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Court : Guwahati

Decided On : Nov-13-1969

Judge : P.K. Goswami, J.

Appellant : Halim Munshi and ors.

Respondent : The State of Assam and anr.

Prior history : P.K. Goswami, J. 1. This Criminal revision is directed against the conviction Under Section 447, Indian Penal Code. The three accused were sentenced to a fine of Rs. 50/- each, in default, rigorous imprisonment for 15 days. They moved the learned Sessions Judge in revision unsuccessfully. 2. The prosecution case is that on 11-1-67 these accused persons trespassed into the complainant's land and ploughed over it. One of the accused seemed to have put forward a claim of right which he failed t

Judgement :

P.K. Goswami, J.

1. This Criminal revision is directed against the conviction Under Section 447, Indian Penal Code. The three accused were sentenced to a fine of Rs. 50/- each, in default, rigorous imprisonment for 15 days. They moved the learned Sessions Judge in revision unsuccessfully.

2. The prosecution case is that on 11-1-67 these accused persons trespassed into the complainant's land and ploughed over it. One of the accused seemed to have put forward a claim of right which he failed to establish Both the courts below held that there was sufficient evidence to establish the charge.

3. Mr. Bari, the learned Counsel for the petitioners, submits that the conviction is bad in law inasmuch as there was non-compliance of Section 242 of the Code of Criminal Procedure. It is true that the order-sheet of the trial court does not show that the allegations in the complaint had been explained to the accused on their appearance. They were, however, examined at the close of the trial Under Section 342 Criminal Procedure Code when the question of trespass was brought to their attention and each of them denied their guilt. The accused had not raised any objection on this score before the trial court nor before the learned Sessions Judge. This point is fairly conceded by Mr. Bari.

4. The point, therefore, which arises for consideration is whether mere non-compliance with Section 242 Criminal Procedure Code will vitiate the conviction in law. There is difference of opinion between different High Courts and several decisions have been placed before me by either side at the Bar. There are, however, two decisions of this Court in A.I.R. 1953 Assam 161, Nayan Ram Das v. Prasanna Kumar Das and in A.I.R. 1956 Assam 127 (1), Abdul Kadir v. Gafur Sheikh, the latter being a Division Bench decision. In A.I.R. 1953 Assam 161, Ram Labhaya, J. held that the mere omission to state the particulars of the offence to the accused as required by Section 242 unaccompanied by any suggestion of any probable failure of justice having been occasioned thereby, would be curable irregularity. In the next case, which is a Division Bench decision, the following observation of their Lordships is apposite :

Even if there had been non-compliance with Section 242, Cr.PC it could not be held that it amounted to an illegality so as to vitiate the proceeding; utmost, it might be said to be a case of irregularity which in the absence of any prejudice was curable.

With respect, I am bound by the above decision of the Division Bench. The various decisions placed before me by Mr. Bari. namely A.I.R. 1967 Mys 248, Siddappa v.

Patel Shivappa; : AIR1965 Bom30 , Mulkraj Bodhraj Chabra v. Nagpur Municipal Corpn. and those cited by Mr. Sen, namely : AIR1950 Cal61 , Express Dairy Ltd. v. Corpn. of Calcutta, and : AIR1959 Ori121 , Bidyadhar Tunga Samantra v. Daitari Rana, have not had the occasion to deal with the amendment of the Code in 1955 introducing Section 204 (1-B) therein. The impact of this Section 242 Criminal Procedure Code was not required to be considered in those cases cited at the Bar. I would, therefore, like to deal with this point in order to be fortified in my conclusion that here non-compliance with Section 242 Criminal Procedure Code per se may not be enough to vitiate the entire trial in absence of any prejudice which must be claimed and established in the proceeding. Sub-section (1-B), noted above, is in the following terms:

In a proceeding instituted upon a complaint made in writing every summons or warrant issued under Sub-section (1) shall be accompanied by a copy of such complaint.

Indeed Mr. Bari has stated that a copy of the complaint was furnished to the accused persons after they appeared in Court although it did not accompany the summons. There is also in this case compliance with Section 342 of the Code of Criminal Procedure. Mere omission of the Magistrate to explain the particulars of the offence to the accused on their appearance in this case is greatly neutralised by their being supplied with a copy of the complaint on which processes Under Section 447 Indian Penal Code had been issued earlier. Mr. Bari has not been able to point out any circumstance by which the accused had been prejudiced in the trial in the court below. I am, therefore, clearly of opinion that whatever merit there might have been before the amendment of 1955 in a submission about non-compliance with Section 242 Criminal Procedure Code, that has been greatly neutralised by the introduction of Sub-section (1-B) in Section 204 Criminal Procedure Code.

5. The next question is whether any prejudice has been caused to the accused. I am clearly of opinion that in this case no prejudice has been caused to the accused and they had fully notice of the simple charge which had been alleged against them. Indeed, no prejudice has been also claimed before me in this Court.

6. The petition is accordingly rejected.

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