

Daulat Ram v. Girdhari Lal and another (S. S. Kang, J.)

(14) The second contention of Shri R. L. Garg is also devoid of any merit. The learned counsel contended that under Section 482 of the Code an abuse of the process of the Court can be inferred and a case is made out defeating the ends of justice. We have gone through the complaint and the allegations made therein which in our opinion do spell out *prima facie* an offence of defamation and the decision in *Smt. Nagawwa's case* (supra), would apply in the present case. The other significant feature to be considered is, the discharge of the complainant Mohinder Pal by the High Court, as a result of the revision filed by him before the Court. The order of the High Court definitely indicated that no case was made out against Mohinder Pal with reference to the complaint instituted by Kamla Rani. That was also a factor to be considered *prima facie* at this stage when these accused are merely summoned to stand their trial. Besides Mohinder Pal examining himself under Section 200, he also produced three witnesses, Sadhu Ram, Kishan Chand and Magh Singh. The learned Magistrate considered all this preliminary evidence, besides going through the allegations made in the complaint. Thereafter he passed the order summoning the accused under Section 204. It cannot be said that any abuse of the process of the Court was committed or ends of justice were defeated in any manner. In our opinion, therefore, a case is not made out for interference under Section 482 of the Code of Criminal Procedure. Similarly it cannot be held that the order of the Magistrate is illegal or improper for interference in exercise of the revisional jurisdiction of the High Court. The petition is thus without any merit and the same is dismissed.

D. S. Tewatia, J.,—I agree.

N. K. S.

Before Sukhdev Singh Kang, J.

DAULAT RAM,—Appellant.

Versus

GIRDHARI LAL and another,—Respondents.

Criminal Appeal No. 56 of 1976

May 8, 1979.

Code of Criminal Procedure (II of 1974) — Sections 195 and 340 —
East Punjab Urban Rent Restriction Act (III of 1949) — Section 16 —
Rent Controller and Appellate Authority — Whether 'Courts' for the
purpose of section 195 of the Code.

Held, that the Rent Controller appointed under the East Punjab Urban Rent Restriction Act, 1949, has all the trappings and attributes of a Court. Under Section 16 of the Act, the Rent Controller and the Appellate Authority have been authorised to summon and enforce the attendance of the witnesses and to compel the production of evidence like a Civil Court under the Code of Civil Procedure and under various sections of the Act the Rent Controller has to decide the matters before it on the evidence produced by the parties and the parties have a right to produce evidence and to be heard in support of their respective cases. Similarly, the Appellate Authority is obliged to decide the appeals coming before it after perusing the records of the case and after hearing the parties in support of their respective cases. It can make further enquiry into the matter, of course, in the presence of the parties. Both the Courts have to decide the cases before them in a judicial manner. From this attribute of the Rent Controller and the Appellate Authority it follows that they are not only the courts, but Courts of Justice as defined in section 20 of the Indian Penal Code, 1860. Since the proceedings before them are of a civil nature, they are necessarily to be termed as "Civil Courts of Justice" or simply Civil Courts for the purposes of sub-section (3) of section 195 of the Code of Criminal Procedure, 1973.

Appeal from the Order of Shri H. L. Randev, Additional District & Sessions Judge, Barnala, dated 7th November, 1975, dismissing the application for launching prosecution.

G. R. Majithia, Advocate, for the appellant.

Ashwani Kumar Chopra, Advocate for M. L. Sarin, Advocate, for respondents.

JUDGMENT

Sukhdev Singh Kang, J.

(1) Daulat Ram, appellant, has filed this appeal against the judgment, dated the 7th November, 1975, passed by Shri H. L. Randev, Additional District Judge, Barnala, exercising the powers of appellate authority under the East Punjab Urban Rent Restriction Act, who has dismissed the application filed by the appellant under section 340, Criminal Procedure Code, for launching prosecution against the respondents for offences under sections 193 and 471, Indian Penal Code.

(2) Daulat Ram, appellant, had filed an application under section 13 of the East Punjab Urban Rent Restriction Act (hereinafter called the Act) against Girdhari Lal, respondent, for his eviction from House

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No. 4607, situated at Barnala, which was occupied by Girdhari Lal, tenant-respondent. The main ground for eviction set up in the petition was that the tenant had not paid the rent. Girdhari Lal, tenant-respondent put in a written statement and stated therein that he had paid the rent amounting to Rs. 1,980 for the period from 1st of June, 1971 to 30th of May, 1976. In order to support his case, he produced a receipt purported to have been issued by Daulat Ram, appellant. He examined Bharpur Singh to substantiate his claim. He made his own statement also. The learned Rent Controller did not accept the version set up by Girdhari Lal, respondent. He came to the conclusion that the receipt produced by Girdhari Lal was a forged and fictitious document and that Girdhari Lal and Bharpur Singh, respondents had made false statements before him. He allowed the application filed by Daulat Ram, petitioner-appellant, and ordered eviction of Girdhari Lal, tenant-respondent. The appeal filed by the tenant-respondent was decided by Shri H. L. Randev, the appellate authority, who also upheld the findings of the learned Rent Controller. Regarding the receipt and the evidence of the two witnesses Girdhari Lal and Bharpur Singh, he held that the receipt was a forged document and these witnesses have made false statements. Daulat Ram, petitioner-appellant, then moved an application under section 340, Criminal Procedure Code, praying that prosecution should be launched against Girdhari Lal and Bharpur Singh, respondents under sections 193 and 471, Indian Penal Code. The notice of the application was given to the respondents, who appeared before the learned Appellate Authority and raised two preliminary objections regarding the maintainability of the application.

(3) It was argued that the Rent Controller while deciding the ejection application under section 13 of the Act was not acting as a Court. It was only a Tribunal constituted under the Act and the same had not been declared to be a Court under the provisions of the Act for the purpose of section 195(3), Criminal Procedure Code. The second contention was that if the application was governed by the Code of Criminal Procedure, 1898 (hereinafter called the Old Code), the application will not be maintainable in view of section 479-A (1) of the Old Code, because then the prosecution could be launched against the respondents only after recording a finding envisaged by the provisions of section 479-A of the Old Code at the time of the delivery of the judgment and after giving opportunity to the respondents of being heard and it had not been done so in the present case. The learned appellate authority accepted both these

contentions and dismissed the application. It held that the Rent Controller or the Appellate Authority deciding cases under the Act are not Courts. It also held that if the application was treated under the Old Code, even then it was liable to be dismissed as the procedure under section 497-A of the Old Code had not been followed.

(4) At the outset it may be stated that the case is not governed by the Old Code. The appellate authority decided the ejection application on 7th June, 1975. The present application has been filed after 1st of April, 1974, when the Code of Criminal Procedure, 1973, came into force. In the old Code, the provision for filing the application was contained in section 476, but in the New Code, the provision for filing such an application has been made under section 340. Since the application has been filed after the coming into force of the Code of 1973, the application shall be decided in accordance with the procedure prescribed by this Code. Section 195 of the New Code, provides the conditions requisite for initiation of proceedings in the Criminal Courts. It is in the following terms :—

“195. (1) *No Court shall take cognizance —*

(a) (i) of any offence punishable under sections 172 to 183 (both inclusive) of the Indian Penal Code, or

(ii) of any abetment of or attempt to commit such offence, or

(iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate.

(b) (i) of any offence punishable under any of the following sections of the Indian Penal Code, namely, sections 193 to 195 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

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(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii), except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate.

(2) Where a complaint has been made by a public servant under clause (a) of sub-section (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the complaint :

Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded.

(3) In clause (b) of sub-section (1), the term "Court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a Court for the purposes of this section.

(4) For the purposes of clause (b) of sub-section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees or sentences of such former Court, or in the case of a Civil Court from whose decrees no appeal ordinarily lies, to the Principal Court having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court is situate :

Provided that —

(a) where appeals lie to more than one Court, the Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate ;

(b) where appeals lie to a Civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the Civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed.

A perusal of sub-section (3) of section 195 will show that the term "Court" means a Civil, Revenue or Criminal Court and it includes a Tribunal constituted by or under a Central, Provincial or State Act if declared by that Act to be a Court for the purposes of this section. If an offence punishable under sections 193 and 471 of the Indian Penal Code had been committed in relation to any proceedings in a Court, the Criminal Court could take cognizance only on the complaint in writing made by that Court or the Court to which that Court is subordinate. The learned appellate Court came to the conclusion that the Rent Controller exercising the powers under the Act was a Tribunal constituted by a State Act, but since it had not been declared by the Act to be a Court for the purpose of section 195, Criminal Procedure Code, so, it was not a Court as envisaged by that section. It was not disputed that the Rent Controller or the Appellate authority have not been declared by the Act to be Courts for the purpose of Section 195. However, the Rent Controller and the Appellate Authority squarely fall within the term "Civil Court". Whether particular authority is a Tribunal or a Court, has taxed the minds of the Courts for quite some time. In *Virinder Kumar Satyawadi v. The State of Punjab* (1), their Lordships of the Supreme Court have described the essential characteristics of a Court in contra-distinction to a Tribunal exercising quasi-judicial functions in the following terms:—

"It may be stated broadly that what distinguishes a Court from a quasi-judicial tribunal is that it is charged with a duty to decide disputes in a judicial manner and declare the rights of parties in a definitive judgment. To decide in a judicial manner involves that the parties are entitled as a matter of right to be heard in support of their claim and to adduce evidence in proof of it.

And it also imports an obligation on the part of the authority to decide the matter on a consideration of the evidence adduced and in accordance with law. When a question therefore, arises as to whether an authority created by an Act is a Court as distinguished from a quasi-judicial tribunal, what has to be decided is whether having regard to the provisions of the Act it possesses all the attributes of a Court."

In many cases before the Supreme Court the question arose as to whether a particular Appellate Authority or Tribunal was a Court.

(1) AIR 1956 S.C. 153.

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(5) In *Lalji Haridas v. The State of Maharashtra and another* (2), it was held that the proceedings under section 137 of the Income-Tax Act taken by the Income Tax Officer are judicial proceedings and while deciding those proceedings the Income Tax Officer is to be deemed a Court for the purpose of section 195(1)(b) of the Criminal Procedure Code. Their Lordships have held a "Registrar" and "Assistant Registrar" exercising the powers under the Bihar and Orissa Co-operative Societies Act to be a Court subordinate to the High Court for the purpose of section 3 of the Contempt of Courts Act.

(6) The Rent Controller appointed under the Act has all the trappings and attributes of a Court. Under section 16 of the Act, the Rent Controller and the Appellate Authority have been authorised to summon and enforce the attendance of the witnesses and to compel the production of evidence like a Civil Court under the Code of Civil Procedure and under various sections of the Act, the Rent Controller has to decide the matters before it on the evidence produced by the parties and the parties have a right to produce evidence and to be heard in support of their respective cases. Similarly, the Appellate Authority is obliged to decide the appeals coming before it after perusing the records of the case and after hearing the parties in support of their respective cases. It can make further inquiry into the matter, of course, in the presence of the parties. Under the Act, the parties had a right to be heard in the proceedings before the Rent Controller as also the Appellate Authority. Both the Courts have to decide the cases before them in a judicial manner. A Full Bench of five Judges of this Court in *Smt. Vidya Devi v. Firm Madan Lal-Prem Kumar* (3), has held that the Rent Controller and the Appellate Authority under the Act are Civil Courts for the purposes of sections 195(1)(b). There is every reason to include the Rent Controller and the Appellate Authority within the definition of the term "Court" as given under section 195(3) of the said Act as these Tribunals have far greater trappings of a Court than a Registrar or a Sub-Registrar under the Indian Registration Act. It was also held that from this attribute of the Rent Controller and the Appellate Authority, it follows that they are not only the Courts, but Courts of Justice as defined in section 20 of the Indian Penal Code. Since the proceedings before them are of a civil nature, they are necessarily to be termed as "Civil Courts of Justice" or simply Civil

(2) AIR 1964 S.C. 1154.

(3) AIR 1971 Pb. & Haryana 150.

Courts for the purposes of sections 195(1)(b), 476 and 479-A of the Old Code. So, in view of this authoritative pronouncement of the Full Bench, the Appellate Authority was a Civil Court as defined in sub-section (3) of section 195. In view of this weighty pronouncement in clearest terms by the Full Bench, the Court below had fallen into an error in holding that the Appellate Authority was not a Court in view of the definition provided by sub-section 195(1)(b). There is no change in section 195(1)(b) in the New Code. The change in sub-sections (2) and (3), does not in any way affect the merits of this case. Since the Appellate Authority is a Civil Court, so it will squarely fall within the meaning of word "Court" as given in sub-section (3) of section 195. The changes in section 195 do not in any way affect the decision of the Full Bench in so far as it has held that the Rent Controller and the Appellate Authority are Civil Courts as envisaged by section 195(1)(b). The Appellate Authority was a Court. So, the application filed by the appellant before the Appellate Authority in this case is clearly maintainable. I set aside the order of the learned Appellate Authority and send back the case to him to decide the application under section 340, Criminal Procedure Code, afresh in accordance with law and in the light of the observations made in this judgment.

(7) Parties have been directed through their counsel to appear before the Appellate Authority, Barnala, on 22nd May, 1979.

N.K.S.

Before Kulwant Singh Tiwana, J.

GURDIAL SINGH—*Petitioner.*

Versus

KARTAR SINGH ETC.—*Respondents.*

Criminal Miscellaneous No. 494-M of 1979

May 10, 1979

Code of Criminal Procedure (II of 1974) — Section 398 — Term "further enquiry" — Meaning and scope of — Order for further enquiry — Whether wipes off evidence already recorded.