

Ram Nandan and ors. Vs. the State

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Court : Allahabad

Decided On : Jun-20-1958

Reported in : AIR1959All11

Judge : A.P. Srivastava, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 260, 403 and 530; [Essential Commodities Act, 1955](#); Uttar Pradesh Coal Control Order, 1955

Appeal No. : Criminal Revn. No. 1727 of 1957

Appellant : Ram Nandan and ors.

Respondent : The State

Advocate for Def. : Asst. Govt. Adv.

Advocate for Pet/Ap. : Prem Chandra Srivastava, Adv.

Disposition : Application dismissed

Judgement :

ORDER

A.P. Srivastava, J.

1. This application in revision raises an interesting point of law which does not appear to be covered by any direct authority. Three persons Ram Nandan, Chhedi

and Sankatha Singh were first tried by a Magistrate first class under the Essential Commodities Act for contravention of S. 3 of the U. P. Coal Control Order, 1955. The trial was a summary one.

After the trial was over it was pointed out on behalf of the accused persons that a summary trial was not permitted by the Act. The learned Magistrate conceded the force of this objection and felt that he could not at that stage restart the proceedings and try the accused in a regular manner. He, therefore, acquitted the accused persons. Subsequently they were challenged again for the same offence and this time they were going to be tried in the regular manner.

They raised an objection before the Magistrate who was trying them and pleaded that as they had been formerly acquitted of the same offence, the second trial was barred by Section 403 of the Code of Criminal Procedure. The learned Magistrate, overruled this objection. They went up in revision to the Sessions Judge who upheld the view of the learned Magistrate and refused to interfere. They have come up to this Court now, and it is contended on their behalf that the previous order of acquittal bars the second trial in view of Section 403, Criminal P. C.

2. Section 403 of the Code will apply and bar the second trial only if the accused can show that they had been tried previously by a court of competent jurisdiction and acquitted. The contention of the learned counsel for the applicants is that the Magistrate who formerly tried them was a court of competent jurisdiction.

He may have committed an irregularity of procedure in trying them summarily for an offence which was not triable in that manner but on that account the Magistrate did not cease to be a court of competent jurisdiction, and if he recorded a verdict of acquittal Section 403 became applicable and a fresh trial must be held to be barred.

3. There appears to be no direct case in which this exact point was raised. Before the Sessions Judge reliance was placed on behalf of the applicants on a case reported in *Emperor v. Dulla*, ILR 45 All 58: (AIR 1923 All 360) (A). But that case has not been relied upon here as it appears to be clearly distinguishable. In that case the trial Magistrate had acquitted the accused because the complainant was

absent on the date fixed. The complainant had filed a second complaint and it was held that that was not entertainable,

4. The learned Sessions Judge has relied in support of his view that in this, case the previous trial was without jurisdiction on the case of Emperor v. Yusuf Ali Nur Bhai AIR 1948 Bom 153(B). That case is one of a series of cases in which it has been held that if an accused is tried for an offence which requires a sanction or a particular kind of complaint and is acquitted, he can be tried again.

The previous trial would in that case be one without jurisdiction because cognizance could not be taken without the sanction or the complaint. It is not necessary to refer to all these cases. This line of cases has been recently approved of by the Supreme Court in the case reported in Baijnath Prasad v. State of Bhopal : 1957 CriLJ597 . The question is whether the principle on which these cases were decided can be extended to the case of the applicants also.

5. Learned counsel for the applicants tried to distinguish this line of cases from the present one on the ground that want of sanction affected the jurisdiction of the Magistrate to try the case, but whether the Magistrate tried it in the regular manner or summarily was only an irregularity of procedure which did not go to the root of the jurisdiction of the Magistrate.

The argument does not appear to be convincing. Section 260 of the Code of Criminal Procedure which gives an option to a Magistrate to try an offence summarily or in a regular manner confines that option to a particular class of cases which are enumerated in the section. That option is not available to the Magistrate in respect of cases which fall outside that class.

It follows that in respect of cases which do not fall within the categories mentioned in the section the learned Magistrate is not authorised or, in other words, has no jurisdiction to hold a summary trial. If in such a case he does hold a summary trial, the trial must be held to be without jurisdiction. It is conceded that though the Essential Supplies Temporary Powers Act permitted an offence like that which the applicants are alleged to have committed to be tried summarily if a request was made to this effect on behalf of the State, that provision has been deleted from

and is not contained in the [Essential Commodities Act, 1955](#) which has repealed and replaced the Essential Supplies Temporary Powers Act.

Considering the measure of punishment provided for the offence in the new Act also the offence for which the applicants are to be charged is not one which can fall under any of the categories mentioned under Section 260 of the Code. The learned Magistrate who tried the applicants earlier had, therefore, no jurisdiction to try them in the way he tried them at that time. It was not only a procedural irregularity which he committed. The irregularity which he committed went to the root of the matter.

6. A reference to Section 530 of the Code of Criminal Procedure lends support to this view. In that section the Legislature has enumerated a number of irregularities and has declared that those irregularities vitiate the proceedings and are incurable. Clause (k) of the section deals with an irregularity in connection with the taking of the cognizance of an offence under Section 190, Sub-section (1). Clause (c).

Clause (g) relates to the trial of an offender in a summary manner. Both these irregularities have been put on the same footing and have been considered to be equally incurable. There does not appear to be much difference between the irregularity of taking cognizance under Section 190, Sub-section (1), Clause (c) and the irregularity of taking cognizance of an offence requiring sanction without the necessary sanction.

The two irregularities appear to be of the same kind. If the latter makes the trial without jurisdiction, the former too must be held to have a similar effect. That is why the former has been expressly made incurable under CL (k) of Section 260, Criminal P. C. The irregular summary trial of an offence not triable in that manner having been put on the same footing as a trial in which cognizance could not have been taken, it appears to follow that such a summary trial should also be treated as an irregularity going to the root of the matter on the same basis as an irregularity of acting without jurisdiction.

7. I am, therefore, of the opinion that the courts below were right in their view that the previous trial of the applicants was not a trial by a court of competent jurisdiction, and the order of acquittal recorded at that trial could not bar their fresh trial for the same offence.

8. The application in revision has, therefore, no force and is rejected. The stay order is discharged.

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