

B. Rajanna Vs. State of Karnataka

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Court : Karnataka

Decided On : Dec-14-1995

Reported in : 1996(1)ALT(Cri)436; 1996CriLJ1820; ILR1996KAR766; 1996(1)KarLJ433

Judge : K.H.N Kuranga, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 251, 252, 262 and 263

Appeal No. : Criminal Petn. No. 459 of 1991

Appellant : B. Rajanna

Respondent : State of Karnataka

Advocate for Def. : A.B. Patil, Addl. S.P.P.

Advocate for Pet/Ap. : S.V. Angadi, Adv.

Judgement :

ORDER

1. This petition is listed for Admission today. The learned Additional State Public Prosecutor has taken notice for the respondent. By consent of the counsel for the petitioner and the learned Additional State Public Prosecutor, the petition is taken up for final disposal.

2. Heard.

3. The petitioner has in this petition challenged the order dated 28-2-1991 passed by the Metropolitan Magistrate, Traffic Court-III, Bangalore City in C.C. No. 6700/1991 convicting him for the offence punishable under Section 92(o) & (p) of the Karnataka Police Act and sentencing him to pay a fine of Rs. 150/-.

4. The Sub-Inspector of Police, Law and Order, Mahalakshmi Police Station filed a petty-charge-sheet before the Metropolitan Magistrate, Traffic Court, III, Bangalore City on 28-2-1991 alleging the commission of the offence under Section 92(o) & (p) of the Karnataka Police Act ('the Act') against the petitioner. The date of the occurrence was on 27-2-1991.

5. It is stated in the charge-sheet that on 27-2-1991 at 10.20 p.m., the petitioner was standing on the public-road in Saraswathipuram and he was drunk and was abusing in a foul language and committed breach of peace. The petitioner was produced before the Magistrate on 28-2-1991. It appears that the learned Magistrate has adopted the summary procedure to try the accused in this case.

6. It is seen from the records, a printed form as prescribed under Section 263 of the Code of Criminal Procedure (hereinafter referred to as 'the Code') has been used. This form has been filled up with necessary particulars.

7. In Column No. 7 the sentence 'do you plead guilty or have any defence to make' has been printed. This is a question to be put to the accused as provided under Section 251 of the Code by the Magistrate. Using of the Form in which this sentence is printed is not authorised by Section 263 of the Code and therefore, it is illegal. In this case, against Column No. 7 something is written by the Magistrate which cannot be made out. Column No. 8 which provides for the plea of the accused and examination, is kept blank. The learned Magistrate has not recorded the plea of the accused as nearly as possible in the words of the accused.

8. Chapter XXI of the Code deals with summary-trials. According to Section 262 of the Code, in trials under this chapter the procedure specified in the Code for the trial of summons cases shall be followed. Chapter XX of the Code deals with trial of summons cases by the Magistrate. 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 he shall be asked whether he pleads guilty or has any defence to make as required under Section 251 of the Code. If the accused pleads guilty, the Magistrate shall record the plea as nearly as possible in the words used by the accused as required under Section 252 of the Code.

9. The rule embodied in Section 252 of the Code is a very salutary rule, being necessary for the protection of the accused and the proper administration of justice. The superior Court is entitled to be satisfied that what was treated by the Magistrate to be an admission of the offence is really such an admission. It is not difficult to conceive of cases in which the superior Court and the Magistrate may differ upon the construction to be placed upon the statements of the accused person. By not recording the admission of the accused as nearly as may be in his own words the Magistrate disregards the provision of Section 252 of the Code. The safeguard provided in Section 252, namely, that the plea must be recorded as nearly as possible in the words used by the accused is a wholesome provisions and any departure from this would not be in the interest of justice as superior Courts must know what question was put to the accused and what was his real answer, to decide for itself if the plea of guilt was really so. The fact that the offence was petty is not relevant for this purpose as conviction in a petty offence may also carry stigma and may affect persons in many ways.

10. The requirement of Section 252 of the Code are mandatory in character and violation of these provisions vitiates the trial and renders the conviction invalid. The requirement of the section is not a mere empty formality but is a matter of substance intended to secure proper administration of justice. It is important that the terms of the section are strictly complied with because the right of appeal of the accused depends upon the circumstances whether he pleaded guilty or not, and it is for this reason that the legislature requires that the exact words used by the accused in his plea of guilty should, as nearly as possible, be recorded in his own language in order to prevent any mistake or misapprehension.

11. In this case the learned Magistrate has not recorded the plea of the accused in his own words as nearly as possible. There is no material to show that the petitioner has sufficient opportunity to make up his mind. The incident took place

on 27-2-1991 and he was produced before the Magistrate on 28-2-1991 and the plea of the accused was recorded on that day. In the circumstances, the order passed by the Magistrate convicting and sentencing the accused to pay a fine of Rs. 150/- for the commission of the offence under Section 92(o) & (p) of the Karnataka Police Act dated 28-2-1991 passed in C.C. No. 6700/91 is liable to be set aside.

12. Accordingly, the petition is allowed. The order dated 28-2-1991 passed by the Metropolitan Magistrate, Traffic Court III, Bangalore City in C.C. No. 6700/91 is set aside. The case is remanded to the learned Magistrate to record the plea of the accused afresh and dispose of the case in accordance with law.

13. Petition allowed.

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