

Sadananda Shetty Vs. State of Karnataka

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Court : Karnataka

Decided On : Nov-30-1984

Reported in : ILR1986KAR861

Judge : Kudoor, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 130, 130(1), 130(2) and 130(3); Karnataka Motor Vehicles Act, 1930 - Sections 3(1), 12, 83(2) and 106(3); Karnataka Motor Vehicles Rules, 1963 - Rules 54 and 181(2)

Appeal No. : Cr. R.P. No. 109 of 1983

Appellant : Sadananda Shetty

Respondent : State of Karnataka

Advocate for Def. : S.S. Koti, HCGP

Advocate for Pet/Ap. : M.N. Pramila, Adv.

Judgement :

ORDER

Kudoor, J.

1. This Criminal Revision is by the accused for setting aside the order of conviction and sentence dated 28-1-1985 passed by the Metropolitan Magistrate, Traffic

Court-I, Bangalore City in C. C, No. 19559/81.

2. The matter arises in this way :

The accused was prosecuted upon a petty case charge-sheet placed by the Sub-Inspector of Police, Frazer Town Traffic Sub-Zone for offences under Rules 54 and 181(2) of the Karnataka Motor Vehicles Rules, 1963 (the 'Rules') and Sections 86(2) and 106 of the Motor Vehicles Act, 1939 (the 'Act'), all of them are punishable under Section 112 of the Act. The accused was convicted upon the alleged plea of guilty for offences under Rule 54 of the Rules and Sections 3(1), 86(2) and 106(3) read with Section 112 of the Act and sentenced him to pay a fine of Rs. 100/- in all as per the order dated 28-1-1983. It is the correctness and legality of this order that is under challenge in this revision.

3. Smt. Pramila, Learned Advocate appearing for the petitioner vehemently contended that the procedure followed and the conviction recorded in this case by the Learned Magistrate, although the accused was dealt on a petty case charge-sheet, would reduce the criminal trial into an empty formality and conviction of a citizen for an alleged offence a mockery. She further contended that the Magistrate should have followed the procedure laid down in Section 130 of the Act which is mandatory since all the offences alleged against the accused are punishable with fine only, that he having dealt with the case under summary trial procedure as laid down under Chapter XXI of the Code of Criminal Procedure (the 'Cede') should have adopted the procedure applicable for the trial of summons cases as stipulated in Section 262 after securing the presence of the petitioner by due service of the summons, that the records of the case show that the Magistrate did not comply with the provisions of the Coda either to secure the presence of the petitioner or in putting the accusation of the alleged offences to the petitioner and recording his plea and thus the entire proceedings initiated against the petitioner and the conviction are liable to be set aside.

4. Sri S. S. Koti, Learned High Court Government Pleader appearing for the respondent State, supported the order under challenge.

5. I shall proceed to consider the contentions urged by Smt. Pramila on behalf of the petitioner in the order in Which they were presented.

6. The first grievance of Smt. Pramila against the legality and validity of the conviction and sentence passed against the petitioner was that the Magistrate has not followed the mandates of Section 150 of the Code. The material portion of Section 130 reads :

'130(1) : the Court taking cognisance of an offence under this Act.--

(i) may, if the offence is an offence punishable with imprisonment under this Act, and

(ii) shall, in any other case,

state upon the summons to be served on the accused person that he-

(a) may appear by pleader and not in person, or

(b) may, by a specified date prior to the hearing of the charge plead guilty to the charge by registered letter and remit to the Court such sum (not exceeding the maximum fine that may be imposed for the offence) as the Court may specify;

Provided that nothing in this sub-section shall apply to any offence specified in Part A of the Fifth Schedule.

2) Where the offence dealt with in accordance with Subsection (1) is an offence specified in Part-B of the Fifth Schedule, the accused person shall, if he pleads guilty to the charge, forward his licence to the Court with the letter containing his plea in order that the conviction may be endorsed on the licence.

3) Where an accused person pleads guilty and remits the sum specified and has complied with the provisions, of Sub-section (2), no further proceedings in respect of (he offence shall be taken against him, nor shall he be liable to be disqualified for holding or obtaining a licence by reason of his having pleaded guilty.'

(The Emphasis is added)

7. It is indisputable that the offences alleged against the accused are neither punishable with sentence of imprisonment nor they fall under Part A of the V Schedule. That being so, the Learned Magistrate should have issued summons to the petitioner as provided under Section 130(1)(ii) and proceeded with the enquiry as stipulated under Subsections (2) & (3) of Section 130 and if the accused did not plead guilty to the charge, then he should have conducted the trial in a summary way as provided under Chapter XXI of the Code by adopting the procedure for the trial of the summons cases. This special provision was intended by the legislature to avoid unnecessary harassment to an accused who is alleged to have committed certain petty offences under the provisions of the Act without being needlessly put to the harassment of undergoing a regular trial stipulated under the Code by attending the law Court. The petitioner in this case was deprived of this right by the Trial Magistrate by not following the mandatory provisions of Section 130 of the Act. As contended for the petitioner it seems to me that this lapse on the part of the Magistrate is a very serious defect in the conduct of the trial of the case.

8. The second contention was that the petitioner was not served with the summons as required under the provisions of the Code. Section 62 of the Code provides for the service of summons personally on the person to be summoned if practicable by delivering or tendering to him one of the duplicates of the summons and every person on whom a summons is so served shall, if so required by the serving officer, sign a receipt thereof on the back of the other duplicate. Section 64 provides for the mode of service of summons when the person to be summoned cannot be found. It stipulates that where the person to be summoned cannot by exercise of due diligence be found, the summons may be served by leaving one of the duplicates for him with some adult male member of his family residing with him and the person with whom the summons is left shall, if so required by the serving officer, sign a receipt thereof on the back of the other duplicate. Thus it is clear from these provisions that the person to be summoned shall be as far as possible served with a summons personally and if he cannot be found by exercise of due diligence then, the summons may be served on him in his absence by leaving one of the duplicates for him with some adult male member of his family residing with him and no other. In the instant case, there is absolutely no material on record to show that the petitioner was served with a summons either personally as provided

under Section 62 or in the manner stipulated under Section 64 in his absence. On the other hand, we find a solitary copy of the summons issued to the petitioner in which different dates of appearance had been noted directing him to appear in person or by pleader before the Magistrate on the dates mentioned therein. On the reverse of it, we find an endorsement of the police constable, obviously who was entrusted with the summons to be served to the petitioner, requesting the Court to give him another date for service of the summons as he could not serve the summons on the petitioner because he could not find him. It is very significant to note that this endorsement is un-dated. I do not find any other copy of the summons in the records of the case. Thus it is seen that there is no material on record to show that the petitioner was served with a summons to appear either personally or through his advocate before the Magistrate.

9. However, Sri S. S. Koti, Learned High Court Government Pleader appearing for the respondent-State attempted to make out a point that it is not open to the petitioner to advance a contention that he was not served with the summons in view of the averments made by him in the Revision Petition. On this point he emphasized in particular the averments contained in para 4 of the grounds of revision. It reads :

'The Court below ought to have seen that when the petitioner was in his office, his wife wrong up and informed that a summons from Court has been given to her and hence he had asked his security officer or the Vijaya Bank one Captain Das to go to the Court and found out what is the matter. Security Officer Das had been to the Court and came with a receipt which is produced herewith for having paid a fine of Rs. 100/- and collected the same from the petitioner.'

On the basis of this averment made by the petitioner in his revision Petition Sri Koti contended that the petitioner was duly served with the summons in this case. I find it difficult to accept this contention. Even assuming that the wife of the petitioner was given a copy of the summons and that she had conveyed that information to the petitioner through phone while he was in his office, it would not be a due service of summons as required under law. Apart from the averments made in the revision Petition, there is no material on record to show that the

summons issued to the petitioner was served on his wife as the copy of the summons With her signature is not found in the records of the case. On the other hand, as noticed earlier, the police constable who was entrusted with the summons to serve upon the petitioner, returned the summons with an endorsement that he could not serve the summons on the accused as he could not find him and sought for extension of time for service of summons. In that view of the matter, I find no force in the submission made by Sri Koti. On a proper analysis of the material on record, I have no hesitation to hold that the petitioner was not served with the summons.

10. The next contention urged was that alleged plea on the basis of which the petitioner was convicted and sentenced of the offences alleged against him was not the plea of the petitioner as he did not appear before the Magistrate at any time in connection with this case. There seems to be considerable force in this submission.

11. The plea of the accused as recorded by the Magistrate does not contain the signature of the petitioner. It is true that the name of the petitioner was written under the column 'accused'. All the contents of the record sheet in which the plea of the accused was recorded are in English except the recital which is in Kannada. The petitioner is described in the revision petition as the Executive Director of Vijaya Bank. It is a nationalised bank. A reading of the contents of the record sheet in which thy plea was recorded shows that the accused was questioned in English and only ins answer was recorded in Kannada. If the petitioner was the person appeared before the Court and that ho was questioned in English, certainly he would have answered the accusation also in English. This circumstance, taken along with the fact that the petitioner's signature was not taken to the plea recorded clearly goes to show that the plea recorded was not that of the petitioner but it must have been of someone who appeared before the Magistrate when the case was called. This possibility gains substantial support from the fact that the sentence of fine of Rs. 100/- awarded by the Magistrate appeared to have been paid as noted on the reverse of the Record Sheet in which the plea of the accused was recorded under the signature of someone which could not be the signature of the petitioner as it is obvious when compared with the admitted signature of the

petitioner found on the vakalath executed by him in favour of his advocate. In these circumstances, there is every force in the contention urged that the plea recorded by the Magistrate was not that of the petitioner and as such the conviction and sentence passed against him on the basis of the said plea of guilty are illegal and cannot be sustained.

12. Another contention urged was that there was no correlation between the offences alleged in the charge-sheet and the offences in respect of which plea was recorded and conviction and sentence were passed. The allegations made against the petitioner were that the petitioner was found driving the car MET-2865 when the Sub-Inspector of Police, Frazer Down Traffic Sub-Zone, K. G. Halli Police Station checked the car with defective head-light, that he was driving without driving licence and that he failed to produce the Registration Certificate, the Insurance Certificate and the Tax Card, thereby committed the offences punishable under Rules 54 and 181(2) of the Rules and Section 86(2) and 106 read with Section 112 of the Act. However, while reading out the accusation and recording the plea, the Learned Magistrate, on the very same allegations, told the accused that he had committed the offences under Rule 54 of the Rules and Sections 3(1), 86(2) and 106(2) read with Section 112 of the Act. Thus, it is seen that while recording the plea, the accused was told that he had committed the offence under Section 3(1) of the Act instead of under Rule 181(2) of the Rules, among others, on the basis of the very same allegations contained in the charge-sheet. Equally there is no correlation between the allegations made against the petitioner and the offences for which he was convicted and sentenced.

13. Rule 54 deals with exhibition of registration mark. There was no allegation that the Registration Mark was not properly exhibited. On the other hand, the allegation was that the petitioner was found driving the car with defective head-lights. This allegation is vague and indefinite. Except alleging that the petitioner was driving the car with defective headlights, it was not stated in what way, the headlights of the car at the time of driving, were defective.

13. Section 3(1) deals with the necessity of holding an effective driving licence for driving a motor vehicle in any public place. The prosecution has not placed any

evidence to show that the petitioner was not holding an effective driving licence on the date of commission of the alleged offence. The Learned Advocate appearing for the petitioner in the course of the arguments, produced a photostat copy of the driving licence of the petitioner which was effective from the year 1970 upto the year 1985. Thus it was current on the alleged date of the commission of the offence which was on 1-8-1981. That being so, it cannot be said that the petitioner was not holding an effective driving licence and contravened Section 3(1) of the Act.

14. Another offence alleged against the petitioner was one falling under Section 86(2). Section 86(2) stipulates the production of the certificate of Registration of the vehicle on demand. The allegation made against the petitioner was that he failed to produce the registration certificate. Sub-section (3) of Section 86 provides that the person against whom a demand was made to produce the Registration Certificate was not in possession of the Registration Certificate at the moment, it shall be sufficient compliance with the provisions of Section 86(2) if such person produces the Registration Certificate within 10 days as specified by the officer making the demand. In this case, there is nothing on record to show that the petitioner was asked to produce the Registration Certificate within 10 days, nor he failed to produce the same within the time specified by the officer who made the demand. In this view of the matter, it cannot be said that the accused has committed an offence failing under Section 86(2) of the Act.

15. The only other offence alleged against the petitioner was that he had committed an offence falling under Section 106(2). Sub-section (1) of Section 106 stipulates that any person driving a motor vehicle in any public place shall, on being so required by a police officer in uniform authorised in this behalf by the State Government, produce the Certificate of Insurance relating to the use of the vehicle. It is alleged that the petitioner had failed to produce the insurance certificate. Sub-section (2) provides that if the person driving the motor vehicle failed to produce the Insurance Certificate on demand, it would be due compliance of the provisions of Section 106 if he would produce the Insurance Certificate within seven days from the date on which its production was required on demand at the time and place specified by the officer making the demand. Absolutely no

material has been produced to show that the Sub-Inspector had directed the petitioner to produce the Insurance Certificate at any time and place within seven days and the petitioner failed to produce the same. Thus there is no material to hold that the petitioner had committed an offence under Section 106 of the Act.

16. Before parting with the case, I am constrained to observe that the Magistrate had not followed the procedure laid down in the trial of a case taken cognizance of the offence upon a police charge-sheet. The Magistrate is empowered to take cognizance of an offence on a police report under Clause (b) of Sub-section (1) of Section 190 of the Code of Criminal Procedure (the 'Code'). On receipt of a police report on a charge-sheet the Magistrate, if satisfied that there was ground to proceed with the case, issue process as required under Section 204 of the Code and while issuing process, he may direct issue of summons or warrant as the case may be. Issue of process is the first step in the trial of a case by which the presence of the accused will be secured. The records of the case should disclose that the Magistrate has issued process as required under Section 204 to secure the presence of the accused. This could be shown by maintaining a regular order sheet in the case for the purpose of entering the details of the procedure followed. The Magistrate shall maintain a regular order sheet in every case, whether the case is instituted upon a petty-case, charge sheet placed as in this case or on a regular charge-sheet placed under Section 173 of the Code. Similarly, recording the plea of the accused is another fundamental requirement in the trial of a case whether it is a summons case or a warrant case. There should be clear indication in either case that the accusation of the offence alleged against the accused has been read over and made known to the accused and his plea has been recorded in clear terms. Section 241 provides for conviction in a warrant case and Section 25 provides for conviction in a summons case on a plea of guilty. It is true that both the Sections do not positively stipulate that the signature of the accused is required to be taken to the plea recorded. Even then, it seems to me that the signature of the accused is necessarily to be taken to the plea recorded in view of the importance and the far-reaching consequence that may flow out of pleading guilty as the accused may straight away be convicted on his plea of guilty, to ensure that the plea recorded was that of the accused. The Magistrate should not skip over these mandatory provisions of law even in a case initiated upon petty-

case charge sheet.

17. In the result, for the reasons stated above, I am inclined to hold that the entire procedure followed by the Magistrate in this case is wholly illegal and as such conviction and sentence passed against the petitioner are liable to be set aside. Accordingly, they are set aside. The fine amount recovered shall be refunded.

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