

Hardeo and ors. Vs. the State

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Court : Allahabad

Decided On : Jan-12-1959

Reported in : AIR1959All611; 1959CriLJ1133

Judge : V.G. Oak, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 435, 438 and 439; High Court Rules; High Court Orders; Allahabad High Court Rules - Rule 20(2)

Appeal No. : Criminal Revn. No. 45 of 1959

Appellant : Hardeo and ors.

Respondent : The State

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : Sushil Kumar, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

V.G. Oak, J.

1. This is a revision by Harden and five others, who have been convicted and sentenced by a learned Magistrate under Sections 347, I.P.C., 323/ 149, I. P. C.

and Section 24, Cattle Trespass Act read with Section 149, I. P. C. These persons filed a revision against the order of conviction. That revision was disposed of by the learned Additional Sessions Judge of Varanasi. The operative part of the order of the learned Additional Sessions Judge ran thus :

'Accordingly, I refer the case to the Hon'ble High Court under S. 438, Cr. P. C. with the recommendation that the conviction and sentence of the fine awarded by the learned Magistrate under S. 149 read with S. 24 Cattle Trespass Act, be set aside In other respects the revision is rejected; the convictions and sentences of the petitioners under Sections 147 and 323 read with Section 149 I.P.C. are maintained. They are to deposit the fines, thereunder, within a period of two weeks.'

2. The reference made by the learned Sessions Judge was registered as Reference No. 443 of 1953. The reference was put up before me in chambers. I rejected the reference on 20-12-1958.

3. Hardeo and five others have now filed Criminal Revision No. 45 of 1959 against the order of the learned Additional Sessions Judge dated 11-10-1958. It will be noticed that, the criminal revision has been filed after I rejected the reference made by the learned Additional Sessions Judge. The question, therefore, arises whether the criminal revision is maintainable.

4-5. Chapter XVIII, Rule 20 of the Rules of Court, provides for disposal of references. Sub-rule (2) of Rule 20 of Chapter XVIII runs thus :

'If within two weeks of the receipt of such reference no appearance is put in on behalf of any party, the papers shall be submitted to a Judge in chambers for orders. Where appearance is put in on behalf of any party before the case is so laid before a Judge it shall be listed before a Court for orders.'

Sub-rule (2) of Rule 20 contemplates two situations: If neither party puts in appearance, the papers are put up before a Judge in Chambers for orders. When appearance is put in on behalf of any party, the case is disposed of in open Court. In the present case neither party put in appearance before this Court after the

reference had been made on 11-10-1958. The office, therefore, placed papers before me in chambers for orders as provided in the first part of Sub-rule (2) of Rule 20 of Chapter XVIII of the Rules of Court. The reference was disposed of on 20-12-1958, in accordance with law.

6. I rejected the reference, It means that I did not accept the recommendation of the learned Additional Sessions Judge that the conviction of the accused under Section 24 of the Cattle Trespass Act read with Section 149, I. P. C. should be set aside. In other words, the conviction of the accused under Section 24 of the Cattle Trespass Act read with Section 149, I. P. C. was confirmed. Now if I were to allow the present criminal revision and set aside the conviction under Section 24 of the Cattle Trespass Act read with Section 149, I. P.C., the new judgment would be in conflict with my previous judgment dated 20-12-1958. This cannot be allowed.

7. The learned counsel for the applicants urged that, even if the conviction under Section 24, Cattle Trespass Act has become final, there is no such, finality attached to the convictions under Sections 147 and 323/149, I. P. C. It was urged that the learned Sessions Judge expressly maintained the convictions under Sections 147 and 323/149, I. P. C., and the applicants are entitled to come before this Court in revision against that part of the order of the learned Sessions Judge. Now, it is to be remembered that the proceeding before the learned Additional Sessions Judge was a revision and not an appeal.

Even if the learned Sessions Judge was inclined to interfere with conviction for a certain offence, he could not himself set aside the conviction. He could only recommend the setting aside of the conviction to this Court. So the true effect of the order of the learned Additional Sessions Judge was this. He was of the opinion that, the convictions under Sections 147 and 323/149, I. P. C. should be maintained, whereas the conviction under Section 24, Cattle Trespass Act read with Section 149, I. P. C. should be set aside. With this opinion, he forwarded the papers to this Court.

The entire case was open before this Court in December 1958. On 20-12-1958 this Court rejected the reference. No direction was given about modifying any part of the learned Magistrate's order. It means that this Court was of the opinion that,

the learned Magistrate's order should stand in its entirety. The convictions of the accused were maintained by this Court for all the offences by its order dated 20-12-1958. It is not now possible for this Court to take a different view of the matter. The whole case was finally disposed of by this Court on 20-12-1958.

8. The Criminal Revision is not maintainable, and is hereby dismissed.

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