

Nistarini Debi Vs. A.C. Ghose, Overseer, Howrah Municipality

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Court : Kolkata

Decided On : Jul-18-1895

Reported in : (1896)ILR23Cal44

Judge : Macpherson and ;Banerjee, JJ.

Appellant : Nistarini Debi

Respondent : A.C. Ghose, Overseer, Howrah Municipality

Judgement :

Banerjee, J.

1. The petitioner, who has preferred an appeal to the Magistrate of Howrah against a conviction and sentence under Section 217, Clause 5, of the Bengal Act III of 1884, asks us to transfer the appeal from the Court of the Magistrate of Bowrah to that of the Magistrate of the 24-Pergunnahs, on two grounds : First, that, under Section 555 of the Criminal Procedure Code, the District Magistrate of Howrah is not competent to try the appeal, as he is personally interested in the case by reason of his being the Chairman of the Howrah Municipality, at whose instance and under whose sanction the prosecution was instituted; and, second, that even if it be held that the Magistrate is not incompetent to hear the appeal, still, under Section 526 of the Criminal Procedure Code, Clause (e), the transfer applied for is expedient for the ends of justice.

2. In support of the first ground, the learned Vakil for the petitioner contends that though, by the explanation to Section 555 of the Criminal Procedure Code, a Magistrate shall not be deemed to be a 'party or personally interested,' merely because he is a Municipal Commissioner, in the present case the Magistrate is something more than merely a Municipal Commissioner. He is the Chairman, or executive head, of the Municipality; and, ordinarily, municipal prosecutions are to be instituted under his sanction, as will be seen from Sections 353 and 44 of Bengal Act III of 1884. It is true that by Section 45 of the Act, the Chairman may, by a written order, delegate to the Vice-Chairman all or any of the powers or duties of a Chairman as defined in the Act, and the learned Magistrate in his explanation says that the power of sanctioning municipal prosecutions has been so delegated: but that does not, in my opinion, materially alter the case. Although the power has been delegated, the office to which the power appertains still continues to be held by the Magistrate. The Chairman's connection with and his interest in a Municipality are very different from those of an ordinary Municipal Commissioner. That being so, and having regard to the restricted form in which the explanation to Section 555 of the Criminal Procedure Code, excepts the case of a Magistrate who is a Municipal Commissioner from the rule disqualifying a Judge or Magistrate from trying a case in which he is

personally interested, I think Section 555 renders a Magistrate incompetent to try a municipal case where he is the Chairman of the Municipality. This view is fully supported by the case of Queen-Empress v. Erugadu I.L.R. 15 Mad. 83; and the case of Kharak Chand Pal v. Tarack Chunder Gupta I.L.R. 10 Cal. 1030, though not exactly on all fours with the present one, lends considerable support to the view I take. The case of Queen-Empress v. Pheroza Pantonji I.L.R. 18 Bom. 442 appears to be in conflict with this view; but the conflict, I think, is only apparent and not real, for the facts of that case were different from those of the present one. The position of the Magistrate so far as can be judged from the report, was not the same as that of the Magistrate in the present case, and the learned Judges who decided that case observe that the cases of Queen-Empress v. Erugadu I.L.R. 15 Mad. 83 and Kharak Chand Pal v. Tarack Chunder Gupta I.L.R. 10 Cal. 1030 are distinguishable from the one that they had before them.

3. A question might be raised as to whether Section 555* disqualifies a Magistrate from hearing an appeal merely by reason of personal interest, when it only provides that 'no Judge or Magistrate shall, except with the permission of the Court to which an appeal lies from his Court, try or commit for trial any case to or in which he is a party or personally interested, and no Judge or Magistrate shall hear an appeal from any judgment or order passed or made by himself.' I am of opinion that the words 'try any case' are comprehensive enough to include the hearing of an appeal. The reason of the rule is quite as applicable to the hearing of an appeal as to the trying of a case in the first instance, and the express provision in regard to an appeal is made for a different purpose altogether.

4. Upon the first ground, therefore, I think the petitioner ought to succeed, and the transfer applied for ought to be granted. But even if the first ground had failed, I should have thought that the petitioner was entitled to have the transfer applied for upon the second ground, as it is desirable that parties should have the fullest confidence in the tribunal that has to try them. Next only to the importance of a fair and impartial administration of justice, is the importance of the confidence of parties in the fairness and impartiality of the tribunal which has to try their case.

5. For these reasons, I would transfer the appeal to the Court of the Magistrate of the 24-Pergunnahs for trial.

Macpherson, J.

6. I do not think it necessary to decide in this case the broad question, whether a Magistrate, who is also the Chairman of a Municipality, is incapacitated under the provisions of Section 555 of the Code of Criminal Procedure from trying a case or hearing an appeal in which the prosecution has been sanctioned by the Municipality. I think it is unnecessary, because I have no doubt that even if the Magistrate is qualified to hear the appeal, he ought not to do so. As Chairman, he is the executive head of the Municipality, and, under the law, he is vested in many matters with the power of the Commissioners.

7. The question which is practically raised in this case is, whether the petitioner before us has encroached upon land which the Municipality claim to be a road, but which he claims as his own property, free from any right of way over it. That is a question in which the Municipality as a body is undoubtedly interested, and without making any reflection on the Magistrate before whom the case would, in the ordinary

course, come in appeal, it may very well be that the appellant may not regard the tribunal as one which is independent and unconcerned in the results.

8. For these reasons, I think that the order of transfer ought to be made apart altogether from the question whether there is a disqualification under Section 555 of the Code of Criminal Procedure. On that point I should prefer to reserve my opinion rather than decide it in the present case. We agree, therefore, in making the rule absolute, and the appeal will be transferred for trial to the District Magistrate of Alipore.

* Case in which Judge or Magistrate is personally interested.

[Section 555: No Judge or Magistrate shall, except with the permission of the Court to which an appeal lies from his Court, try or commit for trial any case to or in which he is a party, or personally interested, and no Judge or Magistrate shall hear an appeal from any judgment or order passed or made by himself.

Explanation: A Judge or Magistrate shall not be deemed to be a party or personally interested, within the meaning of this section, to or in any case, merely because he is a Municipal Commissioner.]

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