Pearey and ors. Vs. State

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SooperKanoon Citation : sooperkanoon.com/447437

Court : Allahabad

Decided On : Feb-04-1952

Reported in : AIR1953All5

Judge : Wali Ullah, J.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 350(1)

Appeal No. : Criminal Revn. No. 206 of 1951

Appellant : Pearey and ors.

Respondent : State

Advocate for Def. : J.R. Bhatt, Asst. Govt. Adv.

Advocate for Pet/Ap. : Bageshwari Sahai, Adv.

Disposition : Revision allowed

Judgement :
ORDER

Wali Ullah, J.

1. The applicants have been tried and convicted of an offence under Section 379, Penal Code. They have been sentenced to pay a fine of Rs. 25 each or in default to undergo rigorous imprisonment for one month.

2. They went up in appeal to the learned Sessions Judge, but the appeal was unsuccessful.

3. They have now come up in revision to this Court.

4. One of the main points urged by learned counsel in this Court is that the proviso (a) to Section 350(i), Criminal P. C., was not complied with fully by the learned Magistrate who decided the case and therefore the conviction of the applicants is vitiated in law.

5. It appears that the trial of the applicants proceeded before two other Magistrates before it came to the Court of the present Magistrate--the Tahsildar Magistrate--who decided the case. It appears that all the five prosecution witnesses in the case had been examined before other Magistrates. When the case was taken up by the Tahsildar Magistrate, an application was made on behalf of the applicants that they wanted a de novo trial and that the prosecution witnesses might be produced afresh. This application made by the applicants was resisted by the complainant. At this stage, it appears that the counsel for the applicants made a statement that two of the witnesses viz. p. ws. 4 and 5, who were formal witnesses might not be resummoned and reheard: in other words, that their evidence, already recorded might be acted upon in the trial by the Tahsildar Magistrate. It was, however, claimed that the other three witnesses viz. p. ws. 1 to 3---witnesses of fact must be resummoned and reheard. The learned Magistrate, however, allowed only fresh cross-examination of these witnesses. Then the case proceeded further. Defence evidence was taken and the trial actually ended later in the conviction and sentenced the applicants.

6. Learned counsel for the applicants has contended, in the first place, that the trial of the applicants was vitiated in law inasmuch as the proviso (a) to Section 350 (l) was not complied with. Learned counsel has contended that the expression 'resummoning and rehearing', clearly implies that the witnesses in question must be summoned again and heard afresh i. e. that the witnesses should be examined in chief, then cross-examined and, if necessary, re-examined. If this interpretation is correct, obviously the proviso (a) to Section 350 (l) has not been complied with in this case.

7. In support of his contention, learned counsel has relied upon the case of Nathu Balajee v. Emperor, A. I. R. 1945 Nag. 207. It was held in that case by a learned single Judge of that Court that the witnesses should be heard afresh from the start and that it was not enough merely to allow them to be cross-examined again. Admittedly this has not been done in the present case. Therefore, it is contended, there has been a violation of the provisions of proviso (a) to Section 350 (l), Criminal P. C.

8. The question is what is the consequence, if any, of this non-compliance on the validity or otherwise of the trial and conviction of the applicants. The learned Judge, who heard the appeal has observed that he was satisfied that the applicants had not been prejudiced by the fact that the material witnesses of fact were not examined afresh. In the Nagpur case cited above, it was held by the learned Judge, after an examination of a number of cases decided by various Courts is India, including our own, that the failure of the learned Magistrate who concluded the trial to comply strictly with proviso (a) to Section 350 (l) vitiated the trial.

9. Mr. Bhatt, the Assistant Government Advocate, has relied strongly on the case of In re Ramamuni Reddi in A. I. R. 1938 Mad. 724, decided by a learned single Judge of that Court. In that case, the learned Magistrate had merely allowed the witnesses to be further cross-examined and it was held that that amounted to a mere irregularity which did not vitiate the trial. With respect, I am not able to share the view of the learned Judge of the Madras High Court. On the other hand, it seems to me that the expression 'resummoned and reheard' clearly indicates that the witnesses named by the accused person must be resummoned and reheard i. e. heard afresh. Merely allowing cross-examination or further cross-examination of a witness so named by an accused person would not be sufficient compliance with the provisions contained in proviso (a) to Section 350 (l), Criminal P. C. 1 am accordingly satisfied that in this case, the proviso (a) to Section 350 (l), Criminal P. C. was not complied with as the result of which the applicants did not have a fair and proper trial of their cases.

10. In view of what I have said above, it is not necessary to consider certain other objections which have been raised by learned counsel in the application for revision.

11. The result is that I allow the application in revision and set aside the conviction and sentence passed upon the applicants. The fine, if paid, shall be refunded.