

Ganesh Bahadur Vs. the State

Ganesh Bahadur Vs. the State

SooperKanoon Citation : sooperkanoon.com/129761

Court : Guwahati

Decided On : Nov-30-1950

Judge : Ram Labhaya, J.

Appellant : Ganesh Bahadur

Respondent : The State

Judgement :

Ram Labhaya, J.

1. Ganesh Bahadur was convicted under Section 19(f) of the Arms Act by an order of the Magistrate, 1st Class, Mangoldoi. He was sentenced to a fine of Rs. 50, in default of payment, of which he was ordered to undergo rigorous imprisonment for a period of one month. His petition of revision to the Sessions Court did not succeed. He has now invoked the revisional jurisdiction of this Court.

2. The only important point that arises in the case is whether sanction for the prosecution of the petitions, which was obtained admittedly after the institution of the proceedings against him, can validate the proceedings with retrospective effect.

3. The learned Counsel for the petitioner contends that under Section 29, Arms Act, the sanction must precede the institution of the proceeding. Where a sanction is not obtained before the institution of the proceeding, the proceeding stands

vitiating and the conviction cannot stand. Section 29, Arms Act, provides that:

Where an offence punishable under Section 19, Clause (f), has been committed within three months from the date, on which this Act comes into force in any province, district or place to which Section 32, Clause 2, of Act XXXI of 1860 applies at such date, or where such an offence has been committed in any part of British India not being such a district, province or place, no proceedings shall be instituted against any person in respect of such offence without the previous sanction of the Magistrate of the district or, in a presidency town, of the Commissioner of Police.

4. The language of the section does not support the contention raised by the learned counsel. It also receives support from two decisions of the Patna High Court, viz., *Girja Suri v. Emperor* A.I.R. (33) 1946 Pat. 160 and *Mohan Lahari v. The King* A.I.R. (37) 1950 Pat. 243. The earlier decision of the Patna High Court followed a decision of their Lordships of the Federal Court reported in *Basdeo Agarwalla v. Emperor* A.I.R. (32) 1945 F.C. 16. In the case before us, the charge sheet was submitted on 3.1.1949 in the Court of the Sub-Divisional Officer, Mangoldoi. He transferred the case to the 2nd Magistrate for disposal. On the same day it was received by the 2nd Magistrate who ordered that the case be fixed for hearing on 1.3.1949. He also directed the police to produce the accused and the prosecution witnesses that day. On 1.2.1949 the accused was produced but the prosecution witnesses were absent. The case then dragged on for sometime. There were several adjournments, but for one reason or the other no prosecution witnesses could be examined. On 15.7.1949, it was discovered that sanction for the prosecution as required by Section 29, Arms Act had not been obtained. The Prosecuting Officer then asked for an adjournment to obtain sanction from the District Magistrate. The case was adjourned. The sanction of the District Magistrate was received after this date. The prosecution witnesses were then examined and at the termination of the trial the accused was found guilty.

5. This case is fully covered by *Girja, Suri v. Emperor* A.I.R. (33) 1946 Pat. 160 in which it was held:

that requisite sanction under Section 29, Arms Act, is a condition precedent for the institution of a proceeding in respect of an offence under Section 19(f). Proceeding instituted without such sanction is null and void.

In this case also A.I.R. (33) 1946 Pat. 160, the accused who was charged with an offence under Section 19(f) was produced before the Magistrate on 25.6.1941. The charge sheet was put in on 8.7.1944. The sanction of the District Magistrate was received on 16.8.1944. No prosecution witnesses had been examined before 16.8.1944. Relying on the decision of their Lordships of the F.C. reported in *Baxdeo Agarwalla v. Emperor* A.I.R. (32) 1945 P.C. 16 the Patna High Court quashed the proceedings holding that they were null and void.

6. The learned Government Advocate concedes that as the sanction in this case was obtained after the institution of the proceedings, the case is fully covered by the authorities relied on by the learned Counsel for the petitioner and finds himself unable to support the conviction in view of these authorities.

7. I am in respectful agreement with the view taken in these cases. The proceedings ending with the conviction of the petitioner are, therefore, null and void. In these circumstances the petition of revision is allowed and the conviction is set aside. The fine, if paid, shall be refunded.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com