

Pole Samabhanna Vs. the State

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Court : Andhra Pradesh

Decided On : Feb-11-1954

Reported in : 1955CriLJ496

Judge : Palnitkar, J.

Appellant : Pole Samabhanna

Respondent : The State

Judgement :

ORDER

Palnitkar, J.

1. This revision petition has been directed against the order of the Additional District Magistrate at Adilabad dated 21-10-1953 by which the accused was sentenced to pay a fine of Rs. 50/- for the contravention of the Supply Department's Notification No. 43 dated 28-5-1951. The first ground urged by the learned advocate for the petitioner is that the lower Court while trying the case summarily did not abide by the provisions of Section 12, Essential Supplies (Temporary Powers) Act, and that the trial was therefore illegal and void.

2. I find that there is force in this argument. Section 12, Essential Supplies (Temporary Powers) Act, provides that any Magistrate empowered to try in a summary way the offences mentioned in Criminal P. C, Section 260, may, on

application in this behalf being made by the prosecution, try in a summary manner the offences under the Essential Supplies (Temporary Powers) Act. It is therefore clear that unless the prosecution makes an application requesting for the trial of the offence in a summary manner, the Magistrate cannot try the case summarily.

3. In this case there is no application on behalf of the prosecution praying for the trial of the case in a summary manner. The learned advocate argues that such an application may be made orally as well. No doubt there is nothing in the section to indicate that the application must be in writing only. Oral application is therefore permissible. But there must be something on the record to show that such an application was made, and was considered by the trying Magistrate and that he decided to proceed summarily having applied his mind to such an oral application. There is nothing in the order sheet of the Magistrate of the lower Court to show that an oral application was made or that he decided to assume jurisdiction to try the case summarily. Thus it is clearly a case of illegality. The Magistrate had no jurisdiction to proceed with the case summarily.

4. I therefore set aside the conviction and sentence passed by the lower Court and send the case back to that Court in order that a fresh trial be held in accordance with the provisions of the law. Revision petition is therefore allowed.