

Tota Ram Vs. Emperor

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Court : Allahabad

Decided On : Aug-04-1947

Reported in : AIR1948All137

Appellant : Tota Ram

Respondent : Emperor

Judgement :

ORDER

Harish Chandra, J.

1. The applicant Tota Ram was convicted by a Magistrate of the first class under Section 411, Penal Code, with respect to a bicycle which was said to be stolen property and sentenced to a fine of Rs. 200. In default of the payment of the fine he was sentenced to three months' rigorous imprisonment. He made an application in revision to the learned Sessions Judge who rejected it and he has now come up to the High Court in revision from this order of the learned Sessions Judge.

2. The case was tried summarily and although it is written in the order-sheet that after the examination of the prosecution witnesses, the applicant was examined and a charge framed against him, there is no record of his examination to be found on the file. There is also no charge-sheet on the file, but in view of Section 263, Criminal P.C., no formal charge was in fact necessary. But there is nothing in

chap. XXII, Criminal P.C., to suggest that in a summary trial the examination of an accused person may be dispensed with. The case was a warrant-case. Although it was tried summarily, the procedure prescribed for the trial of a warrant-case should have been followed. According to Section 253 of the Code, after the evidence of the prosecution witnesses has been recorded, the examination of the accused, if any, should be recorded. Section 342 makes it obligatory on the Court to question an accused person generally on the case after the witnesses for the prosecution have been examined and before he is called on for his defence. Such an examination should precede the framing of a charge. It appears from the record that this requirement of the law was not complied with by the learned Magistrate. The record, however, shows that he has explained the charge to the applicant and that he had pleaded guilty. In this Court it is said that he had not in fact pleaded guilty to the charge. This contention does not seem to have much force, for it appears that in the grounds of revision presented by him before the Sessions Judge of Agra, no such plea was taken. However, the fact remains that the examination of the applicant as required under Section 342, Criminal P.C., was not made by the learned Magistrate and this, in my opinion, is an important omission. If an examination of the applicant had been made and recorded, there would have been no question of any misunderstanding with respect to the plea of guilty recorded by the Magistrate. But as the applicant was not examined at all, it may be open to doubt what the plea really was and whether he had in fact admitted his guilt or had merely admitted certain facts alleged against him. However, having regard to all the circumstances of the case my opinion is that the trial cannot be regarded as a fair one and that it is necessary that the applicant should be tried afresh in accordance with law. It will also be noted that the learned Magistrate has given the value of the property as Rs. 40 although it is well-known that a bicycle, even a second-hand one, is generally much more value-able than that at the present time and as such the case could not have been tried summarily.

3. I accordingly allow the application and setting aside the convictions and the sentences passed upon the applicant direct that he be tried afresh according to law by some competent Magistrate to whom the case may be made over by the District Magistrate of Agra. The trial this time will be a regular one and not a summary one.

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