

**Shripathy and ors. Vs. State**

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**SooperKanoon Citation :** [sooperkanoon.com/423322](http://sooperkanoon.com/423322)

**Court :** Andhra Pradesh

**Decided On :** Jul-08-1952

**Reported in :** 1953CriLJ101

**Judge :** Mohd. Ahmed Ansari and ;Jaganmohan Reddy, JJ.

**Appellant :** Shripathy and ors.

**Respondent :** State

**Judgement :**

**Jaganmohan Reddy, J.**

1. This is a second appeal against the finding and judgment of the learned Sessions Judge of Bhir. The facts of the case are that the three appellants who were caught while transporting coal and edible oils on the night of 21 and 22 February 1951, in contravention of Notifications under the Essential Supplies (Temporary Powers) Act, were charged, convicted and sentenced to 5 months' rigorous imprisonment and a fine of Rs. 100/- each with an alternative sentence in default of the payment of the fine. The learned Sessions Judge to whom the accused have appealed after reviewing the evidence confirmed the convictions, but reduced the sentence to one month's rigorous imprisonment and a fine of Rs. 100/-. Of this sentence, the accused have undergone fifteen days rigorous imprisonment and have been released on bail. Apart from the question whether a second appeal would lie to the High Court after the enforcement of the Indian

Criminal Procedure Code, inasmuch as the charge-sheet was filed before it was enforced under the Hyderabad Criminal Procedure Code, we can treat the application as a revision petition. On an examination of the record, we find that no charge has been framed against the accused as the Magistrate was bound to do if it was a trial in which the procedure laid down for warrant cases was being applied. But since this was not done, and for reasons which we will subsequently give, the conclusion at which we have arrived at is that the procedure under which the trial has been conducted is that prescribed for summary cases.

2. Under Section 12 of the Essential Supplies Act, no doubt all First Class Magistrates, who are empowered to try in a summary way offences specified in Sub-section (1) of Section 260 of the Criminal Procedure Code of 1898, may on application in this behalf being made by the prosecution try in accordance with the provisions contained in Sections 262 - 265 of the said Code any offence punishable under this Act. The Essential Supplies Act was enforced in the State of Hyderabad on 17th August 1950; as such it governs this case and any reference in the Act to the Indian Criminal Procedure Code shall under Section 2A of the said Act be construed as a reference to the corresponding enactment in force in the State, i.e., Hyderabad Criminal Procedure Code.

3. On going through the records, we find that the trial has been conducted in accordance with the procedure laid down for summary trials, in that a memorandum of evidence has been recorded, a charge was not framed nor any statement of the accused has been recorded. The offence is one which is admittedly punishable with a sentence of 3 years rigorous imprisonment or more and is not ordinarily triable under a summary procedure unless the special provisions of the Code are made applicable. In this case before the procedure prescribed for summary trials was followed the prosecution ought to have made an application in order to warrant the Magistrate in adopting the summary procedure. But no such application has in fact been presented or made to the Court, and as such the prosecution has not in our view conformed with the provisions of Section 12 of the Essential Supplies (Temporary Powers) Act before the Magistrate could try the case in a summary manner. In the absence of such an application, we are of the opinion that the trial in a summary manner by the Magistrate was vitiated not

only as being one which, was without jurisdiction but also as creating a prejudice to the accused in that he is deprived of the right of appeal. Ordinarily we would have remanded the case for retrial; but having regard to the fact that the accused had already served a part of their sentence, we do not think it in the interest of justice to order a remand of the case for fresh trial. We set aside the conviction and sentence. The fine if any paid be refunded. This judgment will govern all the other connected appeals.

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