ALLAHABAD HIGH COURT

Narotam Das

Vs

Emperor

(Yorke, J.)

21.10.1942

ORDER

Yorke, J.

1. This is an application in revision against the judgment of the Additional Sessions Judge of 'Allahabad at Mirzapur partly allowing the appeal of one Narotam Dass who was convicted by the Munsif of Mirzapur on 5th January 1942 of an offence under Section 228, Penal Code, and sentenced to pay a fine of Rs. 100 with 20 days' simple imprisonment in default. The learned Sessions Judge reduced the fine to Rs. 50 but otherwise dismissed the appeal. The facts of this case are quite simple. The applicant was a defendant in a regular suit before the Munsif of Mirzapur. In his defence he had disputed the jurisdiction of the Court. The case came up on 3rd October 1941 when the Munsif postponed the hearing of argument on this issue to 10th October. On that date, the Court decided the issue against the defendant holding that it had jurisdiction to try the suit. The applicant, Narotam Dass, took no steps of any kind for a period of more than two months. On 16th December 1941 he made an application in revision to this Court against the decision on the issue relating to jurisdiction. He did not at the same time make any application to this Court for stay of the proceedings in the Court of the Munsif.

2. The case came before the trial Court again s on 2nd January 1942 when Narotam Dass applied to the Munsif to postpone the case for two weeks to enable him to go to the High Court and bring a stay order. The Court, it seems, ordered that the case should come up on 5th January and that meanwhile the applicant should bring a stay order from the High Court if he so wished. On 5th January the applicant, Narotam Dass, it seems, brought no stay order but he filed an application to the Court for postponement of the case to enable him to move an application for transfer. The application contained a statement that the applicant was making the application for transfer because the Court had for some unknown reason become hostile to him. In effect the application was a statement that the Court had acquired a bias against the applicant by reason of which he would not be able to get a fair and impartial trial and that therefore he would move the District Judge for transfer of the suit to another Court. It was, of course, quite unnecessary for the applicant to include in his application this gratuitous and insulting statement that the Court had become biased. All that it was necessary for the applicant to say was that he desired a postponement because he proposed to move the District Judge to transfer the suit from the Court of the Munsif. The learned Munsif proceeded to take action at once against the applicant under

the provisions of Sections 480 and 481, Criminal P.C. When called upon to make a statement, the applicant said that he had had no intention to insult the Court and in effect he pleaded not guilty to the charge. The Munsif however proceeded to convict him. The learned Sessions Judge after considering a number of cases stated his view thus:
On reading the application No. 47 C I got the impression that this was added by Narotam Dass not because he wanted to move for a transfer, but because he felt himself aggrieved and wanted to tell the learned Munsif what he thought of him. It seems to me, therefore, that Narotam Dass'a idea was clearly intentionally to insult the Munsif. I am therefore of opinion that his conviction is correct.

3. Learned Counsel has contended that there was really no proof of any intention to insult and he has relied on a number of cases for the proposition that the intention cannot be inferred from the mere words of the application and that the Courts should not be particularly sensitive in regard to the wording of applications of this kind which are made to them. I confess that I am not very strongly impressed with this latter contention. The mere fact that the Courts do not usually bother themselves very much or show themselves very sensitive to insulting language used in applications tends to the increase of the practice of importing insulting language into such applications and in the long run to an increase of contempt of Court and to a lowering of the dignity of Courts. It is the duty of persons who come to Court with applications to be careful about the language they use, and in the present case it has been pointed out that the applicant came to Court with his counsel and presented the application in person. In all probability had he consulted his counsel and presented his application through him, the language which found a place would not have been allowed to find a place. On the question of intention, it has been pointed out by Mr. Chandra, holding the brief of the Deputy Government Advocate, that when the applicant was taxed in the proceedings of the Munsif with this use of insulting language he merely said that he had not intended to insult the Court. He never suggested that he might be allowed to strike out the insulting language which he used in the application, although, if there was no such intention, that was the obvious course for him to suggest. Moreover, the absence of necessity for bringing in this charge indicates that it was an intentional act.

4. Coming now to the decisions on the point, learned Counsel has referred to *Queen-Empress v. Abdullah Khan*[1] in which it was held by Burkitt J. that, where an accused person in making an application for transfer of the case pending against him inserted in such application assertions of a scandalous or defamatory nature concerning the Magistrate who was trying the case, there being no intention on the part of the applicant to insult the Court but merely to procure a transfer of his case, the applicant was not rightly convicted under Section 228, Penal Code. In this particular case, Abdullah Khan was on trial with others before a Deputy Magistrate on a charge of rioting and during the trial he presented to the trying Magistrate an application for transfer alleging for various reasons that he did not expect a fair and impartial trial. Some of the reasons were of a scandalous nature. This application, with which the Magistrate clearly could not deal himself since he had no power to transfer the case, was referred to the District Magistrate and the District Magistrate ordered the prosecution of Abdullah Khan under Section 228 and he was in due course convicted and his conviction upheld by the Sessions Judge. The judgment of this Court deals in the main with the subject-matter of this application and the correctness or the incorrectness of the allegations made; but so far as I am able to understand it, the learned Judge, if I may say so, with all respect, failed to consider the fact that the application for transfer was not an application with which the Magistrate to whom it was made was empowered to deal and

therefore all these allegations made in the application to the Magistrate were of a gratuitous nature and might well therefore have been considered to have been included in the application with the object of insulting the Magistrate. Another point which has escaped notice was that, so far as it appears from the judgment and the facts as stated in the preliminary note, there was no complaint to a Court by the Deputy Magistrate under Section 228 and it would seem probable that the District Magistrate had no power at all to order a prosecution of Abdullah Khan for insulting the Court. It seems to me therefore that this case is not really very helpful in the present case. The second case referred to is *Murli Dhar v. Emperor*[2] in which the headnote runs as follows:An application containing certain unhappy expressions presented to a Court, in which the applicants occupied the position of accused persons, does not raise the presumption that the intention was to offer insult to the presiding officer of the Court.

5. This was a case in which an application was made to a Magistrate asking for an adjournment on the ground that the applicants who were the accused intended to apply for transfer of the proceedings to another Court. It seems that the gist of the application was that the trying Magistrate was known to be a personal friend of the complainant, but the decision does not anywhere make it clear what the unhappy expressions used in the application were. Judging by the words used by Piggot J., it seems that the applicants had expressed themselves somewhat unhappily in making their point that the trying Magistrate was a personal friend of the complainant and that therefore the applicants could not hope for an impartial trial in his Court. It is to be noted again, that in this decision also no reference is made to the fact that the making of an application for adjournment did not necessitate the repetition of the allegations which might have been intended to be included in the actual application for transfer. Be that as it may, without knowing what the unhappy expressions were or whether the term 'unhappy wording' covers no serious insult, it is impossible, I think, to derive any great assistance from this decision. It must, I think, be a matter for consideration in each individual case how insulting the expressions used are and whether there was any necessity for the applicant to make use of those expressions in the application which he was actually making to the Court. Reference has also been made to a Punjab case, *Parshotam Lal v. Crown*[3] The headnote runs as follows: The chief ingredient of the offence contemplated by Section 228, Penal Code, is the intention of the offender. The question is not whether a judicial officer felt insulted, but whether an insult was actually offered and intended.

6. That was a case in which a pleader came into Court and spoke to the Sub-Judge, as the latter thought, in a very discourteous and insolent manner. The Sub-Judge inferred this to be an act of insult and convicted the pleader of an offence under Section 228, Penal Code, and this conviction was maintained by the Sessions Judge in appeal. Moti Sagar J. in revision held as follows: In the present case it is clear from all the circumstances that no insult had been offered, nor was there any intention on the part of the petitioner to insult or cause interruption to the learned Subordinate Judge. A judicial officer is no doubt fully entitled to maintain the dignity of the Court, but, as often pointed out, he should not be too sensitive and too ready to take offence where none is intended.

7. I do not think that this case is in any way helpful, although. I entirely agree with the principles stated. Prima facie I should have supposed that the question whether insult was intended must really turn on the tone in which the remarks were made by the pleader to the learned Sub-Judge, and that was a matter which was apparent to him and could not be apparent to either of the

Courts before which the case went in appeal or revision. The last case referred to is *Salag Earn v. Emperor*[4] and reliance has been placed on the remarks which are to be found on p. 175 where Iqbal Ahmad J. remarked:I am informed that Salag Earn has filed an appeal which is pending in the Court of the Sessions Judge (that is an appeal from the conviction under Section 228, Penal Code). As the appeal is to be heard and decided by the Sessions Judge, I refrain from expressing my opinion about the "propriety or otherwise of the conviction recorded by the learned Judge under Section 228, Penal Code, but I must observe that the learned Judge would have shown judicial balance by not taking notice of the passages in the application quoted above and by not taking proceedings under Section 228, Penal Code.

8. That was a ease where one of the accused made an application for adjournment to enable him to make an application to this Court under Section 526, Criminal P. C., in which he said:The applicant notices with regret that the Court is completely in the hands of the prosecution and is unable to show any mercy, favour or kindness to the innocent accused persona. The applicant has completely lost all faith. The applicant apprehends that the Hon'ble Court is unable to administer justice in this ease impartially.

9. It is a matter of opinion whether a Court should or should not take notice of gratuitously insulting remarks contained in an application for adjournment and I am by no means satisfied that it is wise to press the principle of taking no notice too far. In cases where the words used and the absence of necessity for including insulting suggestions in an application clearly suggests that there was an intention to insult the Court, I do not think it wise for the Courts to pass over such actions in silence. In my judgment, in the present case, the circumstances were rightly held by the two Courts below to indicate that there was an intention to insult the Court. The applicant was rightly convicted and it cannot possibly be said that the sentence ultimately inflicted upon him is at all too severe. This application accordingly fails and is dismissed.

Cases Referred.

11898 A. W. N. 145
2('16) 3 A.I.R. 1916 All. 330
3A.I.R. 1925 Lah. 210
4A.I.R. 1937 ALL. 171