner had sought to set aside an order dated 30th January, 1989 passed by the learned Additional District Judge, Delhi, dismissing the application filed on his behalf wherein he had prayed for cancelling an order dated 14th October, 1988 vide which a part of the claim of the suit of the petitioner/ plaintiff covered by issue No. 1 was ordered to be dismissed as withdrawn.
3. The facts giving rise to the filing of the revision petition were that the petitioner had filed a suit inter alia for declaring that the resignation tendered by the petitioner/ plaintiff was involuntary and a result of fraud, coercion and threat as well as the inducement as alleged in the plaint. This plea of the petitioner was subject matter of issue No. 1.
4. During the course of the proceedings the petitioner had filed an application dated 14th October, 1988 purporting to be under O. 10, R. 2 read with S. 151 of the Code of Civil Procedure. In this application it was prayed that if Sh. Amrik Singh and Sh. R. P. Mahendroo, officers of defendant No. 1. took special oath in Gurudwara and Mandir ' respectively to the effect that the resignation of the plaintiff was not extracted from him on 5th April, 1976 under duress, fear, inducement, fraud, coercion then that part of the claim might be dismissed as withdrawn. The plaintiff/petitioner in fact made this statement before the Additional District Judge and Sh. Amrik Singh and Sh. Mahendroo accepted the said challenge. They were ready to take special oath in Gurudwara and Mandir in terms of the plaintiff's statement. Consequently a local commissioner was appointed by the Additional District Judge who administered the oath to the said two persons in Gurudwara and Mandir respectively, as desired by the plaintiff/ petitioner and accordingly the learned Additional District Judge ordered on 14-10-1988 dismissal of that part of the claim covered by issue No. 1 as withdrawn. The revision petition was directed against this order as well.
5. That on the next date i.e. 15th October, 1988 the plaintiff/petitioner filed another application with

the prayer to decide the aforesaid issue No. 1 on merits and evidence and the defendants may not be allowed to take advantage of the blunder committed by the plaintiff/ petitioner and for cancelling the order dated 14th October, 1988. This application dated 15th October, 1988 was dismissed by the trial court by order dated 30th January, 1989.

6. In the reply filed to the Special Leave Petition it is pointed out that the suit was fixed on 14th October, 1988 for further evidence of the defendants and in fact on the said date Dr. Amrik Singh was to be cross-examined by the petitioner. Dr. Amrik Singh as well as Sh. R. P. Mahendroo, Under-Secretary of the Association of Indian Universities were present in the Court and when the suit was called the petitioner filed the application dated 14th October, 1988 wherein he had offered to abide by the statement made by Dr. Amrik Singh and Sh. R. P. Mahendroo. Whereupon both Dr. Amrik Singh and Sh. R. P. Mahendroo expressed their willingness and agreed to take oath and accepted the offer. The petitioner affirmed the same and made a further statement before the Court as under:-

"Dr. Amrik Singh D. W. present in the Court and R. P. Mahindru, officials of the respondents take special oath in Gurudwara and Mandir respectively to the effect that the resignation of the plaintiff K. M. Singh was not extracted from him on 5-4-76 under duress, fear, inducement, fraud or coercion then that portion of the plaint shall be dismissed as withdrawn."

The said offer made by the petitioner was put to both Dr. Amrik Singh and Sh. Mahendroo and both of them accepted the same and also made the following statement in Court as under:-

"We are ready to take special oath in the Mandir and Gurudwara as stated by the plaintiff in his statement above."

In view of the offer made by the petitioner and accepted by both of them the Court thereafter passed the order reading as under:-

"Present - Plaintiff in person.

Counsel for the defendant.

One witness of the deft. Dr. Amrik Singh is present for further cross-examination by the plaintiff. However, the plaintiff has filed an application under R. 2 read with S. 151, C.P.C. and has stated that if the said witness of the defendant and Shri R. P. Mahendroo Under-Secretary of the defendant No. 1 takes special oath in the Gurudwara and Mandir respectively to the effect that the resignation of the plaintiff was not extracted from him on 5-4-76 under duress, fear, inducement, fraud or coercion, then that part of the claim of the plaintiff may be deemed to be dismissed as withdrawn. The witness and official of the defendant stated that they are ready to take the said special oath in the Gurudwara and Mandir respectively. Let statements be recorded. Statements have been recorded separately. The application filed by the plaintiff stands disposed of. The counsel for the defendant states that the defendant is ready and willing to pay the admitted part claim, if any, of the plaintiff. The plaintiff submits direction to go along with the parties and the witness to the Gurudwara and Mandir respectively for taking special oath. The plaintiff states that he is ready to bear the expenses of the local commissioner. Accordingly, I hereby appoint Sh. A. P.

S. Ahluwalia, Advocate, as Local Commissioner present in Court with the direction to visit along with the parties to Gurudwara Sisganj Sahib and Gauri Shanker Mandir today at 1 p.m. to take special oath by the said persons. His fee is fixed at Rs. 500/- to be paid by the plaintiff. The plaintiff has paid the fee of the, Local Commissioner in the Court."

7. Thereafter the petitioner paid the fee fixed by the trial Court to the Local Commissioner. The time and date for visit to Gurudwara and Mandir were fixed by the Court at the instance of the petitioner as well as Dr. Amrik Singh and Sh. Mahendroo. As per the directions of the Court the Local Commissioner in the company of the petitioner, Dr. Amrik Singh and Sh. Mahendroo went to Gurudwara Sisganj as well as Gauri Shanker Mandir both situated in Chandi Chowk, Delhi where the Local Commissioner administered the oath to both of them and their statements were recorded. Both of them denied that the plaintiffs resignation was obtained by fraud, coercion, threat and or that he was induced to tender the resignation. After the said oath was taken the matter was taken up in the afternoon session by the trial court when the Local Commissioner submitted his report to the Court whereupon the trial court passed the following order:

"Present - As before.

The Local Commissioner has filed his report to the effect that he has got the special oath administered to the witness and official of the defendant. In view of the statement of the plaintiff recorded earlier the suit of the plaintiff with regard to his resignation and consequential reinstatement which is covered by Issue No. 1 stands dismissed as withdrawn.

Now to come up for making payment by he defendant of the other claim of the plaintiff, if any, on 4-11-1988."

8. As stated earlier, thereafter, on 15th October, 1988 the application was filed for recalling this order dismissing a part of the suit as withdrawn. The trial court, however, took the view that S. 20 of the Evidence Act was applicable and it also took the view that the repeal of the Oaths Act, 1873 by S. 9 of the Oaths Act, 1969 nowhere debars the parties from entering into any contract.

9. High Court, as stated earlier, dismissed the revision petition and agreed with the view of the trial court. Before the High Court reliance was placed on the decision of the Karnataka High Court in Pacharanda Nanjappa v. Pacharanda Belliappa deceased by -Seethavva, ILR (1979) 2 Kant 2018. The High Court, however, did not follow the aforesaid decision and preferred to decide the matter in view of the decisions of the Madras High Court in J. A. Munnuswami Naidu v. K. S. P. Thyagaraya Chettiar, AIR 1977 Mad 273; Vasudeva Shanbog v. Naraina Pai (1 880) ILR 2 Mad 356; decision of the Punjab and Haryana High Court in Rustam v. Financial Commr. (1981) 83 Pun LR 759 and Full Bench decision of Punjab and Haryana High court in Mrs. Florabel Skinner v. Jai Bajrang Kala Mandir Ram Lila Mandal, Hissar, AIR 1980 Punj & Har 284.

10. Before us also the petitioner, who appeared in person, submitted that in view of the repeal of the Oaths Act, 1873 by the Oaths Act, 1969 the suit could not be decided on the basis of special oath. The petitioner also relied on the decision of the Orissa High Court in Ananda Chandra Sahu (deceased by L. R.) v. Ananta Khuntia, AIR 1983 Orissa 250.

11. It may be noticed that both the learned single Judge of the Karnataka High Court as well as the

learned Division Bench of the Orissa High Court were correct in noticing the effect of repeal of the Oaths Act, 1873 by S. 9 of the Oaths Act, 1969. But it appears the provisions of S. 20 of the Evidence Act were not brought to their notice. The learned Judges of the Karnataka High Court and Orissa High Court were right in observing in what cases the provisions of the Oaths Act, 1873 was to continue to govern and in which cases they would cease to apply. But as stated earlier, the provisions of S. 20 of the Evidence Act were not brought to their notice. Section 20 of the Evidence Act reads as follows:-

"20. Admissions by persons expressly referred to by party to suit.- Statements made by persons to whom a party to the suit has expressly referred for information in reference to a matter in dispute are admissions.

Illustration

The question is, whether a horse sold by A to B is sound.

A says to B - "Go and ask C, C knows all about it". C's statement is an admission.',

12. In *Hirachand Kothari (dead) by LRs. v. State of Rajasthan*, 1985 Supp SCC 17 : (AIR 1985 SC 998) this Court held thus:

"Section 20 is the second exception to the general rule laid down in S. 18. It deals with one class of vicarious admissions. Where a party refers to a third person for some information or an opinion on a matter in dispute, the statements made by the third person are receivable as admissions against the person referring. The word 'information' occurring in S. 20 is not to be understood in the sense that the parties desired to know something which none of them had any knowledge of. Where there is a dispute as regards a certain question and the Court is in need of information regarding the truth on that point, any statement which the referee may make is nevertheless information within the purview of S. 20 and is admissible. The reason behind admissibility of the statement is that when a party refers to another person for a statement of his views, the party approves of his utterance in anticipation and adopts that as his own. The principle is the same as that of reference to arbitration.

The reference under S. 20 may be by express words or by conduct, but in any case there must be a clear admission to refer and such admissions are generally conclusive. Admissions may operate as estoppel and they do so where parties had agreed to abide by them."

13. A similar question arose in *J. A. Munnuswami Naidu* (AIR 1977 Mad 273) (supra) before the Division Bench of the Madras High Court. There a suit had been filed on 16th June, 1971- for recovery of money against the appellant on the foot of a security bond. The second respondent in the suit was a puisne mortgagee. The appellant filed the written statement that the respondent, the first mortgagee had fraudulently suppressed the payment of interest in the security bond and if the proper account was taken the money will be due to the first respondent. When the suit was taken up for trial, the plaintiff agreed to take a special oath on his family deity that for the suit security bond no money except those shown by way of endorsement was received by him. It was also agreed that the plaintiff mortgagee taking such an oath, the suit may be decreed. The plaintiff took a special oath and the suit was decreed. The judgment debtor filed an unnumbered execution application

praying that the decree be declared as a nullity having been passed by the Civil Court having no jurisdiction. The executing court dismissed the objections to the execution and the matter came up in appeal before the High Court. The learned single Judge of the High Court dismissed the appeal. Whereupon the matter was taken up before the Division Bench. Kailasam, C. J. (as His Lordship then was) and Balasubrahmanyam, J. dismissed the Letters Patent Appeal. It was submitted before the Division Bench that because the Oaths Act, 1873 has been repealed, what the plaintiff had stated on special oath is not an evidence. The learned single Judge who had heard the appeal was confronted with the arguments that the date on which the special oath was taken the Oaths Act, 1873, which provided that when a special oath was taken under S. 10, it would be conclusive against the person who offered, was no longer in force as the said Act been repealed in 1969 and the new Act of 1969 dispensed with the procedure as to the taking of the special oath and its consequences. It was common ground that the special oath was taken in ignorance of the fact that the Oaths Act, 1873, under which the procedure as to the taking of special oath was admitted, had been repealed and that the new Oaths Act had no provision for such a procedure. The Division Bench observed that they could not accept the contention that because Oaths Act, 1873 has been repealed, what the plaintiff has stated on special oath is not an evidence. Earlier the single Judge had taken the same view.

The question directly in issue came up before a Division Bench of the Punjab and Haryana High Court in Thakur Singh v. Inder Singh, AIR 1976 Punj & Har 287. The Division Bench took the view that:

The only effect of exclusion of Ss. 9 to 12 of the Oaths Act, 1873 by Oaths Act, 1969 is that if any party to any judicial proceeding offers to be bound by any special oath and the Court thinks it fit to administer such an oath to the other party consenting thereto and such oath is taken by the other party, the evidence given on such oath as against persons who offered to be bound as aforesaid would no more be conclusive proof of the matter stated in such deposition. Where an agreement was arrived at between the counsel for parties that if the defendant were to take oath in a particular Gurdwara stating that the suit land was not of plaintiff and that defendant had not executed any agreement in favour of plaintiff, the suit of plaintiff be dismissed and in pursuance of the order of the Court on the basis of agreement, the defendant did take oath, there being no special oath either prescribed or taken and the suit having been dismissed on the basis of such oath,

Held that the compromise arrived at between the counsel for the plaintiff on behalf of his client and the defendant-appellant would be covered by S. 20 of the Evidence Act and the plaintiff would be bound by the statement made by the defendant if the same is found to have been made strictly in accordance with the terms offered by him."

14. It will be noticed that in the present case the oath was administered as per plaintiff /petitioner's statement and, therefore, there is thus no manner of doubt that the oath taken by two persons in pursuance of the offer of the petitioner amounted to admission of respondent's claim on his part within the meaning of S. 20 of the Evidence Act. The two persons were the nominees of the plaintiff and the statements of the nominee by virtue of S. 20 of the Evidence Act would be treated as an admission of the parties. Thus the orders of the trial Court dated 14th, October, 1988 and 30th January, 1989, were unassailable and the High Court has rightly dismissed the revision petition.

15. The Special Leave Petition is accordingly dismissed without any order as to costs. Petition dismissed.

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