

(1951) 03 AHC CK 0021

In the Allahabad High Court

Case No : Criminal Miscellaneous Case No. 2375 of 1950

Shri Ram Ghei and Others

APPELLANT

Vs

Shri Ram Kishan Das and Others

RESPONDENT

Date of Decision : 26-03-1951

Acts Referred:

Constitution of India, 1950 — Article 20(2)

Citation : AIR 1952 All 642 : (1951) 21 AWR 620

Hon'ble Judges : Raghubar Dayal, J;Desai, J

Bench : Division Bench

Advocate : A.P. Pandey, for the Appellant; Janardan Swarup Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Raghubar Dayal, J.—A complaint by Shri Ram Kishan Das was filed against four persons for an offence u/s 420 I.P.C., on 23.5.1849. Of the four accused one was the managing director of Aspee (India) Ltd. & the others were said to be its directors. This complaint was eventually dismissed on 23-5-1950 on account of the absence of the complainant & his counsel on the date of hearing.

2. A second complaint on the same allegations was then filed on 8-7-1950. This complaint was filed before a Magistrate other than the one who had dismissed the earlier complaint & so was referred to the District Magistrate who sent it to Shri Nahar Singh who had dismissed the complaint. The three directors accused went up in revision against this order of the District Magistrate to the Ses. J. & against his dismissing the revision came to this Court. This Court also rejected the revision on 21-11-1950. The grounds taken in the revision were that the Courts at Aligarh had no jurisdiction over the case & that the complaint did not disclose the commission of any offence. It was also alleged that a second complaint amounted to an abuse of the process of Court. This Court was requested to exercise its powers u/s 561A, Cr. P. C. & Article 227 of the Constitution.

3. On 27-11-1950 the present application under Articles 226 227 & 228 of the Constitution was filed & it was prayed that the complaint & the proceedings based thereon, be quashed.

4. Four points have been urged in support of this application. The first is that the applicants cannot be prosecuted a second time after they had been discharged for the same offence on 3-7-1950, & reliance for the contention is placed on Article 20(2) of the Constitution, which is that no person shall be prosecuted & punished for the same offence more than once. The contention is to read this provision of the Constitution in such a way as to amount to the prohibition of a second prosecution irrespective of the fact whether the person prosecuted earlier had been punished or not. The expression used in this clause obviously bars a second prosecution for the same offence after a person has been prosecuted & punished for that offence. The contention is that the Constituent Assembly must have contemplated prohibiting a second prosecution even after the accused has been acquitted or discharged on the first prosecution & that due to such consideration this provision should not be interpreted grammatically but should be constructed differently after taking help from the context in which it appears. We are of opinion that it cannot be said that the Constituent Assembly must have thought of barring a second prosecution after a discharge or acquittal. There is nothing fundamentally wrong in not barring a second prosecution after a discharge or acquittal. A second prosecution may mean further trouble to the person proceeded against but it does not harm him substantially to the same extent as a second punishment for the same offence is bound to harm him. A discharge or acquittal can in certain circumstances take place on account of technical reasons & it may be very desirable in the circumstances of particular cases that the person be prosecuted after removing those technical defects in procedure. In this view of the matter we do not consider it necessary to discuss whether, if it was open to us to construe the provisions of Article 20(2) of the Constitution, the construction should be that a person cannot be prosecuted a second time for the same offence after his discharge or acquittal. We, therefore, do not consider the second complaint to be in contravention of Article 20(2) of the Constitution.

5. The other three points are practically the same which were sought to be raised in the revision which was rejected by this Court on 21-11-1950. Two of them are just the same, i. e., the allegations in the complaint do not make out any offence of cheating & that the Court at Aligarh had no jurisdiction. In view of the previous order of this Court we need not discuss these two points & would simply say that we do not consider them to have any force.

6. The third point argued was that the applicants had been very much harassed by the way in which the complainant behaved during the trial of the first complaint. The complaint remained pending in the Court of the Magistrate from 23-5-1949 to 3-7-1950. During this long period nothing practically happened between 21 & 22-12-1949, on account of proceedings in connection with the

transfer of the case. The first date on which the parties appeared in Court was 2-7-1949. On this date the prosecution witnesses were not present & the case was adjourned to the 12th of July. The Magistrate was not right in not opening the proceedings of the case by examining the complainant, especially when the complainant's statement in view of the allegations was bound to be protracted one. The complainant was examined on the 12th July & again on the 13th July. The Court could have given more time to the case on these days, but any way the complainant cannot be held responsible for his piecemeal examination & for the Court's not giving sufficient time to this case. No evidence was recorded on the 18th July on which date the sureties desired to withdraw. In this again the Magistrate was in the wrong; he should have proceeded with the evidence that day. When the case was called on 22-12-1949 the accused were absent & summonses were ordered to be issued for 18-1-1950. On the 18th of January the 2nd of February was fixed for the production of evidence. The complainant was absent on the 2nd of February & his statement was again partially recorded on the 14th of March. He was again absent on the 4th of April on which day the presiding officer was also on leave. He was present on the 13th of April but his statement was not recorded by the Magistrate. He was absent on 2-5-1950. The case was then transferred to some other Court. All the accused could not appear till the 3rd of July, when the complainant was absent & the complaint was dismissed. It is thus clear that the Magistrate had been lax in proceeding with the trial of this case & in not dismissing the complaint promptly when the complainant was absent & when it does not appear from the record that any reasonable explanation for his absence was mentioned in Court. All the same it is difficult to say that the complainant's conduct had been such as to amount to harassment of the accused to such an extent that the filing of a second complaint must be held to be an abuse of the process of the Court. It is apparent that the Court now in charge of the case must exert itself & try to give more time to this case & finish it as early as possible.

7. We, therefore, reject this application.