
(1976) 11 SC CK 0001

In the Supreme Court Of India

Case No : Appeal Criminal 316 of 1971

Chhotan Prasad Singh and Others

APPELLANT

Vs

Hari Dusadh and Others
Smt. Suchan Devi and Others
Vs Bihari Manjhi and Others

RESPONDENT

Date of Decision : 24-11-1976

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 145(1)
Oaths Act, 1969 — Section 4

Citation : AIR 1977 SC 407 : (1977) CriLJ 249 : (1977) 10 PLJR 210 : (1977) 1 SCC 102 : (1977) 2 SCR 174 : (1977) 9 UJ 46

Hon'ble Judges : P. N. Shingal, J;P. N. Bhagwati, J;A. C. Gupta, J

Bench : Full Bench

Final Decision : dismissed

Judgement

P.N. Shinghal, J.—The point for consideration these appeals by special leave is whether affidavits sworn or affirmed before magistrates who are not in seizing of the case u/s 145 of the CrPC, hereinafter referred to as the Code, could be read in evidence under that section? The High Court has held such affidavits to be inadmissible in evidence, in the impugned judgments dated September 17, 1971 and October 7, 1971, and that is why the present appeals by special leave have arisen at the instance of the aggrieved parties.

2. It is not in controversy that in the absence of any specific provision to the contrary in the Code, the affidavits have to be sworn or affirmed in accordance with the provisions of the Oaths Act, 1873. It is also not in controversy that the Oaths Act of 1969 has no application to the controversy.

3. Sub-section(1) of Section 145 of the Code provides, inter alias, that the Magistrate making an order under it shall require the parties concerned in the dispute to attend his court in person or by pleader and to put in such documents, or to adduce, "by putting in affidavits, the evidence of such persons" as they rely upon in support of their claims. The affidavits contemplated by the Sub-section

are therefore evidence for purposes of the proceedings before the Magistrate concerned even though the Evidence Act does not apply to them by virtue of the express provision of Section 1 of that Act.

4. Chapter XLVI of the Code deals with miscellaneous matters including the affidavits referred to in Sections 539, 539-A & 539-AA. Section 539 deals with courts and persons before whom affidavits and affirmations to be used before any High Court or any officer of such Court may be sworn and affirmed. Section 539-A relates to affidavits in proof of conduct of public servants, while Section 539AA relates to the authorities before whom affidavits to be used u/s 510A or 539-A may be sworn or affirmed. An affidavit u/s 145 is not however of a formal character because it is meant to prove or disprove the competing claims of the parties as respects the fact of actual possession of the subject of dispute. There is thus no provision in the Code specifying the courts or persons before whom the affidavits referred to in Section 145 have to be sworn and affirmed. This has therefore to be done according to the general provision relating to affidavits.

5. The definition of "affidavit" in Section 3(3) of the General Clauses Act (Act X of 1897) only states that it shall include affirmation and declaration in the case of persons by Jaw allowed to affirm or declare instead of swearing. But it is an essential characteristic of an affidavit that it should be made on oath or affirmation before a person having authority to administer to oath or affirmation. It is here that Section 4 of the Oaths Act comes into operation which provides as follows,

4. The following Courts and persons are authorized to administer by themselves or by an officer empowered by them in this behalf, oaths and affirmations in discharge of the duties or in exercise of the powers imposed or conferred upon them respectively by law:

(a) all Courts and persons having by law or consent of parties authority to receive evidence;

Then follow Clause (b) and proviso, with which we are not concerned.

6. It is therefore clear that all courts and persons having by law or consent of parties authority to receive evidence are authorized to administer oaths and affirmations, but they can do so only where they are otherwise acting " in the discharge of the duties or in exercise of the powers imposed or conferred upon them respectively by law." So the court or persons mentioned in Clause (a) of Section 4 of the Oaths Act can administer oath or affirmation to the deponent in an affidavit only if the court or person is acting in the "discharge of the duties or in exercise of the powers imposed or conferred upon them respectively by law." In the present cases, the Magistrates concerned with the proceeding u/s 145 of the Code were discharging the duties imposed and exercising the powers conferred by the Code, and they alone could administer the oaths and affirmations to the persons who made the affidavits, and not the magistrates who were not discharging any such duty or exercising any such power. As the

affidavits in the cases before us were admittedly not sworn or affirmed before Magistrates who were dealing with the disputes u/s 145 of the Code, they were not proper affidavits and did not constitute evidence for purpose of Section 145. A similar view has been taken in *Nandalal Ghose Vs. Emperor*, ; *Hemdan v. State of Rajasthan and Ors.*, AIR 1966 Raj. 5 *Govind Vs. State and Others*, *Krishna Chandra Naik and Others Vs. Sk. Makbul and Others*, *Mahesh Thokur and Ors. v. Lakshman Prasad Thakur and Anr.* (1971) 19 B L J 727 and *State of Madhya Pradesh v. Triveni Prasad* (1971) 16 M.L. j.1059 on which reliance has been placed by counsel for the respondents.

7. We have gone through *Ahmad Din Vs. Abdul Salem*, which has been cited with approval in *Shambhu Nath Chopra Vs. State*, on which reliance has been placed by counsel for the appellants. We find however that in *Ahmed Din's* case (*supra*) the Punjab High Court did not take proper notices of the requirement of Section 4 of the Oaths Act that the courts and persons mentioned in Clause (a) could administer oaths only "in discharge of the duties or in exercise of the powers imposed or conferred upon them respectively by law." We have also examined the reasoning in *Shambhu Nath Chopra's* case (*supra*), but the Delhi High Court there went wrong in holding that the evidence on affidavits referred to in Section 145 of the Code was of a formal character within the meaning of Section 510-A so as to attract Section 539-AA.

8. As the High Court has rightly held in the two impugned judgments that the affidavits were inadmissible in evidence as they were sworn before Magistrates who were never in seizing of the case, we find no force in these appeals and they are hereby dismissed.