

ALLAHABAD HIGH COURT

Lalit Kumar

Vs.

S.S. Bose

Criminal Misc. No. 1051 of 1956

(James, J.)

28.05.1956

ORDER

James, J.

1. This application by Mr. Lalit Kumar, a pleader of Bareilly, is under Section 561-A Criminal Procedure Code and seeks the expunction of certain derogatory remarks against him contained in the judgment dated the 13th March 1956 by Mr. S. S. Bose. Assistant Sessions Judge, in *State v. Dhani and Mool Chand*¹, under Section 392 Indian Penal Code. The application has been sponsored by the Bar Association of Bareilly.

2. The applicant is a panel pleader, i.e., in the absence of regular State Counsel he appears for the State in certain criminal cases and receives a daily fee, which I understand is Rs. 24/- for a full day's work and Rs. 12/- for work upto 1 p.m. He was appearing on behalf of the State in the aforementioned sessions trial before Mr. Bose.

3. The circumstances in which this application has arisen are not disputed, and indeed will be found in Mr. Bose's own judgment.

4. The case was heard on the 27th and 28th February 1956 and was adjourned for the following day. A police official named Mahendra Pal Singh had been summoned for the 28th but had failed to appear, apparently because he was then serving in another district and his summons had not been returned after service. On the 29th after the examination of one prosecution witness, the applicant sought adjournment of the trial on the ground that Mahendra Pal Singh had not turned up. Mr. Bose turned down the request on the ground that the trial had commenced on the 27th and that even if the applicant had moved the Court on the 28th the attendance of the witness could have been secured on the 29th through a special messenger. The applicant then presented another application praying that if the testimony of Mahendra Pal Singh recorded by the Committing Magistrate could not be read in evidence under Section 33 of the Evidence Act the case be adjourned. Mr. Bose rejected that application, holding that as the witness could be

procured without unreasonably delay Section 33 could not be invoked. Thereafter the applicant presented an application for staying the case as he

¹ *sessions trial No. 80 of 1955*

wished to move the Sessions Judge for transfer, stating that the rejection of the request for adjournment and for the application of Section 33 of Evidence Act had necessitated such a transfer. On this application Mr. Bose required "the party interested" to execute a bond for Rs. 200/- under Section 528, Criminal Procedure Code, but such a bond was not forthcoming, hence he proceeded with the trial and completed it towards the end of the working day. He however withheld delivery of judgment for a week. No transfer application was however made, and subsequently the District Government Counsel of Bareilly expressed regret to Mr. Bose for the incident and intimated that no application for transfer would be made. Mr. Bose delivered judgment on the 13th March acquitting the accused persons. In the penultimate paragraph of his judgment he gave an account of the adjournment matter and included a number of sentences to which the applicant takes exception. These were :

"Before closing the matter it is necessary to refer to the unbecoming conduct of Sri Lalit Kumar....."

"I cannot view with equanimity dilatory moves on the part of one who has a vested interest in delaying the case, i. e., on the part of one who gets remuneration on a Per diem basis." "Transfer proceedings are meant for preventing miscarriage of justice but they are not meant for holding out empty threats to the Court,"

5. These observations are per se derogatory to the applicant. They charge him with unbecoming conduct, with seeking an adjournment solely for dishonestly securing an extra day's fee, and with holding out empty threats to the trial Court. The applicant complains that they impute unworthy conduct to him and are calculated to injure him by lowering him in the estimation of his fellow-practitioners and the litigant public. It is further pointed out on his behalf that they were wholly unnecessary for deciding the case and that before making them Mr. Bose did not give him any opportunity of explaining his conduct.

6. This Court in the recent decision in '*State v. Chhotey Lal*²', has laid down the principles on which the High Court agrees to expunge objectionable remarks. It points out that the Court is very jealous in guarding the independence of Magistrates and Judges subordinate to it and encourages them to feel that they can fearlessly give expression to their opinions in the Judgments which they deliver. But three necessary limitations prescribed are : first, no person should be condemned unheard; second, in making his criticism the Magistrate or Judge should not travel outside the record; and third, the criticism should be made with sobriety and a due sense of responsibility.

7. I should like to observe at the very outset that with regard to the proceedings of the 29th February there was fault on both sides : after, refusing an adjournment for the appearance of

Mahendra Pal Singh Mr. Bose should not have declined to admit his previous statement under Section 33 of Evidence Act, for the statement was of a formal nature and its admission would not have caused any prejudice to the defence case; on the other hand, the applicant was ill-advised in moving for transfer on finding that his requests had been turned down. Nevertheless, I have been unable to

⁷1985 All LJ 240

discover any justification for the remarks which Mr. Bose passed against the applicant in his judgment. For one thing, he did so in violation of the principles laid down in this Court's decision aforesaid. First, he condemned the applicant without giving him a chance of explaining his conduct. Second, in making his criticism he travelled outside the record, for there was nothing to suggest that the applicant wanted to dishonestly secure an extra day's fee. The work for the 29th was sufficient to keep the Court engaged for the whole day, so that even if Mahendra Pal Singh had been present an adjournment for his evidence could not be avoided, thereby entitling the applicant to extra fee. Besides, the applicant has filed a chart showing that between the 19th May 1955 and the 12th December 1955 there were no less than thirteen occasions when he worked well after the normal Court hour of 4 p. m., establishing thereby that he is not in the habit of devising means for obtaining extra fee - had the contrary been the case he would have sought adjournments after 4 p. m. Third, the unsubstantiated accusations of unbecoming conduct of dishonesty in securing fees and holding out threats to the Court, would be serious ones against any citizen, still more so against a practicing lawyer. In leveling them at the applicant Mr. Bose cannot be deemed to have acted with a due sense of responsibility. Besides, the impugned Paragraph of the Judgment was entirely unnecessary for the decision of the case, if Mr. Bose felt that there was suspicion of unworthy conduct on the part of the applicant he could have given expression to his feelings by means other than proclaiming them in a public document like a judgment.

8. The record does not bear indications of a "breeze" in Court, hence I assume that his ire has been aroused by the applicant's move for transfer. This must be regretted. Presiding Officers of Courts are after all human beings and therefore their human frailties must be recognized. We can therefore understand Mr. Bose taking offence at the transfer move, more especially if he honestly felt that he had not passed any unjust order. Nevertheless, Presiding Officers would do well to remember that the very position of power and responsibility in which the law has placed them requires that the power be exercised with moderation; the temptation of being vindictive must be firmly resisted, more so when the person concerned is a respectable lawyer who in the course of the discharge of his professional duty, often times unpleasant, and in exercise of the rights conferred on him by the law, feels bound to take steps which the Presiding Officer does not entirely relish. As a distinguished jurist has said :

"The judicial robe should submerge personality and make its wearer, like a priest investment, an impersonal part of a divine function. In the instant case personal feelings should not have been allowed to override the impersonal functions of a Judge. Uncalled

for structures in a Judgment can well might tear a person's reputation into shreds and cause him irreparable harm. But Mr. Bose is yet a comparatively junior and inexperienced officer, a circumstance which may legitimately be taken in extenuation of his act; it is only hoped that he will bear these observations in mind for his future guidance.

9. For the reasons given above I hold the penultimate paragraph of Mr. Bose's judgment to be without justification and in contravention of the principles laid down by this Court. Accordingly I allow this application and order the paragraph in question to be expunged. I pass no order as to the costs of this application.

Application allowed.