

Nava Vs. State of Mysore

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Court : Karnataka

Decided On : Jul-16-1956

Reported in : AIR1957Kant24; AIR1957Mys24; 1957CriLJ381; ILR1956KAR238

Judge : Venkataramaiya, C.J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 231; [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 165

Appeal No. : Criminal Revn. Petn. No. 12 of 1956

Appellant : Nava

Respondent : State of Mysore

Advocate for Def. : Adv. General

Advocate for Pet/Ap. : S.A. Peeran, Adv.

Judgement :

ORDER

1. The petitioner has been found guilty of being in possession of counterfeit coins knowing these to be false and sentenced to undergo rigorous imprisonment for one year. The evidence relating to the coins being found with him has been believed by two Courts and there is no good reason to treat it either as insufficient or unreliable. Nevertheless the conviction is attacked on the ground that the coins

are not proved to be counterfeit and that the search conducted by the police to secure these is illegal.

The coins were sent to the Mint Master for examination and he communicated the opinion that these were not genuine. This is not sufficient by itself, as contended for the petitioner, in the absence of evidence by the expert before Court to conclude that the coins are false. There is however the testimony of Police Officers and the finding of the Court as also the opinion of assessors to the effect that these were faked ones. The petitioner when his attention was drawn to the evidence and asked to offer explanation, if any, to what was alleged against him, did not deny that these were such and even in the appeal before the Sessions Court, he is said to have not disputed it.

One need not be an expert to find out a bad coin and experience shows that many have the knack & capacity to mark it out readily even though the same is mixed up with good ones. At the time the police officers entered the accused's house, these are said to have been lying before him tied up in a piece of cloth and he is alleged to have thrown away some into a basket. Some instruments or materials with which the process of imitation may be carried on were also kept by the side of petitioner. The objection to the conviction on the score of inadequacy of proof about the coins not being genuine is untenable.

2. The search as a result of which the coins were seized was commented upon as high handed and unwarranted. Section 165 of the Code of Criminal Procedure relied upon for this states:

'(1) Whenever an officer in charge of a police station or a police officer making an investigation has reasonable grounds for believing that anything necessary for the purposes of an investigation into any offence which he is authorised to investigate may be found in any place within the limits of the police station of which he is in charge, or to which he is attached, and that such thing cannot in his opinion be otherwise obtained without undue delay, such officer may, after recording in writing the grounds of his belief and specifying in such writing, so far as possible, the thing for which search is to be made, search, or cause search to be made for such thing in any place within the limits of such station.'

Admittedly there is no record of the reasons and the omission according to petitioner's counsel is a vital defect which renders the evidence about petitioner having been in possession of the coins unacceptable.

The section does of course cast an obligation on the police officer to express in writing as to what led him to make the search without a warrant and this is to some extent a safeguard against the Possibility of wanton annoyance and needless harassment caused by a search. The requirement cannot be dispensed with or explained away on assumptions of necessity or the existence of proper grounds for the act. Disregard of the provision amounts to a default in doing what is enjoined by law, which should not be countenanced or encouraged by those who exercise control and authority over the work of the police officer concerned.

3. The question whether the provision is man. mandatory or directory--what is the effect of the non-observance of the condition on the decision--has been considered in some cases. In *Ali Ahmad Khan V. King Emperor* AIR 1924 All 214 (2) (A) Suleman J. held that the failure to record reasons is not a material error so as to vitiate the conviction if the circumstances point to the guilt, *Sohan Lal v. Emperor*, AIR 1933 Oudh 305 (B) supports the contention that non-compliance with the section is highly irregular. But there is a later case of the same Court *Nangu Bhagat v. Emperor*, AIR 1935 Oudh 270 (C) in which the omission is considered not to be a serious defect if the police officers have acted bona fide. The Calcutta High Court has held in *Indu Bhusan Chatterjee v. State* : AIR1955 Cal129 (D), that failure to record reasons is not an illegality which can be urged as a ground for acquittal.

4. The direction contained in the section can-not be treated as imperative and independent of the circumstances of the case. Much depends on these and on the inference which may be reasonably drawn from the course and manner of the investigation. When the authority for the search does not appear to be made use of as a cover for harassment and malicious interference with peace and privacy a person is accustomed to in his residence and the materials gathered are incriminating, want of conformity to the section is to be regarded as unessential flaw.

5. In the present case, I think that the failure to record reasons is nothing more than a bona fide unintentional omission of a formality and that it does not affect the legality of the conviction.

6. The petition is dismissed.

7. Petition dismissed.

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