Surath Chandra Vs. the State

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Court : Guwahati

Decided On : Mar-13-1958

Judge : Sarjoo Prosad, C.J.

Appellant : Surath Chandra

Respondent : The State

Judgement :

Sarjoo Prosad, C.J.

1. For the reasons stated in the letter of reference, the order of conviction passed in this case cannot be upheld.

2. The reference of directed against an order, dated 4-4-57, passed by Mr. Thomas, Magistrate with first class , powers, Gauhati, convicting the petitioner of an offence under Section 34 of the Police Act. The order runs as. follows:

Accused Surath Chandra Dauka produced undler arrest for obstructing public traffic. Substance of allegations explained to the accused, who pleads guilty and convicted under Section 34, Police Act, and fined Rs. 50/-, in default, 30 days simple imprisonment

The accused in his petition moving! against the order made various allegations repudiating the fact that the charge was explained to him or that he had pleaded guilty to the charge. He asserted that he was merely an office assistant in the firm

and his duties did not include the management of the workshop or any matter connected1 therewith. The charge was for obstruction to traffic because of some truck belonging to the Assam Engineering Works being placed on the road in front of the workshop for the purpose of repairs.

3. The main ground for making the reference is that there was non-compliance with the provisions of Sections 242 and 243 of the Code of Criminal Procedure which apply to summons cases. These are very salutary provisions which should be observed by Magistrates in the trial of summons cases. Section 242 requires that when the accused appears or is brought before the Magistrate, the particulars of the offence of which he is accused, shall be stated to him, and ha shall be asked if he has any cause to show why he should not be convicted; but it shall not be necessary to frame a formal charge.

In this case, I do not find! anything on the record to suggest that the requirements of Section 242, Cri.P.C. were complied with except the bare order of the Magistrate stating that the allegations were explained to the accused. This, in my opinion, was quite insufficient. The record, on the face of it, does not show that the Magistrate explained to the accused the essential particulars of the offence and recorded the answers which the accused gave. What is more serious is the omission of the learned Magistrate to observe the formalities required by Section 243 of the Code.

This section lays down that if the accused admits that he has committed the offence of which he is accused, his admission should be recorded as nearly as possible in the words used by him and, if he shows no sufficient cause why he should not be convicted, the Magistrate may convict him accordingly. In this case, the so-called admission of the) accused was not recorded by the Magistrate at all much less in the words of the accused himself, as required by the section. These provisions are necessary for protection of the accused and for a proper administration of justice which would inspire confidence in the administration.

Magistrates have to remember that an order convicting an accused on his own admission is not a final order, as it is open to revision by a superior Court which has to be satisfied that what the Magistrate thought to be an admission of an

offence by the accused, was really such an admission. Cases can be easily imagined where the superior Court and the Magistrate might very well differ on the construction to be placed upon the statement of the accused. In the absence of any such record, the superior Court is deprivedl of the chances of forming its own independent conclusions, which might often result in serious miscarriage of justice.

That is why the law requires that the admission of the accused should be recorded as nearly as possible in the words used! by him. The various cases which the learned Sessions Judge has discussed in his letter of reference bear out the propositions which I have laid down. Indeed the language of the section itself is quite clear on the point. The Magistrate in his report observes that it was not necessary to examine the accused undter Section 342 of the Code of Criminal Procedure because the trial was of a summons case. Indeed he lost sight of the actual point urged by the petitioner, namely, that there was non-compliance, not with the provisions of Section 342, but with' those of Sections 242 and 243 of the Code of Criminal Procedure.

4. The conviction of the petitioner is accordingly set aside, and the reference is accepted. The fine, if paid, is ordered to be refunded.