
(1972) 03 RAJ CK 0004
In the Rajasthan High Court

Shyam Singh

APPELLANT

Vs

The State of Rajasthan and Another

RESPONDENT

Date of Decision : 16-03-1972

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 145, 556

Citation : (1973) CriLJ 441 : (1972) WLN 165

Hon'ble Judges : L.S. Mehta, J

Bench : Single Bench

Judgement

L.S. Mehta, J.—This is a reference submitted by Additional Sessions Judge No. 3, Jaipur City, recommending that the order of Mr. Tara Prakash Joshi City Magistrate, Jaipur City, declaring the possession over the disputed property in favour of Ravi Shanker and Smt. Kamla, non-applicants Nos. 2 and 3 on the date of the preliminary order, be quashed.

2. Briefly stated, the facts of the case are that a report u/s 145, Criminal Procedure Code was made in the court of City Magistrate Jaipur City on July 26, 1969 by the police that Shyam Singh on the one side and Ravi Shanker and Mst. Kamala on the other were asserting their respective claims over the possession of certain portion of the temple situate at Khara Kua Jaipur City. It was further reported that there was likelihood at breach of the peace and, therefore, the property should be attached and the parties should be bound over to keep the peace and be of good behaviour. On receiving that report, the City Magistrate issued notices to the aforesaid parties asking them to put in their written statements of their respective claims as respects the fact of actual possession over the subject of dispute and further requiring them to put in such documents or to adduce, by putting in affidavits, the evidence of such persons as they relied upon in support of such claims. The parties submitted their replies, relevant documents and affidavits. The City Magistrate after making necessary inquiry and examining the records held that non-applicants Ravi Shanker and Smt. Kamala were in actual possession of the disputed property on the date of the

preliminary order and directed that the possession of the property should be made over to them. Aggrieved by that order, a revision petition was filed in the Court of Sessions Judge Jaipur City. The case, it appears, was transferred to the court of Additional Sessions Judge No. 3. Mr. Shyan Behari Lal Mathur, Advocate, representing Shyam Singh filed an application stating that Mr. Tara Prakash Joshi was personally interested in the case and, therefore, he was not competent to hear it in the capacity of the City Magistrate by virtue of Section 556, Criminal Procedure Code. Mr. Joshi had previously held the post of the Deputy Commissioner. Devasthan, Jaipur and in that position he had conducted an inquiry about the disputed property. He had also inspected the site on July 13, 1969 and had recommended that the said property should be taken over by the Devasthan Department. That order had been passed by the Deputy Commissioner when proceedings u/s 145, Cr.P.C. had already been initiated in the court. Later on Mr. Tara Prakash Joshi took over charge as City Magistrate Jaipur City. He should, therefore, have not dealt with this case. Learned Additional Sessions Judge agreed with the contention and has submitted this reference to this Court with the above recommendation.

3. Ravi Shanker and Mst. Kamla are represented by Mr. N.M. Kasliwal, who opposes the reference. Shyam Singh is unrepresented. Mr. G.A. Khan. Deputy Govt. Advocate supports the reference. Mr. Kasliwal's main contention is that objection, if any regarding hearing of the case should have been taken in the court of the City Magistrate at its initial stage. Since Shyam Singh abandoned the objection in the course of proceedings u/s 145 Cr.P.C. he could not have been permitted to raise protest against the Impugned order of the City Magistrate in the court of Additional Sessions Judge. In support of his contention he relied upon Rameshwar Bhartia Vs. The State of Assam, and Sudhindra Nath Dutt Vs. The State, . The counsel also referred to Manak Lal Vs. Dr. Prem Chand, .

4. I have looked into all these authorities and have carefully considered the view point canvassed for the non-applicants. It looks grotesque that when a particular officer passes a certain order in one capacity and if that very officer is transferred to a court of law, he deals with "that very case and passes another order in his different capacity. It is well settled that every judicial officer who is called upon to try certain issues in judicial proceedings must be able to act judiciously. He should be able to act impartially, objectively and without any bias. The question is not whether a bias has actually affected the judgment. The real test is whether there exists a circumstance according to which a litigant could reasonably apprehend that a bias attributable to a judicial officer must have operated against him in the final decision of the case. It is in this sense that it is often said that justice should not only be done but must also appear to be done. Viscount Cave L. C, has observed in Frome United Breweries Co. Ltd. v. Keepers of the Peace and Justices for County Borough of Bath 1926 App. Cas. 586.

It has been held over and over again that if a member of such a body is subject to a bias in favour of or against either party to the dispute or is in such a position

that a bias must be assumed, he ought not to take part in the decision, or even to sit upon the tribunal. This rule has been asserted not only in the case of courts of justice and other judicial tribunals but in the case of authorities which, though in no sense to be called courts, have to act as Judges of the rights of others.

Similar in Halsbury's Laws of England 3rd Edition Vol. 25, P. 131 Para 238, it has been laid down that the principle *nemo debet esse judex in causa propria sua* precludes a justice who is interested in the subject matter of a dispute, from acting as a justice therein. It has further been observed in that very para that if however, the fact that a justice is interested in the subject matter of a case is known to the parties, and objection to his acting is waived, either by their requesting him to act, or acquiescing in his acting, the proceedings are not rendered void. But a party does not waive his right to take an objection when he does not know that he is entitled to it See *R. v. Essex Justices* (1927) 2 K.B. 475. In *Allinson v. General Medical Council* (1891) All. E.R. 768 it was observed by the Court of Appeal:

In the administration of Justice, whether by a recognised legal court or by persons who, although not a legal public court, are acting in the same sort of capacity, public policy requires that in order that there may be no doubt as to the purity of the administration any person who takes part in it shall not be in such a position that he might reasonably be suspected of being biased.

In this case *Shyam Singh*, it appears, had not waived his right to take objection as he, at the initial stage, did not know that he was entitled to it. Here the question was not whether he was or was not biased nor is it whether he was suspected by some perversely minded person. The question is whether Mr. Joshi bore such a relation to the matter which was being adjudicated that he could reasonably be suspected of being biased. Here he did bear such a relation and therefore, the subsequent proceedings of the tribunal in which he took part is invalidated.

5. Here a distinction must also be drawn between pecuniary interest and prejudice. The smallest pecuniary advantage is a bar to the justice acting. But where the interest is not pecuniary, the question arises whether the interest is of such a substantial character as to make it likely that he has a real bias in the matter. What then has to be considered is the effect likely to be produced upon the minds of the public as to the fairness of the administration of justice and this is a question of degree to be decided in every case: See *R. v. London Justices Ex parte South Metropolitan Gas Co.* (1908) 72 J.P. 137 In *R. v. Farrant* (1886) AER 393 it has been laid down that it is primary principle of English law that no man shall be judge in his own cause. If he is interested otherwise than pecuniary to such an extent as to bias his judgment, he will be disqualified from sitting as a Magistrate.

6. In this case the same person has passed two different orders in two different capacities and that act of his is no doubt likely to produce the effect upon the

minds of the public as to the fairness of the administration of justice, even though the decision in question did not involve any pecuniary advantage to that person. It was essential that Mr. Joshi ought to have remembered that justice should be so administered as to satisfy a reasonable person that his tribunal was impartial and unbiased, it was a real likelihood that Mr. Joshi from kindred or any other cause had a bias in favour of one of the parties. It was therefore, very wrong in him to sit as Magistrate.

7. I now take up the authorities referred to by Mr. N.M. Kasliwal. In *Manak Lal Vs. Dr. Prem Chand*, following relevant observation of their Lordships of the Supreme Court is reproduced below as it would afford useful guide for the determination of this case:

We would therefore hold that Shri Daphtary is right when he contends that the constitution of the tribunal appointed by the Chief Justice of the High Court of Rajasthan suffered from a serious infirmity in that Shri Chhangani who had appeared for Dr. Prem Chand in the Criminal proceedings in question, was appointed a member of the tribunal and In fact acted as its Chairman.

The Supreme Court case instead of helping Ravi Shanker and Mst. Kamala directly helps Shyam Singh. The case reported in *Sudhindra Nath Dutt Vs. The State*, is clearly distinguishable from the facts of the present case. In that case the trial Judge, who had acted previously as Legal Remembrancer and who had settled the draft of the order according sanction, disposed of the case in the capacity of a judicial officer. The High Court held that it could not be said that he had become personally interested in the sense of becoming interested in the success of the prosecution. It was also held that the appellant ought to have raised the objection at the earliest stage of the trial and not after the trial came to an end. In that case the Judge only accorded sanction in the capacity of Legal Remembrancer and he did not pass any order on the merits of the case. Similarly in *Rameshwar Bhartia Vs. The State of Assam*, it was observed that the Judge granting sanction for the prosecution in another capacity is not disqualified from trying the case himself. That case is also clearly distinguishable from this case. In the Supreme Court case no decision was given by the trial Judge in the previous proceedings. What the Judge did in that case was that he had simply accorded sanction for the prosecution of the accused. It has further been observed in the Supreme Court case that personal interest within the meaning of Section 556 is not limited to private interest and it may well include official interest also. This case also does not help Ravi Shanker and Mst. Kamala. Whenever the deciding Judge has any direct or indirect interest in the matter to be decided, he is not a fit Judge to decide it.

8. Foregoing discussion reveals that an officer, who had previously decided a case, cannot subsequently sit as a Judge to dispose of the same matter over again. The criterion generally is whether justice is seen to be done by a tribunal which satisfied reasonable persons that it is impartial and unbiased. Here in the peculiar circumstances of the case, there is a real likelihood of bias. I therefore,

accept the reference submitted by Additional Sessions Judge No. 3. Jaipur City and quash the order of the City Magistrate, Jaipur City dated May 11, 1970. The case is transferred to the court of District Magistrate. Jaipur, with the direction that either he should himself dispose of the case or remit it to another Magistrate other than to Mr. T.P. Joshi. City Magistrate, Jaipur City, for its rehearing and disposal according to law.