

A. Krishna Reddy Vs. State and Another

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Court : Andhra Pradesh

Decided On : Sep-21-1999

Reported in : 1999(6)ALD279; 1999(2)ALD(Cri)720

Judge : K.B. Siddappa. J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 206(2), 236(1), 260, 262(2), 263, 264, 265, 274, 281, 313, 322, 325, 326(3) and 353; [Essential Commodities Act, 1955](#) - Sections 12-AA

Appeal No. : Crl. RC No. 1258 of 1997 and Crl. RP No. 1249 of 1997

Appellant : A. Krishna Reddy

Respondent : State and Another

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : Mr. M. Indrasena Reddy, Adv.

Judgement :

1. This Revision is filed against the order passed in Crl MP No.1586 of 1997 in STC No.19 of 1995 on the file of Special Judge for trial of Essential Commodities Act-cum-III Additional Metropolitan Sessions Judge, Hyderabad.

2. By virtue of Section 12-AA(f) all the offences under this Act shall be tried in a summary way and the provisions of Sections 262(2), 265 (both inclusive) of the

Code, shall, as far as, apply to such trial. In the instant case a part of the evidence was recorded by the previous officer, on his transfer, the present officer assumed charge. At this juncture this CrI. MP was filed to conduct de novo enquiry by virtue of Section 326(3) Cr.PC, as the procedure contemplated under Essential Commodities Act is summary in nature. This petition was allowed and de novo enquiry was ordered. The Public Prosecutor was directed to get the witnesses as per schedule.

3. The learned Counsel appearing for the petitioner submitted that though the law provides for summary trial the learned Special Judge adopted summons procedure in examining the witnesses. As many as eleven witnesses were examined. Their evidence verbatim was taken that is, not in, a summary way. The witnesses were elaborately cross-examined. As a matter of fact, the accused were examined under Section 313 Cr.PC also. That being the case there is no need to conduct de novo enquiry. The succeeding officer can certainly rely on the evidence available on record. In support of his contention he relied upon a decision of Rajasthan High Court in Mukesh etc. v. State of Rajasthan, 1998 CrI.LJ 2439. The scope of applicability of Section 326(3) of Cr.PC is considered in this case. The Court held :

'Sub-section (3) of Section 326 Cr.PC starts with a non-obstante clause and excepts summary trials and cases falling within the purview of Sections 322 and 325 Cr.PC from the field of operation of the general principle laid down in sub-section (1). The principle applied to the construction of a non-obstante clause is that the enacting part of the statute, where it is clear, must be considered as controlling the non-obstante clause, in case both cannot be read harmoniously. I find no occasion to apply this principle of construction of the non-obstante clause contained in sub-section (3) as in my opinion there is no disharmony between the enacting provision of sub-section (1) and the non-obstante clause in subsection (3). In so far as non-application of the principle contained in subsection (1) to summary trials is concerned and which is the question we are concerned with for disposal of these petitions, it needs to be appreciated that under the scheme of the Code in general and that underlying Chapter XXI of the Code in particular, trial of petty offences, as defined in Section 206(2), Cr.PC in a summary way was intended. It

may be recalled with reference to objects and reasons behind Sections 260 to 265 of the New Code that in a summary trial under the provisions of the Old Code, the summons procedure used to be followed in summons cases and the warrant procedure in warrant cases as the list of offences given in Section 260 included both types of offences. That distinction, practically used to serve no useful purpose. In the New Code the procedure for trial of both kinds of offences was simplified by providing in Section 262(1) that in summary trial all cases, whether triable as a summons case or a warrant case, shall be tried by summary procedure. Summary trial, being essentially a speedy trial dispensing with unnecessary formalities or delays and giving discretion to the Magistrate to try or not to try an offence, triable summarily in a summary manner, increased his responsibility in that he was required to take care and see that the procedure is not made under summary than is laid down in the statute. Since in the trials of offences, triable as warrant case even, in a summary way, the trial is to be shortened or simplified by having recourse to Sections 263 to 265, there rises every necessity of maintaining the required record. For, it is to be appreciated, that so little is recorded in summary trials and so little is the protection against the risk, error or the scanty provisions of Section 263 are fully and strictly complied with. This essential requirement gets increased when, it is kept in mind that provisions like Section 281 regarding examination of accused, Section 274 regarding making memorandum of the substance of the evidence only and Section 353 or Section 264 regarding writing judgments curtail the procedure of a regular trial to a considerable length. Therefore, the maintenance of record under Sections 263, 264 Cr.PC can give an indication whether a case has been tried summarily, indicate that it was not tried in a summary way though it was titled as a summary case and was in fact tried as a regular summons case it would not face within the exclusion clause of sub-section (3) of Section 326, Cr.PC. Therefore, in applying the excepting clause in sub-section (3) with regard to summary trials to the general principle embodied in Section 236(1) it shall have to be ascertained from the proceeding taken in the trial of a given case and the record maintained therein and thereof as to whether the procedure actually adopted is summary or ordinary. If it is seen that the evidence of the witnesses has been recorded in full together with their cross-examinations and for the formalities which are generally attributes of an ordinary trial have to

been observed, technical objections were raised and decided before or during the course of preparation of the requisite record, the procedure adopted cannot be said to be that of a summary trial to which expression the non-obstante clause in sub-section (3) of Section 326 Cr.PC, were intended to be applied. It now takes me to consider the ratio decidendi in the two decisions of this Court wherein a conflicting opinion is alleged to have been expressed'.

4. As far as the above principle is concerned, I am in entire agreement with the opinion of the learned Judge.

5. Now it has to be seen whether in the instant case, the case was tried in a summary manner or in a ordinary manner? The learned Counsel is right when he said that the evidence was elaboratively recorded in verbatim and the defence was given full scope to cross-examination. They were examined under Section 313 Cr.PC, This clearly indicates that the ordinary procedure is adopted. The procedure adopted in no way indicates that it is summary procedure. That being case required it is not necessary to apply the embargo contained in Section 326(3) Cr.PC. Consequently it is not necessary to order for de novo enquiry. The order is set aside and the lower Court is directed to rely upon the evidence already on record and proceed with the case according to law.

6. Revision is allowed.