Emperor Vs. Jaggan and anr.

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Court : Allahabad

Decided On : Feb-04-1914

Reported in : (1914)ILR36All239

Judge : George Knox, J.

Appellant : Emperor

Respondent : Jaggan and anr.

Judgement :

Knox, J.

1. This is an application for the transfer of a case pending in the court of the Joint Magistrate of Cawnpore and the prayer is that it be transferred to another district outside Cawnpore and be tried there by a competent Magistrate. The application is, as the law requires, supported by an affidavit. The affidavit extends over twenty-one paragraphs. The person who makes the affidavit is one Kunwar Cheda Singh and he describes himself as the pairokar of the applicants Jaggan and Budhu.

2. The proceedings out of which the application arises are proceedings brought under Section 110 of the Code of Criminal Procedure.

3. The record is not before me, but the applicants have been represented in court by learned Counsel. The application has been opposed by the learned Government Advocate appearing on behalf of the District Magistrate of Cawnpore. From the arguments addressed to me the case is apparently one which was based upon Section 110, Clause (d). The learned Counsel who appears for Budhu describes the application, which was instituted as far back as the 23rd of October, 1913, as an application that the two men, Jaggan and Budhu with others had been in the habit of extorting moneyes, &c.; I am told that no fewer than thirty witnesses had been put forward as being witnesses who would depose to the fact that Jaggan and Budhu were persons who habitually committed extortion. At a later stage of the case the police, I understand, asked that six witnesses more might be sent for; they were sent for and examined. The exact date is not before me, but it may be inferred from paragraph twelve of the affidavit that some time before the 18th of November, 1913, Jaggan and Budhu had been called upon to enter upon their defence and to produce their evidence. Jaggan and Budhu appear to have asked that the witnesses who had deposed against them might be recalled and cross-examined, For the purposes of this cross-examination Jaggan and Budhu, according to the affidavit, retained the services of Mr. Lincoln, barrister-at-law of the Lucknow Bar, and of Mr. Khare, Mr. David and Mr. Ajudhia Nath Tiwari of the local Bar. The cross-examination appears to have lasted up to the 24th of November, 1913, when in consequence of something which

occurred in the course of the cross-examination Mr. Lincoln and Mr, Khare (vide paragraph 13 of the affidavit) threw up their briefs and retired from the case. According to the affidavit (vide paragraph 17) the Joint Magistrate fixed the 20th of December as the date for producing defence witnesses. A partial list of witnesses, so runs the affidavit, was obtained. Before the cross-examination was over, another list of over 200 witnesses was filed on the 19th of December. The request was that these 200 witnesses be summoned, The Joint Magistrate, so I am told by the learned Counsel for Budhu, asked that this Hat might be considered and modified. No modification was made, and the Joint Magistrate by an order which is not before me, but which was read over to me in court, dismissed the application for the summoning of these witnesses and in his order stated that he refused it under the powers given him under Section 257 of the Code of Criminal Procedure as an application made for the purpose of vexation and delay and for defeating the ends of justice. He appears to have followed the law and to have recorded the reasons for refusing the application in writing. In the arguments addressed to me in support of the application for transfer no attempt was made to support the application on any ground except that contained in paragraph (e) of Clause (1) of Section 526, i.e. that the order was expedient for the ends of justice. From certain remarks made I was led to infer that the applicants apprehended that they would not have a fair and impartial inquiry in the court of the Joint Magistrate, so I have considered the application both in the light of paragraph (a) and of paragraph (e) of Section 526.

4. I now turn to the affidavit.

5. The first eight paragraphs of the affidavit set. out matter which appears to me wholly irrelevant and which ought never to have found any place in the affidavit. They are to the effect that Jaggan had interested himself in favour of one Pandit Ajudhia Nath Tiwari in an election connected with the Cawnpore Municipal Board somewhere in the year 1913 and that Budhu is on friendly terms with Jaggan. These two, which are the main facts in the paragraphs, do not in any way point to the conclusion that a fair and impartial inquiry cannot be had in the court of the Joint Magistrate or that it is expedient that an order of transfer be made for the ends of justice. The deponent appears to have been of the same opinion, for in his affidavit he calls attention to the paragraphs, beginning from paragraph 9 onward, as being matters concerning the application for transfer, and it is very evident that the cardinal hinge of his application is what the deponent describes as a ' heated controversy between the Joint Magistrate and Mr. Lincoln ' in winch the latter argued that he should be allowed to do his duty towards his clients, unhampered.

6. I will deal with that, later on. Paragraphs 14, 15 and 16 refer apparently to the additional six witnesses whom the police asked might be sent for and examined. I take these paragraphs as representing in the strongest light the matters which the deponent thinks open to exception. Assuming these matters to be accurately stated, they appear to relate to evidence which in my opinion was irrelevant to the matter before the learned Joint Magistrate. Section 117 of the Code lays down that when a Magistrate is inquiring into a case of this kind he should inquire into the truth of information upon which action has been taken. The matter described in these paragraphs relates to occurrences which took place after the information mentioned in Section 110 had been received by the Joint Magistrate. They were, therefore, outside that information. Section 117 does say that the Magistrate may take such further evidence as may appear necessary, but I am of opinion that the further evidence referred to here is evidence ejusdem generis with the evidence described in

the words which immediately precede it. I cannot, however, learn from the application or the arguments addressed to me that if the Magistrate committed an error in taking this evidence he did so from any reason other than the liability to err which is human. The case has not yet been concluded. I am not in a position to pronounce upon this evidence at all, it may be more relevant than it appears to me to he, but if it be irrelevant, consideration of it can easily be excluded from the judgment. These paragraphs do not make it appear to me that from the action of the Magistrate either Clause (a) or Clause (e) need be considered.

7. With paragraphs 17, 18,19 and 20, I shall presently deal. They relate to the dismissal of the application put in for the summoning of the 200 defence witnesses. Paragraph 21 was not insisted upon, and very properly not insisted upon. The only inference I draw from it is that Cheda Singh is a man who allows his mind and judgment to be diseased by a matter which was not open to any sinister conclusion.

8. It remains for me now to consider whether, either from the so-called heated controversy between the Joint Magistrate and the learned Counsel for Jaggan and Budhu or the refusal to summon the 200 witnesses, it has been made to appear to me, for that is what the law requires, that a fair and impartial inquiry cannot be had in the court of the Joint Magistrate or that the order of transfer is expedient for the ends of justice. My attention was called to certain rulings, both of this Court and the Calcutta High Court, bearing upon Section 526 of the Code of Criminal Procedure. The principles contained in this section exist and have existed from the passing of Act No. X of 1872, if indeed they did not exist in the Acts preceding that date, and they have been considered by both these Courts on more than one occasion. I do not propose to allude to all these cases or to certain other cases which were cited to me as to whether or not this Court has the power of transfering from one district to another, eases falling within Section 110 of the Code of Criminal Procedure.

9. In a very recent case i.e. Sumeshwar v. King-Emperor (1913) 13 A. L. J. 33. I had to consider very much the same question as that now before me, and I then came to the conclusion that the law did not intend that a transfer of a case should be ordered simply because an accused person thinks that he would not get an impartial trial, but the real question to be considered is whether on the facts disclosed in the application, and, I might add, in the affidavit supporting the application for transfer, there arises a reasonable apprehension that the Magistrate who is seised of the case may be prejudiced, wittingly or unwittingly, against the accused.

10. The learned Counsel who appeared for Jaggan, while accepting that this was in consonance with previous rulings of this Court, contended that there were incidents in the present case from which the reasonable inference would be that the atmosphere in which this case would be tried in Cawnpore was now so heated that an order of transfer would be a proper order and that those incidents, though capable of explanation, were incidents calculated to create in the mind of the accused a reasonable apprehension that he might not have a fair and impartial trial. This very point arose and was considered by the Calcutta High Court in Empress v. Nobo Gopal Bose (1880) I. L. R. 6 Calc. 491. The learned Judge who decided that case, in which the affidavit was to the effect that the case was causing considerable excitement in the district and that most of the inhabitants of the district had their sympathies enlisted on one side or the other, did not consider it a sufficient reason. This was the substance of what was held in Farzand Ali v. Hanuman Prasad (1896) I.L. R. 19 All. 64. and is apparently derived from the earlier case of Dupeyron v. Driver (1896) I. L.

R. 23. Calc. 495. A careful study of both these cases will, I think, show that they have been somewhat misunderstood and have led more than once to the result that Section 526 must be taken to really mean ' whenever it is made to appear to the High Court or to the accused that a fair and impartial inquiry or trial cannot be had in a Criminal Court, ' &c.; The learned Judges who decided the Calcutta case appear to have rested their decisions on certain words used by Lush, J, in Serjeant v. Dale (1877) 2 Q. B. D. 558 (567). That was a case under the Public Worship Regulation Act, 1874, and the question under consideration was whether the Bishop of London was by reason of interest prohibited from determining whether proceedings ought or ought not to be taken against an incumbent on account of alleged illegal practices. It is a case which stands quite by itself.

11. The principle which underlies or is contained in the maxim 'nemo debet esse judex in propria causa ' is that a person who has a judicial duty to perform disqualifies himself if he has a pecuniary interest in the decision which he is about to give or a bias which renders him otherwise than an impartial Judge. In the latter case the question must be a question of substance and of fact whether he has in truth also been an accuser. Leeson v. General Council of Medical Education and Registration (1889) 43 Ch. D. 366 (384). The interest must be substantial Queen v. Meyer (1875) 1 Q. B. D. 173 so as to make it likely that the justice has a real bias, the mere possibility of bias is not Sufficient to disqualify; Queen v. Handsley (1881) 8 Q. B. D. 383. In Allinson v. General Council of Medical Education and Registration (1894) 1 Q. B. D. 750 (758). Lord Esher delivered himself of the following exposition of the law--the passage will bear repetition in extenso: 'Public policy requires that in order that there should be no doubt about the purity of the administration, any person who is to take part in it should not be in such a position that he might be suspected of being biassed. To use the language of Mellor, J. in The Queen v. Allan (1864) 4 B. and S. 915.---'It is highly desirable that justice should be administered by persons who cannot be suspected of improper motives.' I think that if you take that phrase literally it is somewhat too large, because I know of no case in which a man cannot be suspected. There are some people whose minds are so perverse that they will suspect without any ground whatever. The question of incapacity is to be one of substance and fact' and therefore it seems to me that the man's position must be such as that in substance and fact it cannot be suspected. Not that any perversely minded person cannot suspect him, but that he must bear such a relation to the matter that he cannot reasonably be suspected of being biassed. I think that for the sake of the character of the administration of justice we ought to go as far as that, but I think we ought not to go any further.' So also Lopes, J., at 762.

12. What were the incidents which the learned Judges had to consider in the Calcutta case of Dupeyron. v. Driver (1896) I. L. R., 23 Calc. 495? They found that the Magistrate had issued an order contrary to law, and so contrary that it was well calculated to create a reasonable apprehension in the mind of the accused that the Magistrate was biassed against him. They referred also to an older case of Girish Chunder Ghose v. Queen-Empress (1893) I. L. R. 20 Calc. 857 in which with the same view incidents were discussed. They found that in that case the District Magistrate had initiated and directed the whole proceedings, he had apparently been personally interested in them, he had described matters which came under his own observation and from these incidents they came to the conclusion that there was a reasonable apprehension in the mind of the accused that he would not have a fair and impartial inquiry. In Farzand Ali v, Hanuman Prasad (1896) I. L. R., 19 All., 64. the learned Judges of this Court who followed the rulings above quoted also considered incidents

attached to the case. They found that the Magistrate had been acting on information got out of court and that he permitted rumours relating to the accused in a pending case before him, to reach him out of court and allowed his mind to be influenced by such rumours. He issued a warrant illegally directing the issue of an order of attachment of the whole of the property of the accused, movable and immovable, and all these incidents had taken place in connection with the case before him.

13. In the present case what are the incidents? As I have already pointed out they are two. The first is the so-called interference by the Joint Magistrate with the cross-examination conducted by the learned Counsel for Jaggan and Budhu and the refusal to summon 200 witnesses mentioned in a subsequent order. There is nothing further. I have examined both these orders as far as I could very carefully and in both cases the Magistrate appears to have been acting in strict accordance with the law; he was exercising a jurisdiction which the law conferred upon him. There is nothing which leads me to suppose that if after the witnesses, 20 or more, mentioned in the first list had been examined the accused had gone on and satisfied the Magistrate that there were other witnesses the examination of whom was necessary in the interests of justice, the Magistrate would not have summoned those witnesses under the special power given under Section 540. When the Magistrate was called upon to summon 200 witnesses in a matter of this kind, he would, in my opinion, have exercised his jurisdiction wrongly had he without further consideration summoned those witnesses and put them to the inconvenience of coming to court. So far as I can judge he was right in his conclusion that the application was one made for the purpose of vexation and delay. In any case he had jurisdiction to refuse the application, and it has not been shown to me that the jurisdiction was wrongly exercised. The suggestion in the affidavit that the Magistrate had given the accused only two days in which to produce his defence witnesses is a perverted view of what really did take place. Next with regard to the interference with the cross-examination. From the Magistrate's order, which was read out to me, it appears, and the contrary has not been shown, that the learned Counsel for Budhu and Jaggan in cross-examining one witness put to him the question whether he had not been found guilty of cheating. The allegation was denied He put to another witness the question whether that witness had not been convicted of an offence under Section 498 of the Indian Penal Code. This allegation also was denied, and from the order it would appear that it was when he was addressing a question of a similar nature to a third witness that the court stooped him.

14. I go simply upon what is before me and It is open to the possibility that there has been soma mistake or error in his order, but the contrary has not been shown. If the order of the Judge is an accurate representation of what occurred, I can only say that the learned advocate had no right whatever to put such questions to the witness. He was transgressing the provisions of Section 155 of the Evidence Act, and the Court was right in such a case in interfering under the provisions of Sections 151 and 152 of the Evidence Act. As the framer of the Act in his speech pointed out, these sections, as far as their substance is concerned, speak for themselves and they would be admitted to be sound by all honourable advocates and the public. It is impossible for me to say what were the other interferences referred to. The affidavit does not disclose them and the arguments addressed to me do not and it is my duty under such circumstances to hold that the Magistrate acted properly and in order (omnia praesumuntur rite et solemniter esse acta.). The incidents are then incidents in accordance with the law, they seem to me a judicious exercise of the discretion vested in the court, the Judge was apparently upholding the order and dignity of the court, and I cannot infer from them that there is any danger of the inquiry being unfair or

partial. I find no reason to suppose that the order, if I did make it, would be an order in the interests of justice; on the contrary, such an order would militate against paragraph (d) of Clause (1) of Section 526. To sum up, all the circumstances as disclosed to me show that there was no bias or probability of bias and no interest. The Joint Magistrate appears to have gone no further than to take care that the principles of law laid down in the Criminal Procedure Code were properly observed and maintained in the case before him. I, therefore, dismiss the application.