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

Chokla Vs. State of Mysore

Chokla Vs. State of Mysore

SooperKanoon Citation : sooperkanoon.com/375835

Court : Karnataka

Decided On : Nov-23-1961

Reported in : 1962CriLJ705

Judge : A. Narayana Pai, J.

Appellant : Chokla

Respondent : State of Mysore

Judgement :
ORDER

A. Narayana Pai, J.

1. The petitioner who was working as a cooli in the Railway at Wadi Railway Station was tried summarily for theft of certain articles from a Railway Wagon, convicted Under Section 379 of the Indian Penal Code and sentenced to pay a fine of Rs, 10/-. A Revision Petition against that before the District Magistrate of Gulbarga having failed, the petitioner has now come up to this Court.

2. The substantial point argued by Mr. Jahagirdar on behalf of the petitioner is that in view of the opinion expressed by several High Courts in the cases cited by him, Sachidanand v. State : AIR1956 All212 , Subramanya v. The Queen ILR 6 Mad 396 and Bradley v. Emperor A.I.R. 1932 Lah 188, the petitioner ought not to have been tried summarily Under Section 260 of the Code of Criminal Procedure. These

decisions do not say, nor does the learned Counsel contend, that the trial of a Government servant summarily for an offence of the type enumerated in the said Section is necessarily illegal or irregular. The proposition laid down in those cases and strongly relied upon by the learned Counsel is that Section 260 of the Code of Criminal Procedure does not compel a Magistrate to adopt summary procedure, which normally has the effect of depriving an accused of a substantial right of appeal, but only gives the Magistrate the discretion whether or not to proceed under that Section in a given case.

In, the case of Government servants, having regard to the fact that conviction by a Criminal Court will invariably result in their being dismissed from Government service, the consequences of conviction by Criminal Court are so serious that it would not be a proper exercise of discretion by a Magistrate to try such persons summarily Under Section 260. Although the decision reported in ILR 6 Mad. 396 refers to serious character of the charge in relation to the official position of an accused to which he had risen after many years of service as elements entering into the proper exercise of discretion by a Magistrate, the observations in A.I.R. 1932 Lah. 188 would indicate that rank of an accused is not a very material consideration.

3. On an examination of the principles stated in those cases and the several circumstances which persuaded the learned Judges to hold that the trial of the accused in a summary manner in those cases was the result of an improper exercise of discretion by the Magistrate, it appears to me that it cannot be accepted as a proposition of law applicable to all circumstances that in every case where a Government servant is an accused the Magistrate should invariably exercise his discretion against trying him summarily Under Section 260. To hold so would amount to actually engrafting an exception to Section 260 of the Code of Criminal Procedure. The real principle appears to be that the decision whether or not to try a particular accused summarily being itself a discretion to be exercised by a judicial officer, such discretion should be exercised judicially and any improper exercise of such discretion is open to correction by I superior Courts.

It also appears to me that whether or not in a given case there is sufficient ground for interference is a matter which must necessarily depend upon the facts and circumstances of that case. The fact that conviction' by a Criminal Court of a Government servant invariably entails his dismissal from service itself leads to the result that such circumstance which occurs in every case cannot possibly furnish a test as to whether discretion has or has not been exercised judicially in a given case. The answer to that question must depend upon other circumstances. The serious character of the charge, the position occupied by an accused, the length of service which are found stated in the ruling of ILR 6 Mad 396 must, in my opinion, be counted among the more important circumstances which should govern the exercise of discretion by a Magistrate. I find it a little difficult to accept the general proposition made in the Lahore case referred to above that rank is not a circumstance of materiality at all.

4. In my opinion, the only test which could be stated in general terms must be one of prejudice. If the circumstances are such that a summary trial of an accused would cause him prejudice, whether it be in the matter of the trial itself or in the matter of its consequence then it would be an improper exercise of discretion on the part of the Magistrate to try the particular offence summarily.

5. The question therefore in this case is whether the accused is shown to have suffered any such prejudice as to require a setting aside of his conviction by the trial Magistrate with or without a further direction for retrial.

6. That the accused was caught red-handed is obvious on the face of the record. It is no doubt true that the most important piece of evidence is the oral evidence of a single witness. But, nevertheless, it is evidence which has been', accepted by the trial Magistrate particularly having regard to the fact that within a short time o) the accused being caught red-handed by the witness Anthoni he was taken to a Havaldar and handed over to him along with stolen articles with him. The value of the evidence of this witness does not depend upon or vary with whether it had been given in a summary trial or in a regular trial.

7. Comment has been made on what is described as the scrappy manner in which evidence of this witness has been recorded. The record consists of just a couple of

sentences of chief examination and an equally short cross-examination. But, when ,the fact to be stated is a simple on, I do not think there is anything surprising in either the witness stating it in a single sentence or the Magistrate recording the evidence or the substance thereof in a single sentence. The cross-examination clearly indicates that the veracity of the witness was sought to be tested by eliciting from him whether he could remember the number cord of evidence does not contain any reference-to the enmity between the accused and this witness which was relied upon in arguments in support of the accused to discredit this witness. But, when there is available a more substantial test, viz., the circumstance that the accused along-, with the stolen articles was handed over to the witness's superior shortly after the occurrence, an omission to make a reference to the alleged enmity will not be such a grave omission as to totally deprive the trial court or even a superior court of material necessary for testing the value or acceptability of the evidence.

8. After hearing the arguments and going through the record of the summary trial, I am not satisfied that any prejudice has resulted to-the accused by his having been tried in a summary manner.

9. Revision Petition fails and is dismissed.

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