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SooperKanoon Citation : sooperkanoon.com/377333

Court : Karnataka

Decided On : Jun-13-1967

Reported in : AIR1967Mys214; 1967CriLJ1540; (1967)2MysLJ145

Judge : Ahmed Ali Khan, J.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 342, 364, 438, 533 and 535; Indian Penal Code (IPC), 1860 - Sections 147, 341, 447 and 504

Appeal No. : Criminal Revn. Case No. 43 of 1966

Appellant : State of Mysore

Respondent : Narsappa and ors.

Advocate for Def. : Murlidhar Rao, Adv.

Advocate for Pet/Ap. : G.M. Rego, for State Public Prosecutor

Judgement :

ORDER

1. This is a reference made by the learned Sessions Judge, Raichur, under Section 438 of the Code of Criminal Procedure. The facts of the case may be briefly stated as follows:

2. Rajsekhar, the complainant, is a resident of Rampur Village. Manvi Taluka, Raichur District, and the accused persons are the residents of the Hokrani Village, situated in the same taluk. Harijans of Rampur Village, including Rajsekhar (who has been examined in the case as PW 1) were allotted 6 plots in S. No. 197, situated in Hokrani Village. Including the complainant, Raisekhar, 3 more persons were allotted these 6 plots. S. No. 197 in Hokrani Village is a gairanland land and the plots which were allotted to the complainant and the other persons numbering 3 are situated in that survey number. It was said that on 26th October, 1963, possession of the allotted plots had been delivered to the allottees. The complainant, Rajsekhar, lodged a complaint alleging that on 13th November, 1963, when the complainant and 7 others went to the disputed land to cultivate the same, the respondents forcibly entered into the land, invoked the bullocks and obstructed the complainant from cultivating the land. On the basis of the allegations contained in the complaint lodged before the police, the latter submitted a charge-sheet before the First Class Magistrate, Manvi, under Sections 147, 447, 504 and 341 of the Indian Penal Code. The learned Magistrate framed a charge against the accused persons under Section 147 and Section 447 of the Indian Penal Code and discharged them of the remaining offences of which they had been charged with. On the completion of the trial, the Magistrate came to the conclusion that the offence punishable under Section 147 of the Indian Penal Code namely, trespass is not established beyond reasonable doubt against the petitioners (accused) by the prosecution evidence and acquitted them of the offences. He however, convicted them under Section 447 of the Indian Penal Code and sentenced them each to pay a fine of Rs. 50 or in default to undergo rigorous imprisonment for 16 days. The petitioner went up in revision before the Sessions Judge, Raichur, against the order of the Magistrate. The

learned Sessions Judge has made a reference to this Court under Section 438 of the Criminal Procedure Code for setting aside the order of conviction made by the Magistrate.

3. Mr. Hego, the learned Government Pleader, submitted that the Sessions Judge has erred in coming to the conclusion that omissions and commissions which are alleged to have been made by the Magistrate, vitiated the proceedings. His main grievance was that there was no warrant on the material on record for the Sessions Judge to come to that conclusion. His second argument was that the Sessions Judge has assessed and appreciated the evidence in detail as if he was sitting in an appellate court. In revision, he was not competent to consider the pros and cons of the evidence and evaluate the same in detail. According to him there were no circumstances which would justify the Sessions Judge to probe into the evidence Mr. Murlidhara Rao, the learned Advocate for the Respondents centered his argument solely on the ground that under the circumstances of the case and particularly in view of the subsequent events that had taken place, the Sessions Judge was justified in his order recommending the acquittal. He did not advance any argument with regard to the contention made on behalf of the State in respect of the points of law which the Sessions Judge thought on the basis of which the proceeding were vitiated.

4. There appears to be force in the contention of Mr. Rego that the learned Sessions Judge was not right in coming to the conclusion that the proceeding is vitiated on account of non-observance of the relevant provision of law. The ground on which the Sessions Judge thought that the proceedings were vitiated are:

(1) That at first charge had been framed only against one accused namely, A-1 but subsequently after the evidence of the prosecution was concluded, the trying Magistrate found omission in the record and framed charges against all the accused including A-1;

(2) Although the case was a warrant case, summons case, procedure had been adopted by the trying Magistrate; and

(3) Though the statement of the accused under Section 342 of the Code of Criminal Procedure had been recorded, they were not certified by the Magistrate as required by law.

5. Before I consider the above points, it will be useful to refer to the portion of the order of the Magistrate which has been quoted by the Sessions Judge himself in his reference. It reads:

'At the time of final arguments it was noticed that in fact no formal charge had been framed against the accused the plea that was recorded at the most reveals that a charge under Sections 147 and 447, I.P.C., was framed against one accused person only. On 29-1-1965 a fresh charge was framed against all the accused under Sections 147 and 447, I.P.C., and they were discharged from the other offences which were under Sections 504 and 341, I.P.C. The plea of the accused was again recorded after reading out and explaining the charge to them. All the accused pleaded not guilty and claimed to be tried. On the subsequent date on 15-2-1965 'an application on behalf of the accused was filed to the effect that as there is no change in the charge, no fresh evidence may be recorded and the evidence already on record may be read as evidence for and against the parties.' On the point whether de novo trial should be started or not arguments were heard and a finding was given on 2-3-1965 to the effect that there is no necessity of recording the prosecution evidence afresh and that the evidence already recorded shall be used for and against the parties' (Underlining (herein ' ') is mine). Section 535 of the Code of Criminal Procedure deals with the effect of omission to prepare charge. That section provides:

(1) No finding or sentence pronounced or passed shall be deemed invalid merely on the ground that no charge was framed unless, in the opinion of the Court of appeal or revision, a failure of justice has in fact been occasioned thereby

(2) If the Court of appeal or revision thinks that a failure of justice has been occasioned by an omission to frame a charge, it shall order that a charge be framed, and that the trial be recommenced from the point

immediately after the framing of the charge.'

It is thus clear from the language of the section that the bare fact of an omission to frame a charge unaccompanied by a probable suggestion of any failure of justice having thereby occasioned is not enough to warrant the quashing of the conviction which may be supported by the curative provision of Section 535 of the Criminal Procedure Code. It is evident from the portion of the order of the Magistrate extracted above that the accused themselves had filed an application to the effect that no fresh evidence may he recorded in the case and that the evidence already on record may be read as evidence for and against the parties. Therefore, in these circumstances, it cannot he said that failure of justice had been occasioned on account of omission to frame the charge. That apart it is nobody's case that failure of justice had been occasioned on the ground that no charge was framed. That being so the view taken by the learned Sessions Judge that the conviction or the proceeding was vitiated on account of omission to frame the charge is erroneous. Although the learned Sessions Judge has stated in his reference that summons case procedure had been adopted in the case, he has given no grounds whatsoever on the basis of which he has come to that conclusion Even the learned Advocate for the petitioner was unable to persuade me that the procedure relating to summons case has been adopted by the trying Magistrate in the case. Thus the conclusion arrived at by the learned Sessions Judge on that point is erroneous. Although non-certification by the Magistrate or the Presiding Officer of the statement made by the accused under Section 342 of the Code of Criminal Procedure may amount to an illegality nevertheless it does not ipso facto vitiate the trial. Now it is a well settled law that even an omission to frame a charge would not vitiate the trial, unless prejudice has thereby been occasioned to the accused It is also well settled that if an objection to that effect had not been taken at the initial stage subsequently at the stage of appeal or revision, unless the petitioner satisfies the Court on facts that prejudice has been occasioned, such an omission cannot have the effect of vitiating the proceeding. In the instant case, the accused themselves had made an application requesting the Court that all the evidence on record may be read as evidence for and against the parties Further, even if the statement under Section 342 of the Code of Criminal Procedure could not be taken into consideration on the ground that they were not certified by the Magistrate as required by law, there is nothing on record to show that any objection had been taken by the accused either in the trial Court or before the Sessions Judge to the effect that any prejudice had been there-by occasioned to the accused persons. Therefore, non-certification of the statement of the accused by the Magistrate in these circumstances cannot have any material effect against the prosecution. Thus viewed in any manner. I think that the Session Judge has fallen into an error in thinking that the illegality committed by the Magistrate on account of not certifying the statements made by the accused under Section 542 of the Code of Criminal Procedure had the effect of vitiating the trial. Mr. Rego, the learned Government Pleader is right in maintaining that the view taken by the Sessions Judge with regard to the 3 points referred to above is erroneous.

6. It has been strenuously argued on behalf of the State that the learned Sessions Judge was not justified in probing into the evidence in detail and reviewing the conclusion arrived at by the trial Court on the basis of his own assessment The powers of the revisional Court are restricted. Such powers should be exercised in exceptional cases where evidence has been shut out or the conclusions arrived at by the Court below is based on no evidence or there was any scope for the conclusion that had been arrived at by the Court on the basis of the evidence produced in the case There cannot be any doubt that the revisional Court is not competent to appreciate evidence as the learned Sessions Judge has done Nowhere in his reference the Sessions Judge has come to the conclusion that the conclusion reached by the trial magistrate is not supported by the material on record; nor has he anywhere stated therein that the conclusions arrived at by the trying Magistrate was perverse or there was no scope for any such a conclusion on the evidence produced in the case On the other hand he, himself, in assessing the evidence has come to the conclusion that in his view the finding arrived at by the trying Magistrate was not right. There cannot be any justification for a Court of revision to assess the evidence in that way nor to interfere with the finding of fact arrived at by the trying Magistrate, because the view taken by the Magistrate was not acceptable to him. If there is a possibility of two views a Revisional Court would not be justified in interfering with the view taken by the Magistrate. This much disposes of the

submission made on behalf of the State. But, Mr. Murlidhar Rao, the learned Advocate for the Petitioner contends that it would not be in the interests of justice to interfere with the view taken by the learned Sessions Judge for setting aside the order of conviction made by the Magistrate. There appears to be considerable force in his argument. It is not disputed that in the Writ Petition filed by the petitioner, the grant made by the Government in favour of the complainant and other persons had been set aside by this Court and the effect of the same is that S. No. 197 continued to remain as gairanland land. Taking this circumstance into consideration and also the fact that the offence is alleged to have been committed in November, 1963, about 3 1/2 years ago, at this distance of time, no useful purpose would be served, nor it would be in the interest of justice, to retain the order of conviction against the accused. On a careful consideration of the same, I do not find good grounds for not accepting the recommendation of the Sessions Judge onthat point, although as stated above the viewexpressed by the Sessions Judge with regard to other points referred to above cannot beaccepted.

7. On the reasons stated above by me,this reference is accepted. The order of conviction and sentence made by the Magistrate isset aside and the accused-petitioners areacquitted. If the amount of fine has beendeposited by the accused persons it should berefunded to them. This reference is thusdisposed of accordingly.

8. Reference accepted.