

Chandra Bhal Vs. Rex.

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Court : Allahabad

Decided On : May-18-1949

Reported in : 1949CriLJ970

Judge : Desai, J.

Appellant : Chandra Bhal

Respondent : Rex.

Judgement :

ORDER

Desai, J.

1. This application is directed against an interlocutory order passed by a Magistrate rejecting the applicant's application for a regular trial in place of summary trial. The applicant approached the Additional Sessions Judge, Kheri, who refused to interfere.

2. On 1st May 1948, the Station Officer of Neem Gaon submitted a charge-sheet against the applicant for his prosecution under 8. 60, Excise Act. It was stated in the charge-sheet that during the search of the applicant's house liquor was recovered and that it was found on analysis to be illicit. The charge-sheet was presented in the Court of the Magistrate through the prosecuting Sub-Inspector, who did not make any alteration in it. The Magistrate issued a summons against

the applicant and he appeared in his Court on 27th July 1948. As the prosecution evidence was not present, the case was adjourned to 14th August 1948. On 27th July 1948, the Station Officer added a note on the back of the charge-sheet stating that he had wrongly mentioned Section 60 in it and that it should be altered to Section 63. The Magistrate allowed the correction to be made without giving any reasons. On the same date, the Station Officer requested the Magistrate to try the applicant summarily and the Magistrate acceded to the request. On 14th August 1948, the applicant made an application that his prosecution was the result of grudge that the Station Officer was bearing against him, that there was going to be a serious contest in the case, that many documents would be produced in evidence and that consequently the case should be tried regularly and not summarily. The Magistrate rejected the application stating that it was a petty case under Section 63, Excise Act, that the summary trial had already commenced on 27th July 1948 and that no law under which the application was presented was shown to him. On a subsequent date the Magistrate examined three witnesses and then stayed further proceedings in compliance with the order issued by the Additional Sessions Judge. The proceedings are still stayed.

3. Section 60, Exci Be Act punishes a person who in contravention of the Act or a rule, order or license possesses any intoxicant with imprisonment extending to one year. This offence, there, fore, cannot be tried summarily. Section 63 punishes a person who 'without lawful authority, has in his possession any quantity of intoxicant knowing the same to be unlawfully imported, transported or manufactured or knowing the prescribed duty not to have been paid thereon' with imprisonment for a term extending to three months; this offence can be tried summarily. If the applicant is guilty of an offence punishable under 8. 60, his summary trial would be illegal and under Section 580, Criminal P. C., all proceedings would be void. On the other hand, if he is guilty under Section 63 only, the summary trial would be valid. The charge sheet, which is supposed to contain a report in writing of facts which conatitute an offence (vide Section 190 (b), Criminal P. C.), simply mentions the f Act. that illicit liquor was recovered from the applicant's possession. This discloses an offence punishable under B. 60 (a), because under Rule 436 of the Excise Manual possession of country liquor, which has not been lawfully manufactured, in any quantity Whatso. ever is prohisited. It

is also punishable under Section 63, provided that the applicant knew that the liquor was unlawfully manufactured. There is no allegation in the charge sheet that he knew this. Therefore the offence committed by the applicant was punishable only under Section 60. Even if it was punishable under Section 63, it was still punishable under Section 60 with a severer sentence. It was not open to the Magistrate to try the applicant under the lighter offence. He had not tried him and unless he tried him he could not say what offence had been committed, He had to accept the allegations in the charge sheet as they were and adopt the procedure which was suitable to those allegations. If the allegations made out a case triable as a warrant case he had to try the applicant as in a warrant case. If they made out a case triable as a summons case he had to try the applicant as in a summons case. And if they made out a case not triable summarily he could not try him summarily. I do not understand how the Station Officer wrote that by mistake he put down '60' instead of '63' and I do not understand how the Magistrate believed him. There cannot be the least doubt that there was no mistake in quoting the section and that the offence was punishable under Section 60 even if it might be punishable under Section 63 as well. Why the Station Officer wanted the applicant to be tried under the minor offence was for a mala fide reason and it is a matter of regret that the Magistrate did not realise that the Station Officer's request was mala fide. The Station Officer wanted the applicant to be tried summarily and since he could be tried summarily only if he was accused of an offence under Section 63, he falsely stated that in the charge sheet he made a mistake in quoting the section as 60. This was nothing but deceiving the Court and the Station Officer deserves to be taken to task for deceiving the Court by a false representation. The Magistrate should have known better and should not have let himself be deceived like this. It was his duty to ascertain what offence had been disclosed from the charge sheet and whether the Station Officer's request was bona fide or not.

4. Where a Magistrate has tried an accused summarily even though the allegation against him disclosed an offence not triable summarily, the High Court has interfered with his conviction. See *Mohd. Abdullah v. Emperor* A.I.R. (21) 1934 Lah. 243 : 35 Cr. L. J. 1094; *Kailash Chandur Pal v. Joynuddi*, 60 C.W.N. 252 and *Bishu Shaik v. Saber Mollah*, 29 Cal. 409 : (6 C.W.N. 713).

5. The proceedings in the present case are absolutely void; no question of prejudice to the applicant arises. The Magistrate simply had no jurisdiction to try him summarily, it was not at his option to shut his eyes to the graver offence of Section 60 and to try him for the lighter offence of s. 63 just because the Station Officer wanted him to try him for the lighter offence. In the case of Mohd. Abdullah (A.I.R. (21) 1934 Lah. 243 ; 35 Gr. L. J. 1094), Tek Chand J. relied upon an observation of Plowden J., in *Sarclar Khan v. Empress*, 5 p. E. 1887 dr., to the effect that an accused is prejudiced by being tried summarily because

the prejudice lies in the different procedure which dispenses with a proper record of the evidence being kept and abridges the privilege of the appeal.

In *Costa Behary v. Baistam Das* A.I.R. (10) 1923 Cal. 105 : 24 Cr. L. J. 157, a Divisional Bench thought that an accused is prejudiced by being subjected to a summary trial because the record of the evidence is very short and he loses the right of appeal in certain cases. A summary trial in a case covered by Section 260, Criminal P. C., is perfectly legal. When the Legislature itself empowers a Magistrate to try summarily a person accused of certain offences, it is hardly right to say that the summary trial is prejudicial to him. No motive to cause prejudice to an accused can be attributed to the Legislature. So if the offence is triable summarily, and the Magistrate tries it summarily it cannot be said that the accused would invariably be prejudiced by the trial. When the case is contentious and voluminous evidence is likely to be produced, the summary trial may operate prejudicially against the accused because the Magistrate cannot remember all the evidence. Thus, in special cases a summary trial may cause prejudice to the accused but not in all. What I mean is that a summary trial is not in its nature prejudicial to the accused as was supposed in the case of Mohd. Abdullah (A.I.R. (21) 1934 Lah. 243: 35 Gr. L. J. 1094) and *Costa Behary* (A.I.R. (10) 1923 Cal. 105: 24 Cr. L. J. 157). In the present case, which is quite a simple one, the summary trial would not be prejudicial at all to the applicant. I do not at all understand the remark of the applicant that he was to produce a large quantity of documentary evidence. He is not prevented from producing a large quantity of evidence and if the evidence that he wants to produce is mostly documentary, then it does not matter to him whether the trial is summary or regular. It is the oral

evidence that suffers in a summary trial. The applicant's right of appeal would be abridged but that certainly does not mean that he would be prejudiced. A right to appeal is abridged in many other cases. If a first class Magistrate inflicts a sentence of fine of Rs. 30 the accused has no right of appeal but I have never heard it being said that he is prejudiced because the Magistrate has inflicted a sentence of Rs. 30 instead of Rs. 51 or more. I therefore ignore the ground that the summary trial would be prejudicial to the applicant.

6. The reason given by the Magistrate for not trying the applicant regularly is meaningless. The only proceeding held by him on 27 to July 1948 was to record the applicant's plea of not guilty. This plea had to be recorded whether he was tried summarily or regularly. There was nothing to prevent the Magistrate from starting a regular trial on 14th August 1948. Magistrates should realise that if a Magistrate gives ridiculous reasons for his orders the confidence of the public in him is shattered.

7. It was gratifying to note that the learned Government Advocate did not oppose this application.

8. I allow the application, set aside the proceedings pending in the Court of Shri T. N. Praaad, Magistrate, Kheri, and order the applicant to be tried afresh, The District Magistrate may try the case himself or transfer it to a Magistrate (other than Shri T. N. Prasad) who has jurisdiction over it.