

Abdul Aziz Vs. State

Abdul Aziz Vs. State

SooperKanoon Citation : sooperkanoon.com/466677

Court : Allahabad

Decided On : Jan-12-1956

Reported in : AIR1956All637; 1956CriLJ1181

Judge : Mulla, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 265(1); Civil Proceure Code , 1908

Appeal No. : Criminal Ref. No. 63 of 1955

Appellant : Abdul Aziz

Respondent : State

Advocate for Def. : R.B. Bisaria, Adv.

Judgement :

ORDER

Mulla, J.

1. This is a reference made by the Additional Sessions Judge, Pratapgarh, recommending that the conviction of the applicant in this case be set aside and the case be remanded for retrial in accordance with the law.

2. Briefly stated the facts of the case are that the applicant entered the house of one Deota Din on the 10th January, 1955, and committed a theft of about Rs. 20/-. Deota Din and his wife were not present in the house but before the applicant could leave the house the wife of Deota Din came back and immediately raised an alarm. The applicant was arrested on the spot and a first information report was immediately written and the applicant was sent to the Police Station together with the report.

The case came up for trial before a first class Magistrate who tried the applicant summarily under Section 380, I. P. C., and sentenced him to pay a fine of Rs. 100/- in default rigorous imprisonment for a period of one month. He dictated his order to the reader of the Court who knew typing and then signed it.

3. The applicant went up in revision before the Sessions Judge and the Sessions Judge found that the trial court did not comply with the provisions of Section 265 (1), Cr. P. C, which were mandatory and therefore he made this reference. Section 265 (1) reads as follows:--

'Records made under Section 263 and judgments recorded under Section 264 shall be written by the presiding officer, either in English or in the language of the Court, or, if the Court to which such presiding officer is immediately subordinate so directs, in such officer's mother-tongue.'

The Sessions Judge interpreted the words 'shall be written by the presiding officer' as meaning that they must be in the handwriting of the trial court. The learned Sessions Judge relied for this interpretation on a case reported in 'A. S. Nagappa Sett v. Holalkere Municipal Council', 1955 Mys 109 ((S) AIR V 42) (A). It is a single Judge decision of the Mysore High Court and the facts of that case are similar to this case.

In that case also the Magistrate dictated the judgment to a stenographer and the learned Judge was of the opinion that this was a violation of the mandatory provisions of Section 265 (1) of the Code of Criminal Procedure. It was further held in that case that the rule laid down under Section 367 (1), Cr. P. C. which stated that where the decision is not written by the presiding officer with his own hand

every page of such judgment should be signed by him, does not apply to an order passed under Section 263, Cr. P. C.

There is no other decision barring the decision cited above on this point. An earlier decision of the Madras High Court 'Subramanya Ayyar v. The Queen', 6 Mad 396 (B) does not specifically deal with this point. In that case it was held that a Magistrate should sign the judgment himself and that duty cannot be deputed to a clerk nor can a stamp be used in place of a signature.

However, in the course of the decision it was observed that when the law permitted a Magistrate to try a case summarily it provided as a safeguard for the accused that in non-appealable cases the record and in appealable cases the judgment should be written by the presiding officer. No interpretation of the word 'written' was given in this decision.

I have carefully considered the two decisions cited above and with all respect to the learned judge who gave the Mysore decision I cannot agree with his interpretation. The interpretation of any law, in my opinion, cannot be made in too rigid a manner, specially when such an interpretation leads one to ridiculous conclusions. The spirit of the law can never be ignored and only that interpretation can be accepted which is in keeping with the spirit of law.

If the phrase 'shall be written by the presiding officer' is to be interpreted to mean that the judgment must be in the handwriting of the presiding officer it would mean that even if the presiding officer types a judgment himself it would offend against the provisions of this law. The Code of Criminal Procedure was enacted in 1898 and those who framed the Code perhaps did not know that typewriters would be available to courts and judgments could be typed. At that time they were only safeguarding against someone else other than the presiding officer writing out the judgment and the presiding officer merely signing that judgment.

4. The only reason for making the provision as far as I can think seems to be that as it was a non-appealable order it was considered necessary that the record should contain a clear indication that the Magistrate fully considered the evidence led in the case before pronouncing his final order.

I am unable to think of any reason nor has any reason been given to me by the counsel for the State, to show that the accused stands in any danger of being prejudiced if the Magistrate instead of writing the evidence in his own hand kept a type-written record. The risk of someone else typing out the record and the Magistrate merely signing it is in my opinion negligible and not worthy of consideration.

5. Another ridiculous situation, if this interpretation is accepted, would be that if a Magistrate suffers from some disability either temporary or permanent which prevents him from writing himself he would! become unfit for conducting summary trials. The law surely could not mean that such an officer is disqualified from trying cases summarily under Section 263 or Section 264, Cr. P. C. No doubt some strength is added to this interpretation by the words of Section 367, Cr. P. C. Section 367 (1) runs as follows:--

'Every such judgment shall, except as otherwise expressly provided by this Code, be written by the presiding officer of the court or from the dictation of such presiding officer in the language of the court',

It would appear from the language of Section 367 that the provision for dictating a judgment was made in this section but the same provision has not been made in Section 265, Cr. P. C. It also appears from its words that those cases for which an express provision is made in the Code are excluded from the operation of Section 367, Cr. P. C. Section 265, Cr. P. C. is obviously such an express provision.

I, however, find that Sub-section (2) of Section 265 also contemplates the possibility of someone else writing the judgment at the dictation of its presiding officer in summary trials. Sub-section (2) of Section 265 runs as follows:--

'The State Government may authorise any Bench of Magistrates empowered to try offences summarily to prepare the aforesaid record or judgment by means of an officer appointed in this behalf by the Court to which such Bench is immediately subordinate, and the record or judgment so prepared shall be signed by each member of such Bench present taking part in the proceedings.'

7. In view of this Sub-section it is clear that even a Bench of Magistrates can maintain record under Section 263, Criminal P. C. and deliver judgments under Section 264, Cr. P. C. which are written by a duly appointed person and which are only signed by the Bench Magistrates. No doubt, the reader of a court cannot be said to be a duly appointed person by the superior court to carry out such a function, but, at any rate, this much is clear that in certain circumstances another person can write the body of the judgment or the record and the presiding officer has to sign it only to make it a valid decision.

I am, therefore, of the opinion that the phrase 'shall be written by the presiding officer' includes the dictation of an order by the presiding officer which is typed by someone else. So long as the typed record bears the signatures of the presiding officer in his own hand and not merely stamped it fulfils the requirements of Section 265 (1) of the Code of Criminal Procedure.

8. I, therefore, see no force in the referencemade by the learned Session Judge and I reject it.The order of conviction passed against the applicant by the Magistrate is upheld.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com