Raj Kumar Chauhan Vs. the State

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Court : Guwahati

Decided On : Jun-03-1966

Judge : Rajvi Roop Singh, J.C.

Appellant : Raj Kumar Chauhan

Respondent : The State

Advocate for Pet/Ap. : Mr. Kar

Judgement :

Rajvi Roop Singh, J.C.

1. This is a reference made by the learned Sessions Judge of Tripura recommending that the summons issued on the petitioner on the basis of the order dated 12-2-65, is not in accordance with law and the order passed on 7-3-65 is illegal and without jurisdiction and as such the order of conviction and sentence passed on the petitioner under Section 112 of the Motor Vehicles Act should be set aside.

2. The facts which gave rise to this reference briefly stated are these : On 31-1-65 the O. C., Fatekrey P. S. made a report for prosecution of the accused petitioner Rajkumar Chauhan under Section 112 of the Motor Vehicles Act alleging that the petitioner was found driving the truck TRL-635 from north to south along Assam-Agartala road at Beheherra with S passengers excluding the driver and his assistant. On receipt of the said prosecution report the S. D. M., Kailashahar by

his order dated 12-2-65, transferred the case for disposal to the file of Shri M. L. Das, Magistrate 2nd Class who passed an order on the same date for issue of summons to the accused to the following effect:

Received the case on transfer from S. D. M., Kailashahar. Issue summons to the accused fixing 25-2-65. Mention Rs. 20 to remit as fine if he pleads guilty.

Thereafter a summons was served upon the petitioner asking him to appear before the learned Magistrate on 25-2 65; but in the summons it was not mentioned that the petitioner was to remit Rs. 20 as fine, if he pleaded guilty.

On receipt of the summons the accused petitioner filed an application for revision with the summons attached before the Sessions Judge praying for quashing of proceedings on the ground that the summons was vague. The application for revision was not accompanied by the order of the learned Magistrate, therefore, on the prayer of the learned lawyer for the petitioner, the Sessions Judge granted the petitioner time till 25-3-65 for filing a certified cony of the order of the learned Magistrate. Accordingly the petitioner obtained and filed a certified copy of the order of the learned Magistrate dated 12-2-65. In the meantime on 25-2-65, the learned Magistrate passed an order to the following effect:

Issue of fresh summons upon the accused person. To 19-3-65.

This order was followed by another order dated 7-3-65 passed by the learned Magistrate which is as follows:

Accused Rajkumar Chauhan available at Manu Camp, he is examined Under Section 242, Cri. P. C. by stating substance of accusation who pleaded guilty. He is convicted Under Section 112, M. V. Act and sentenced to pay a sum of Rs. 20 in default 5 days' R. I. Fine amount is deposited.

3. The learned Sessions Judge after hearing the lawyers has made this reference recommending that the order dated 12-2-65 is not in accordance with law and the order dated 7-3-63 is illegal and without jurisdiction and as such it should be set aside.

4. I heard the learned Counsel for the petitioner and the Government Advocate and perused the record of the case.

5. The learned Counsel for the petitioner while supporting the reference vehemently contended that Section 130 (1) of the Motor Vehicles Act, provides that a Court taking cognizance of an offence under this Act, shall, unless the offence is an offence specified in Part A of the Fifth Schedule, state upon the summons to be served on the accused person, that he-

(a) may appear by Pleader and not in person, or

(b) may by a specified date prior to the hearing of the charge plead guilty to the charge by registered letter, and remit to the Court such sum not exceeding twenty-five rupees as the Court may specify.

Now the use of the word 'shall' in the above sub-section makes it obligatory on the part of the learned Magistrate who has taken cognizance of the offence, under this Act, against the accused to issue summons according to the provisions of Section 130 (1), unless the offence is an offence specified in Part A of the Fifth Schedule. Offences under Sections 123 and 112 of the Motor Vehicles Act are not offences mentioned in Part A of the Fifth Schedule to the Motor Vehicles Act. In the present case it was the incumbent duty of the learned Magistrate to issue summons informing the accused that he might appear by pleader and not in person or he might plead guilty to the charge by registered letter and remit a sum not exceeding Rs. 25 by a specified date.

There is nothing in the Motor Vehicles Act to show that a Court can dispense with compliance with the provisions of Section 130 (1) of the Motor Vehicles Act when the charge against the accused is one not covered by Part A of the Fifth Schedule to the Act.

The accused has under Clause (1) of Sub-section (1) of Section 130 a right of appearing by a Pleader and take whatever plea he likes after due deliberations on the basis of the notice and under Clause (b) of that sub-section has a right of remitting a sum not exceeding Rs. 25 on pleading by registered letter without

appearance before the Court. In the present case the summons served on the accused petitioner did not mention that the accused might appear by pleader and not in person; nor did It ask the petitioner to plead guilty and remit money as per Clause (b) of Section 130 (1) of the Motor Vehicles Act or in accordance with the order of the learned Magistrate dated 12-2-65.

In view of these facts the whole proceeding has suffered illegality, therefore, it should be quashed.

In support of his argument he cited the case of Doongarshi Das v. State : AIR1966 Cal215 . In this case the summons did not comply with the provisions of Section 130 (1) (a) of the Motor Vehicles Act, therefore, Shri Amresh Roy, J, set aside all the subsequent orders passed by the Court below upon an observation to the following effect;

The true construction of Sub-section (l) of that section is that the Parliament has enjoined that a summons issued in a case, to which the section applied, must include both the alternatives in Clause (a) and (b). The choice thereby given is not a choice of the Court issuing a summons but is a choice of the accused to whom the summons has been issued. The reason for that provision in this Act, which has been made mandatory by the Parliament by the amending Act of 1956 by substituting the word 'may in the substantive part of Sub-section (1) to the word 'shall', is that in cases where that section is applicable, law does not compel an accused person to either appear in person or even by pleader and gives such accused a choice to plead guilty by registered post and sending by money order the money mentioned as the amount of fine on the summons itself and thereby bring an end to his troubles and the proceeding by way of prosecution.

6. The Government Advocate in order to controvert the contention of the learned lawyer of the petitioner averred that the two Clauses (a) and (b) of Section 130 (1) are alternatives to each other and summons issued by including one of those alternatives would be sufficient compliance with the provisions of that section. The Government Advocate's argument is that otherwise the conjunction 'or' at the end of Clause (a) would really be bearing meaning of 'and'. The Government Advocate, therefore, contended that the summons as issued in the present case,

had included Clause (a) of Section 130 (1) of the Motor Vehicles Act and was, therefore, quite in order.

7. After having given my most anxious consideration to the arguments advanced on both sides, I find that the argument of the Government Advocate carries weight. The offences under Sections 112 and 123 of the Act with which the petitioner was charged are not included in the first part of the fifth schedule to the Act and the Magistrate was, therefore, bound to comply with the terms of Section 130 (1). There can be no doubt on the plain terms of Section 130 (1) that the provision is mandatory. A Magistrate taking cognizance of an offence is bound to issue summons of the nature prescribed by Sub-section (1) of Section 130, But there is nothing in that sub-section which indicates that he must endorse the summons in terms of both the Clauses (a) and (b). To hold that he is so commanded would be to convert the conjunction 'or' into 'and'. There is nothing in the words! used by the Legislature which justifies such a conversion, and these are strong reasons which render such an interpretation wholly inconsistent with the scheme of the Act.

Moreover, Section 130 was enacted with a view to protect from harassment a person guilty of a minor infraction of the Motor Vehicles Act or the Rules framed thereunder by dispensing with his presence before the Magistrate, and in appropriate cases giving him an option to plead guilty to the charge and to remit the amount which can in no case exceed Rs. 25. I, therefore, find that in the present case due to the absence of endorsement in terms of Section 130 (1) (b) the summons could not be said to be against law. In support of my view, 1 may refer the case Puran Singh v. State of Madhya Pradesh : [1965]2SCR853 . In this case a similar point regarding the scope of Section 130 of the Motor Vehicles Act, was raised and Shri Shah, J. while delivering the judgment of this case observed as follows:

Having regard to the phraseology used by the Legislature which prima facie gives a discretion to the Magistrate exercisable at the time of issuing the summons, and having regard also to the scheme of the Act, we are of the view that the High Court was right in holding that the Magistrate is not obliged in offences not specified in Part A of the Fifth Schedule to make an endorsement in terms of Clause (b) of

sub.-s. (1) of Section 130 of the Act. We are of the opinion that the view to the contrary expressed by the High Court of Allahabad in State of U. P. v. Mangal Singh 1962 (1) Cr LJ 684 (All), and the High Court of Assam in the State of Assam v. Suleman Khan 1961 (2) Cri LJ 869 (Assam), on which the Sessions Judge relied is not correct.

8. Mr. Kar counsel for the petitioner next urged that from the order sheet it appears that on 25-2-65 the learned Magistrate ordered issue of fresh summons upon the accused person and adjourned the case to 19-3-65. But from the record it is clear that no summons was issued pursuant to the said order. But even then the case was taken up on 7-3-63 a date which was not fixed for hearing and was actually a date which was earlier to the date fixed under the orders of the previous date, on the ostensible grounds that the accused was available at Manu Camp. The learned Magistrate convicted the accused petitioner on the ground that he pleaded guilty. But the procedure adopted by the learned Magistrate in convicting and sentencing the accused is entirely illegal and has caused a failure of justice, therefore, the order should be set aside.

9. It was further averred that ordinary rule is that Courts of Magistrate shall sit in the usual Court houses. But holding a mobile Court at road side causes a grave prejudice to the accused persons because they cannot get legal advice. Besides, the right to be defended by a lawyer of his choice guaranteed by Article 22 of the Constitution of India is denied to them. Similarly, in this case the petitioner was denied this valuable right by the learned Magistrate.

10. The Government Advocate on the other hand frankly conceded that the case was taken up at Manu Camp on a date which was not fixed for hearing. But he contended that in this case the petitioner confessed his guilt, therefore, the learned Magistrate convicted him, hence in view of these minor irregularities, the order of the Magistrate should not be set aside.

11. After having pondered over the rival arguments advanced on both sides, I find that the learned Magistrate has committed irregularities which have prejudiced the accused. It is true that there is nothing in the Code that prevents a Magistrate from holding Court anywhere within the territorial jurisdiction, so long as it is an open

Court. But as a rule of prudence it should be held at proper place. On this point I may refer to the case Kumar Purnendu Nath Tagore v. Kalipada Dutta reported in : AIR1956 Cal513 wherein Mr. Das Gupta, J. while showing the importance of a Court observed as follows:

I do not think it can be gainsaid that the atmosphere of the Court also plays an important role in the proper administration of justice. Hallowed by the administration of Justice for long years gone by and by the promise of administration of justice for years to come, public Court houses may well be said to be temples of justice where all who seek justice may enter and where none, being called on to help in justice being administered, should refuse to come. That justice be properly administered is the interest of all and not merely of the parties in a particular case. It is for this reason that the highest in the land together with the lowest have entered the portals of Courts of law without hesitation and with the prayerful humility.

12. But the real point in my view is not the place where the Court was sitting, but how the trial was held. In a Criminal trial, the supervening consideration is to hold, a fair trial, by adhering to the procedure laid down, not only in the Code of Criminal Procedure, which is the general law to achieve a fair trial, but also the provisions in any special Act that may be applicable to the case. If the correct procedure has been adhered to and even when there has been some minor deviation therefrom, but no prejudice has been caused, then the particular place where the Court held its sitting is of no consequence. If however, at any place where the Court may be sitting, those procedures have been violated and prejudice to the accused has been caused, the trial need have to be struck down. When such violations of law arise as natural consequence of the place at which and the manner in which Mobile Court is held, then such Mobile Court and trials held thereby must be held to have been illegal and improper.

13. One consequence of the manner in which the proceedings in the Mobile Court was conducted is that the accused was not served with any summons though the Court ordered issue of it. Prosecution has pleaded that was so, because the accused was physically present before the Court, In a summons case, scheme of

the Code is that at the first instance summons shall be issued and served on the accused; if he fails to obey the summons, them only a warrant of arrest will be issued and by execution thereof the accused shall be brought before the Court under arrest.

Even when the accused person is present in Court without any process having been issued against him, there is necessity of service of summons, to give notice to the accused what charge he is being called upon to answer. That the Magistrate has to explain the substance of accusation to him by compliance of Section 242, Criminal Procedure Code is not a complete substitute for that notice, because the right to be defended connotes that upon such notice the accused should come prepared in his mind if he will defend or plead guilty. In usual Court houses he has the opportunity of legal advice to plead then and there. On the road side he has none.

One importance of summons has arisen in this case because the prosecution report mentioned Section 112, M. V. Act as the offence committed under. That is the offence the Magistrate took cognizance of, and explained to the accused to which he was supposed to have pleaded guilty, and the Magistrate has convicted him under. But even on the allegations in the prosecution report proper section for the offence should have been Section 123 and not Section 112, M. V. Act. The allegation against the accused petitioner was that he had carried in the truck 3 passengers excluding the driver and his assistant. Such a matter relates to the terms of permit and the certificate of registration of the Vehicles. Section 123, Sub-section (1) of the M. V. Act makes the driver of a motor vehicle, who drives the same in contravention of any condition of the permit relating to the purpose for which the motor vehicle may be used punishable for the first offence with fine which may extend to one thousand rupees and for a subsequent offence if committed within 3 years of the commission of a previous similar offence, with imprisonment which may extend to 6 months or with fine which may extend to Rs. 2,000 or with both. It is, therefore, clear that the allegations against the accused petitioner in the present case amounts to an offence under Section 123 (1) of the Motor Vehicles Act. It follows, therefore, that Section 112 of the Motor Vehicles Act, which is a residuary section is not applicable in the present case and the

conviction under that section is illegal.

14. The last contention of the learned Counsel for the petitioner was that Section 112, M. V. Act prescribes only a sentence of fine, but the Magistrate has awarded sentence of imprisonment in default of payment of such fine. He further contended that even if it were a conviction under Section 123 of the M. V. Act, by first part of that section which deals with first conviction, the accused person in this case could be sentenced to pay fine only and not to any term of imprisonment either substantive or alternative in default of payment of fine. To show the distinction regarding punishments made by M. V. Act itself he refers to later pads of Section 123 and also Sections 116, 117, 124, 125 and 126 of that Act as illustrations.

15. To this argument of Mr. Kar, Section 64 of Indian Penal Code seems to provide a complete answer because that section says:

In every case of an offence punishable with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment, and in every case of an offence punishable with imprisonment or fine, or with fine only, it shall be competent to the Court which sentences such offender to direct by the sentence that, in default of payment of the fine, the offender shall suffer imprisonment for a certain term, which imprisonment shall be in excess of any other imprisonment to which he may have been sentenced or to which he may be liable under a commutation of a sentence.

16. No other point was pressed before this Court.

17. In the result, I have come to the conclusion that in this case many illegalities and irregularities causing grave prejudices to the accused person sufficient to vitiate the trials and the order of conviction and sentence was allowed to occur by violating clear provisions of Criminal Procedure Code and also of M. V. Act, which I have discussed in detail above.

18. I, therefore, in view of my foregoing discussions, accept the reference and set aside the order of conviction and sentence passed by the learned Magistrate and acquit him. Fine that has been paid be refunded.