

(1922) 01 PAT CK 0019
In the Patna High Court
Case No : Cr. Rev. No. 612 of 1921

Bir Narayan Singh

APPELLANT

Vs

King Emperor

RESPONDENT

Date of Decision : 22-01-1922

Acts Referred:

Citation : (1922) 01 PAT CK 0019

Judgement

Jwala Prasad, J.—This rule was issued by Adami and Bucknill, JJ., against the following order passed by the Magistrate of Daltonganj, dated the 17th September, 1921 :-

"At the same time my impression after going through all the evidence and Police papers, etc., in the case is that the case is not false. I do not believe that any money was extorted from Ram Pratap Singh, but it seems to me that the other two complainants were made to pay some money before they were let off, but on account of their being influenced by Ram Pratap Singh and Jai Prakash Singh, who wanted to improve upon the facts, they have not told a genuine story and have mixed up facts and thus made their evidence untrustworthy and unsafe. Enter true; Sections 384 and 384-114, I. P. C."

2. The petitioner is the Sub Inspector of Police and was called upon to stand his trial before the Magistrate upon charges under the aforesaid Sections 384 and 384-114, I. P. C. along with, one Mahadeo Puri, for having extorted money from three persons, namely, Ram Pratap Singh (P. W. 1) Badri Dusadh (P. W. 2) and Bhukhan Dusadh (P. W. 3) of village Sundipura, in connection with an enquiry into a case of wrongful confinement, assault, etc., alleged before the Sub-Inspector by a woman, Deomonina Mallahin, against 24 persons of the village.

3. The defence in the case of the accused was that the entire case was false and concocted, having been engineered by a veteran enemy of the accused. The trial ended in the acquittal of the accused of all the charges. The Magistrate examined the facts of the case and the evidence in a very great detail.

4. The case of the prosecution and the witnesses on behalf of the prosecution was that money was paid to the accused persons on the 6th day of their arrival in the village. To rebut this the defence filed diaries of the case of Deomonina Mullahin from the 16th to the 20th of April, showing that the Sub-Inspector reached village Sundipura on the 16th of April, at 11 A.M., and left the village at 4 P.M., on the 20th, and thereby proving that he could not be in the village on the date on which the extortion is said to have taken place.

5. In support of this, the Sub Inspector also filed the personal diary of the Head Constable, Abdul Rashid. The learned Magistrate accepted the defence case to be true and stigmatised the case of the prosecution to be false in the following words:-

"Thus there can be no doubt that the statement that money was paid to the accused persons at Sundipura on the sixth day of their arrival there (on the 21st April, 1921) is false."

6. Similarly he characterised the statement of the witnesses on the point in the following words :-

" That it was perhaps forgotten that the witnesses thereby rendered their evidence valueless by their statements being shown to the contrary to facts."

7. The learned Deputy Magistrate, proved by means of documentary evidence, stated by him in his judgment that Ram Pratap Singh complainant had perjured himself at every material point of the case. He relied upon the bail bonds (Exhibits G. H. I. J. and K.) containing the thumb impressions of the bailors, showing that those persons were present in Daltonganj Court on the 19th of April and consequently "if any payment was made, it must have been made on or before the 19th of April."

8. As to the persons named above having been called upon by the Sub-Inspector for the purpose of negotiation at or about the time the search of the house was made, the learned Magistrate accepted the version of the accused that the houses were searched by the head constable and that the Sub-Inspector was examining the complainant and the witnesses on the 18th and 19th and took bail from the accused on the 5th day. This he arrived at also upon a reference to the documentary evidence in the case, and came to the following conclusion :-

" The prosecution evidence on this point has already been shown to be unreliable and the prevaricating statements made by the prosecution witnesses on these points clearly show that they were not speaking the truth. I hold that the defence version on this point is the correct one."

9. As regards the actual payment and the motive for payment, the learned Magistrate devoted three typed pages of his judgment in order to show the material contradictions and improbabilities in the story told by the complainants and their witnesses of their having been threatened to be tied by ropes and having made the payments alleged by them to the Sub-Inspector. He held that

Ram Pratap Singh and his cousin Jai Prakash Singh were the most influential men in the village and were clever men and could not easily be duped into doing a thing they did not like.

10. As a result of the close investigation and scrutiny of the evidence upon the point of payment by the three persons Ram Pratap Singh, Badri Dusadh and Bhukhan Dusadh, the learned Magistrate recorded clear and a definite finding in the following words :-

"It will be seen from the above that the prosecution evidence is discrepant and self-contradictory almost at every point regarding payment and time and motive. The diaries of the case of Deomonina conclusively show that all the prosecution witnesses have told lies regarding the date of payment."

11. He also criticises the attitude of Ram Pratap Singh and Jai Prakash Singh in the matter. He closes his examination of the evidence in the following words :-

" From the above it will be seen that the prosecution evidence is insufficient and unconvincing and having been rebutted in material details by the much more convincing defence evidence in the form of documents cannot be accepted. Coupled with the nature of the evidence, there are the irregularities in the proceedings, and the effect of all these taken together is to make the case a failure.

The result is that I hold that the prosecution has failed to prove its case and I find that none of the two accused is guilty of the charges framed against him. I accordingly acquit them u/s 258, Cr. P. Code."

12. The trial of the case and the enquiry into the charges of the accused ended here. The only issue before the Court upon the charges was whether the prosecution proved its case or not against the accused, or to put it shortly, whether the accused were guilty or not of the offences charged. All the points that arose in connection with the charges for the determination of the Court were set forth in the preceding paragraphs of his judgment and his decisions were recorded thereon seriatim with detailed reasons for those decisions. The judgment, therefore, was complete, and after the aforesaid verdict of acquittal was recorded no other point arose before the Magistrate.

13. It is said that the remark in question was added obviously for the purpose of administrative entry of the case being true or false, under paragraph 314, Chapter XII of the Police Manual. Now the object of this rule is to have a record of the opinion of the Magistrate upon the first information reports and final reports in cognizable cases received from stations and outposts. Clause (d) of the rule requires the entry of the case to be in the form of one of the following in the general register :-true, intentionally true, mistake of law, mistake of fact, non-cognisable or not investigated, and the order, with respect to the entry, is to be made by the Magistrate of the district, the Magistrate in charge of criminal cases at Sadar and the Magistrate in charge of sub-divisions [vide Clause (d).

14. This rule does not apply to Magistrates trying the case. The register has to be filled in by the classes of Magistrates mentioned above, and he is obviously to do that upon the result of the case. The Magistrate trying the case may not necessarily be one of the three kinds of Magistrates, namely, the District Magistrate, the Magistrate in charge of Criminal Cases in Sadar or the Sub Divisional Magistrate, as is contemplated by the rule. Therefore, it was not the judicial function of the Magistrate, who tried this case, to record this order in his judgment of the case. That judgment was a judgment of acquittal, and on a perusal of that judgment another Magistrate (whose duty was to record an entry in the register) was to find out what should be the nature of the entry. The entry in question is purely executive and administrative, and after the case had ended in the acquittal of the accused, the Magistrate had nothing more to decide as to what his personal impression was as regards the guilt or innocence of the accused. The judgment recorded in the present case by the Magistrate was a judgment entirely in favour of the accused. Nowhere throughout the judgment he suspected the defence made by the accused.

15. On the other hand, he accepted all the counter-versions of the case, at each stage, made by the accused. In the present case the accused being a responsible officer, namely, the Sub Inspector of Police chose to give evidence and his own version of the case. He took upon himself the responsibility of disclosing what truly happened. He did not content himself with only throwing doubt upon the case of the prosecution to obtain an acquittal by reason of the benefit of the doubt, as is often done by an accused in an ordinary position. He went further and laid his own case in order to show what the truth was. The investigation of the Magistrate, and, I may observe, a careful and searching investigation, led to the conclusion that the prosecution case was improbable, false and concocted at every stage, and that the version of the accused was true, in its substance.

16. In vain have I ransacked the judgment of the Court to find out a single sentence about doubt and suspicion thrown upon the case of the defence. It was, as I may be able to say, an honourable, acquittal. Even a judgment of acquittal, merely upon the benefit of doubt being given to the accused by reason of suspicious circumstances in the case of the prosecution is entitled to be regarded as a complete exoneration of the accused. A judgment of the type, recorded by the Magistrate in the present case, stands on a still higher footing and is a verdict of an honourable exoneration of all the charges and stigma cast upon the accused.

17. Still with a view to make a record of an executive character the Magistrate thought it best to give his own impression and an impression derived, as he says (1) from the evidence generally which he had already discussed in detail and come to the conclusion that the prosecution case was false and the version of defence was true, (2) an impression derived from the Police papers, most of them may not be relevant and the accused had not the opportunity to meet and (3) an impression derived from what he says "etc," which is too vague to find

place in the judgment. The Magistrate was not entitled to use all these kinds of expressions against the accused, in order to give him a character which may injure the accused and which may throw a suspicion upon the careful judgment that he had already recorded just preceding the paragraph in question.

18. The leading case of *King v. Plummet* (1902) King's Bench Division 339 = 20 Cox. C. C. 243=71 L.J K.B. 805=51 W.R. 137 is an authority for the proposition that no suggestions of any kind can be made against the accused when a verdict of not guilty is recorded except that of establishing his complete innocence. Bruce, J., in that case observes :-

"As to the note by Mr. Greaves in *Russell on Crimes*, 4th Ed., Vol. III, Page 146, referred to in the judgment of Wright, J., where it is suggested that a verdict of not guilty is not to be taken as establishing the innocence of the person acquitted, because the verdict may have been arrived at simply in consequence of the absence of evidence to prove the guilt, I think, it is a very dangerous principle to regard, a verdict of not guilty, as not fully establishing the innocence of the person to whom it relates."

19. This decision has been followed in a number of cases in *The Emperor Vs. Noni Gopal Gupta and others*, *Pulin Behari Das v. King Emperor* (1912) 16 C.W.N 1105=15 C. L. J. 517=16 I. C. 257=13 Cr. L. J. 609 and *Rajendra Narain Singh v. Emperor* (1912) 17 C. W. N. 238=18 I.C. 149=16 C.L. J. 467=14 Cr.L. J 5. Judgments of acquittal are not admissible in evidence even in a case where the character of the person is directly under enquiry u/s 110 of the Code of Criminal Procedure; far less can it be permitted to be used by the Magistrate in this case for the purpose for which he recorded it in his judgment, namely, to throw a slur upon the character of the Sub-Inspector for executive or administrative purposes, that is, to complete a record or register as required under the Police Manual. Even assuming for the sake of argument that the trying Magistrate in the present case could under the Police Manual make an entry as to the case being false or true, his direction to enter the case " true " is against his clear finding that it is false.

20. Now, what is the meaning of the words "Enter true Sections 384 and 384-114, I. P. C." recorded by the Magistrate ? An entry made under the said rule of the Police Manual of the falsity of a case, such as " Enter false " has been interpreted to mean a discharge of the accused or a dismissal of the complaint even where the word "dismissal" was not recorded u/s 203 of the Code of Criminal Procedure. Therefore, the true interpretation of the words "Enter true Sections 384 and 384-114, I. P. C." means that the case of the complainants of a particular charge of extortion, which formed the subject-matter of specific charges against the accused, was true.

21. This is wholly inconsistent with what the learned Magistrate has himself recorded in his judgment that the case of the prosecution was not proved and was concocted and false. The principal charges under Sections 384 and 384-114,

I. P. C., which the Magistrate now wants to be recorded as true, were held by him to be false. Therefore, this entry, if it has any Judicial meaning, is inconsistent with the considered judgment of the Magistrate and is sought to be supported only upon his impressions. As a judicial order it is, therefore, illegal, and is not in accordance with his judgment.

22. No reason has been given and therefore, it must not stand in the judgment. As an executive order, it has no business to be there in a judicial pronouncement, without giving proper opportunity to the accused of meeting those impressions. The privilege of passing an opinion in a case of this kind has been over-stepped. Non-compliance with the strict provisions of the law took away the privilege which was given to the Magistrate against the subject. Such an entry has been interpreted by certain authorities as an entry of a purely executive character. If it is so, the Magistrate exercising the judicial functions has to divest himself for a moment of his executive powers and has to forget himself that he has to deal with the person before him as an executive authority.

23. What he would have done in his executive capacity, we are not concerned with. What he will do in his executive capacity we do not want to know, nor can we stand in his way; but we do not want that a judicial pronouncement should be disfigured, and the judicial functions, exercised by a Magistrate should be blurred in the manner in which the Magistrate has done in the present case. We do not at all want to enter into a general enquiry into the character of the Sub-Inspector. He may or may not be habitual Offender; all the specific charges brought against him have been held not to be true and he has been acquitted without any suggestion of misconduct.

24. It has also been argued that this Court cannot interfere with the order in question. I have clearly shown that if it is a judicial order, this Court has power to deal with it. If it is an executive order, it must not remain in the judgment. Taking any view of the case, this Court has jurisdiction in the case. It has been said that Section 439 of the Code of Criminal Procedure does not intend to cover a case of this kind, where the order passed is not based upon the evidence but upon an impression, the order being to enter true. When the order is deleted, the reasons in the preceding paragraph must also go.

25. The High Court has also power to deal with a case of this kind under its general superintendence under the Government of India Act. The power of the High Court to delete irrelevant orders of this kind has been upheld in the case of *Emperor v. Thomas Pellako* (1912) 14 I. C. 643 where the irrelevant remarks and the Judge's opinion on certain matters contained in the judgment were ordered to be expunged and deleted on the ground that they were "ill-judged and should not have found a place in a judgment in a criminal trial." This case is stronger than that.

26. I would, therefore, direct that the order of the Magistrate, whether it is executive or judicial in the two concluding paragraphs of his judgment should be

expunged.