
(1991) 07 MP CK 0023
In the Madhya Pradesh High Court
Case No : Criminal R. No. 192 of 1986

Shrichand Dhannalal Jain

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 24-07-1991

Acts Referred:

Constitution of India, 1950 — Article 21
Criminal Procedure Code, 1973 (CrPC) — Section 2, 345
Penal Code, 1860 (IPC) — Section 228

Citation : (1992) 37 MPLJ 383 : (1992) MPLJ 383

Hon'ble Judges : S.K. Chawla, J

Bench : Single Bench

Advocate : Rakesh Jain, for the Appellant; A.S. Jha, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Chawla, J.

This revision by the accused is directed against appellate judgment maintaining his conviction and sentence to a fine of Rs. 100/-, in default to simple imprisonment for one month, for the offence u/s 228, Indian Penal Code.

The applicant had filed a civil suit which was pending in the Court of Shri A. H. Sheikh Patel, Civil Judge, Khurai. When that suit was taken up on one of the dates of hearing i.e. on 15-2-1982, it was adjourned by the learned Civil Judge to next date in the absence of the applicant and his counsel. The applicant showed himself up shortly afterwards. He was agitated to find that the case had been adjourned. He protested to the learned Civil Judge and insisted that his case was taken up for hearing on that date itself. The learned Civil Judge felt that in the manner of making protest and in refusing to leave the Court room even after direction by the Court, the applicant had caused interruption while the Judge was sitting in judicial proceeding. The learned Civil Judge then drew up summary proceedings as contemplated by Section 345, Criminal Procedure Code,

and before the close of the day, the learned Civil Judge passed an order convicting the applicant of the offence u/s 228, Indian Penal Code, and sentencing him to a fine of Rs. 100/-, in default to simple imprisonment for one month. The appeal carried by the applicant against his conviction and sentence to the Court of Session was dismissed by Additional Sessions Judge, Khurai by judgment dated 19-2-1986. Aggrieved thereby, the present revision has been filed.

Arguing in support of the revision, Shri Rakesh Jain, learned counsel for the applicant, first contended that the applicant was not provided with a counsel in the summary proceeding to defend himself, which constituted a violation of his fundamental right under Article 21 of the Constitution guaranteeing to every person a reasonable, fair and just procedure before he could be deprived of his life or personal liberty. Placing reliance on the decisions in Suk Das Vs. Union Territory of Arunachal Pradesh, Himachal Singh v. State of M.P. 1989 J.L.J. 256, and State of M.P. v. Champalal 1988 (1) W.N. 120, the learned counsel contended that the applicant was not required to make an application in writing or even orally request for a counsel but the learned Civil Judge was himself bound to inform the applicant that he was entitled to free legal assistance at the cost of the State, if he was unable to engage a lawyer on account of his indigence or poverty or incommunicado situation. Since the learned Civil Judge had failed to give that information and also failed to provide a counsel to the applicant in his defence, the proceedings in which the impugned order was passed were vitiated.

A closer reading of the decisions of the Supreme Court in Khatri and Others Vs. State of Bihar and Others, and Suk Das's case (supra) will show that their Lordships while spelling out the right of an accused to free legal assistance at State cost, which is held to be implicit in the guarantee of Article 21 of the Constitution, recognised some situations wherein such right did not exist. It was, thus, recognised that the said right did not exist in cases involving economic offences or offences against law prohibiting prostitution or child abuse and the like, where social justice required that free services may not be provided by the State. It was also recognised that such right was subject to the qualification that the offence charged against the accused should be such that on conviction it would result in a sentence of imprisonment. This was also differently expressed by saying that free legal assistance at State cost is a fundamental right of a person accused of an offence which may involve jeopardy to his life or personal liberty.

It will be seen that offence u/s 228, Indian Penal Code is punishable in a regular trial with simple imprisonment for a term which extend to six months or with fine which extend to 1,000/- rupees or with both. But in summary proceedings contemplated by Section 345, Criminal Procedure Code, such offence is punishable only with fine not exceeding two hundred rupees, and in default of payment of fine, to simple imprisonment for a term which may extend to one

month. The question is was the offence of which the applicant was being tried in summary proceedings such that his conviction would have entailed a sentence of imprisonment? In other words, whether the offence of which the applicant was being tried in summary proceedings such that it involved jeopardy to the applicant's life or personal liberty?

The offences which are not punishable with imprisonment may be divided into two categories. Firstly, where the offence is punishable with fine and the penal provision dealing with the offence itself provides that in default of payment of fine the accused may be sentenced to imprisonment in default of payment of fine for a certain term. Secondly, the offence may be punishable simply with fine. The point to be noted is that even in the second category of offences, imprisonment in default of payment of fine may be, and is usually, imposed by the courts by recourse to the provision of Section 64, Indian Penal Code. Section 64 *ibid* provides that in every case in which an offender is sentenced to fine, whether the offence is punishable with imprisonment as well as fine or with imprisonment or fine only, it shall be competent to the Court to direct that in default of payment of fine the offender shall suffer imprisonment for a certain term. The matter is made further clear by Section 67, Indian Penal Code, which provides for scales of imprisonment in default of payment of fine when the offence is punishable simply with fine. There is thus practically no difference in the aforesaid two categories of offences. In both, the accused may be sentenced to imprisonment in default. As already observed, the right to free legal assistance at State cost, has a limit or qualification. The limit or qualification is that the offence charged against the accused must be such that on conviction it would result in a sentence of imprisonment. If it is argued that this limit or qualification means that such right is not available where the offence is punishable simply with fine, that argument would make no sense, for the simple reason that even for such offences imprisonment in default of payment of fine may be imposed. The limit or qualification imposed by their Lordships must be held to have some meaning and not simply otiose. It must be conceded that right to free legal assistance was not meant to be limitless. Stating differently it may be said that it is illogical to say that there is jeopardy to personal liberty in the case of first category of offences but no such kind of jeopardy in the second category of offences, when in both the category of offences, imprisonment in default of payment of fine may be imposed. The correct view appears to be that right to free legal assistance has to be confined to offences which are punishable with substantive sentence of imprisonment. Such a right does not extend to offences which are punishable with fine, regardless of whether imprisonment in default of payment of fine is expressly provided for such offences or not. Any other interpretation would lead to the right being limitless extending to most trivial offences.

On the above view, the right to free legal assistance at State cost must be held to be not extending to offence u/s 228, Indian Penal Code of which the applicant was being tried summarily, because on conviction the applicant could not have been visited with any substantive imprisonment. There was, therefore, no

question of denial of that right.

It was next contended that the learned Civil Judge was not "sitting in any stage of judicial proceeding" when the alleged interruption was caused to him by the applicant. The record of summary proceedings shows that the learned Civil Judge at that time was receiving a challan in Crime No. 47/82 against an accused named Kailash from a constable named Ramprasad No. 450 and further the learned Civil Judge was hearing the constable in that connection. It was argued on behalf of the applicant that receiving challan from a constable was no part of judicial proceeding. Such an argument would not have been perhaps advanced if any complaint were being presented before the learned Judge. The expression "Judicial Proceeding" has been defined in clause (i) of Section 2 of Criminal Procedure Code. The definition is that judicial proceeding includes any proceeding in the course of which evidence is or may be legally taken on oath. It is obvious that it is not necessary that the Judge or Magistrate concerned must be actually recording evidence in order to amount to judicial proceeding. In fact, occasion to record evidence may not actually arise and still the proceeding may amount to judicial proceeding. The test is whether in the course of those proceedings evidence may be legally taken on oath or not. In my view presenting of challan is the first step in the judicial proceeding wherein occasion may subsequently arise to record evidence on oath. On receiving challan the Magistrate has to decide judicially whether to take cognizance of the offence thereon or not. The law does not prescribe any particular method of presentation of challan, namely, that it should be presented by any particular police official. It is clear to me that when the challan was being presented before the learned Civil Judge, who was acting as a Judicial Magistrate at that time, the first step in the judicial proceeding was taking place and hence the Judge was sitting in judicial proceeding. There is, thus, no force in the second point raised by the learned counsel.

It was lastly urged on behalf of the applicant that the applicant was acting within reasonable limits when he protested to the Court against the case having been adjourned behind his back. It was urged that the applicant's act did not constitute any kind of interruption in the judicial proceeding. A perusal of the record shows that the applicant, at the time of protesting, started making wild allegations. He stated that the opposite counsel Shri Sapre was in habit of always adding a new thing in the case. He also stated that it was the business of lawyers to get the cases adjourned somehow. When the Presiding Officer tried to stop the applicant from continuing with that kind of reckless talk and ultimately asked the applicant to leave the Court room, the applicant lingered in the Court room and defiantly stated that whatever he was doing was not any kind of contempt and the Court was free to take whatever action it liked. In these circumstances, if the Court felt that it had been interrupted in the course of judicial proceeding, it could not be said that the view taken by the Court was wrong.

There is no force in this revision. It is dismissed.