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Court : Allahabad

Decided On : May-15-1956

Reported in : AIR1956All641; 1956CriLJ1267

Judge : Roy, J.

Acts : [Constitution of India](#) - Article 22 and 22(1); [Code of Criminal Procedure \(CrPC\)](#) , 1898 - Sections 242, 243, 262, 263, 340, 342 and 364; ;Railways Act - Sections 120 and 121

Appeal No. : Criminal Revn. Nos. 192 to 195 of 1955

Appellant : Hansraj and ors.

Respondent : State

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

Advocate for Pet/Ap. : Sri Ram, ;S.C. Khare and ;H.N. Misra, Adv.

Disposition : Revision petitions allowed

Judgement :

ORDER

Roy, J.

1. These four criminal revisions raise common question of law. They have been heard together and may be disposed of by one judgment.

2. On the 29th of March, 1955, between 7 and 8 p.m. certain licensed porters of the Char-Bagh railway station, Lucknow, presumably with a view to have certain grievances redressed, adopted what was contended on behalf of the prosecution civil disobedience or passive resistance (Satyagraha). They were arrested for offences alleged to have been committed by them under Sections 120 and 121, Railways Act and were put into prison. Two sets of these persons were tried within the jail precincts on the 30th of March, 1955, and the other two-sets were tried on the 31st of March, 1955. The trial was held under the summary provisions of the Code. These persons were found guilty and convicted under the two sections. They were fined Rs. 50/- each under Section 120/- and Rs. 100/- each under Section 121, in default of payment of which they were directed to undergo certain term of simple imprisonment.

3. The first point which has been urged on behalf of the applicants is that the right which was given to them under Article 22(1) of the Constitution and Section 340 of the Code of Criminal Procedure had been denied by the Magistrate, inasmuch as the matter was pushed forward by the prosecution in such hot-haste that the applicants could not consult any legal practitioner, nor were they permitted to be defended by any legal practitioners.

Article 22(1) of the Constitution lays down that no person who is arrested shall be detained in custody without being informed as soon as may be of the grounds for such arrest, nor shall he be denied the right to consult and to be defended by a legal practitioner of his choice. Section 340 of the Code provides that any person accused of an offence before a criminal court, or against whom proceedings are instituted under the Code in any such court, may, of right, be defended by a pleader.

The submission made on behalf of the applicants is that since the trial was held in jail very soon after the arrest of the applicants, the applicants had not had the opportunity to consult a legal practitioner of their choice or be defended by any legal practitioner. A similar question came up for consideration before this Court in

-- 'Kailash Nath v. Empero 1947 All 436 (AIR V 34) (A), where it was observed that where the accused were persons who were charged , of an offence they were entitled as a matter of right to be defended by a pleader and the learned Magistrate was bound to give to the accused sufficient opportunity to be represented by a lawyer, especially when they were in custody from the time they had been arrested and accused of the offence. In enunciating those principles reliance was placed upon what was observed in a Bombay case in -- 'In re Llewelyn Evana : AIR1926 Bom551 , where Fawcett J., held that Section 340, Criminal Procedure Code.

'not only contemplates that the accused should be at liberty to be defended by a pleader at the time the proceedings are actually going on, but also implies that he should have a reasonable opportunity, if in custody, of getting into communication with his legal adviser for the purpose of preparing his defence.'

4. In 1947 All 436 (AIR V 34) (A), the question was also raised as to whether a Magistrate can hold his Court in the usual court room or whether he can hold it even in the jail precincts, and it was laid down that there is no provision in the Code of Criminal Procedure which would compel a Magistrate to hold his Court in the usual court room, that Section 352 probably contemplates that a Magistrate can hold his court anywhere he likes, but the Magistrate, where-ever he may be compelled to sit by executive orders, is bound by the provisions of Section 352 and he must realise that the place where the trial is held must be something like an open court to which the public generally may have access so far as the same can conveniently contain them; and though it is not illegal for a Magistrate to hold an inquiry or trial in jail or anywhere else, the Magistrate must realise that the place where the inquiry or trial is held must be deemed to be an open court where the public as such have a right to attend and that such right may be controlled in a proper case on special grounds and not by the jail rules or by the officer in charge of jail.

In the present case we do not know whether the members of the public were excluded from being present at the trial. And on that ground it cannot be urged that the trial was vitiated because it was held in the jail precincts. But the fundamental

question which we have got to determine is whether in the circumstances of the case the accused persons were denied the fundamental right which they had under Article 22 of the Constitution and also under the rule envisaged in Section 340 of the Code.

Article 22, [Constitution of India](#) sets a pattern similar to that which is to be found in the American Constitution. In *Elmer v. Commonwealth of Pennsylvania* (1948) 93 Law Ed 127 (132) (C) the question was considered that the due process clause of the Fourteenth Amendment or the Fifth Amendment requires counsel for all persons charged with serious crimes, when necessary for their adequate defence, in order that such persons may be advised how to conduct their trials; and it was observed that the requirement of due process necessitated the presence of counsel and the petitioner should not have been permitted to plead guilty without an offer of the advice of counsel in his situation; and if the circumstances alleged in his petition were true, the petitioner was entitled to an adviser to help him handle his problems, especially when there was the undenied allegation that he was never advised of his right to counsel and the record showed that no attempt had been made on the part of the Court to make him understand the consequences of his plea.

5. In *Gibbs v. Burke*, (1949) 93 Law Ed 1686 (1691) (D) it was laid down that a failure to request counsel does not constitute a waiver when the defendant does not know of his right to counsel. In *Powell v. Alabama*, (1932) 77 Law Ed 158 (165) (E) an argument similar to that which has been advanced on behalf of the State in the present case was raised namely, that the promptness adopted by the Magistrate was due more to an idea that there should be no delay in the enforcement of our criminal law and the great inexcusable delay in such enforcement is one of the grave evils of our time. The argument was repelled there by the following observations which are to be found at page 165 of the Report:

'It is true that great and inexcusable delay in the enforcement of our criminal law is one of the grave evils of our time. Continuances are frequently granted for unnecessarily long periods of time, and delays incident to the disposition of motions for new trial and hearings upon appeal have come in many cases to be a

distinct reproach to the administration of justice. The prompt disposition of criminal cases is to be commended and encouraged.

But in reaching that result a defendant, charged with a serious crime, must not be stripped of his right to have sufficient time to advise with counsel and prepare his defence. To do. that is not to proceed promptly in the calm spirit of regulated justice but to come forward with the haste of the mob.'

It was further laid down :

'A prompt and vigorous administration of the criminal law is commendable and we have no desire to clog the wheels of justice. What we here decide is that to force a defendant, charged with serious misdemeanour, to trial within five hours of his arrest is not due process of law, regardless of the merits of the case.'

6. In -- 'Glasser v. United State', (1932) 86 Law Ed 680 (699) (F), it was observed :

'Upon the trial judge rests the duty of seeing that the trial is conducted with solicitude for the essential rights of the accused. The trial Court should protect the right of an accused to have the assistance of counsel. This protecting duty imposes the serious and weighty responsibility upon the trial judge of determining whether there is an intelligent competent waiver by the accused. While an accused may waive the right to counsel, whether there is a proper waiver should be clearly determined by the trial Court, and it would be fitting and appropriate for that determination to appear upon the record.'

No such concern on the part of the trial court for the basic rights of the accused is disclosed by the record before us. It cannot therefore be said that there was a waiver on the part of the accused.

7. Coming now to Indian decisions, I have already referred to the decision of this Court in 1947 All 436 (AIR V 34) (A). As far back as 1903 it was held by this Court in -- 'Emperor v. Girand', 25 All 375 (G), that the right which a person against whom proceedings are held under Section 110 or Section 123 of the Code of Criminal Procedure as of being defended by a pleader cannot be exercised by him unless a date is fixed for hearing and notice of such date is given to him.

In the present case it is not disputed that no, information had been given to the accused persons about the date of the trial, nor were they told that under Article 22 of the Constitution and Section 340 of the Code of Criminal Procedure they had a right to consult a legal practitioner and to be defended by him. Nor were they told that if they made any statement which was damaging to their interest the same statement may be used against them.

8. Having regard to these provisions and to what has been held in similar circumstances in the decisions cited above, I am of opinion that the fundamental right given to the applicants under Article 22 of the Constitution and the right further conferred upon them, though similar in nature, under Section 340 of the Code of Criminal Procedure, had in a sense been denied to them when the prosecution adopted such a hot-haste in having the trial held of two batches of these persons on the 30th of March, 1955, and of another two batches on the following day within the jail precincts. The trial was therefore vitiated.

9. In the present cases it appears that there was a further infraction of the provisions of Sections 242 and 243 of the Code of Criminal Procedure, Section 242 says that when the accused appears or is brought before a Magistrate, the particulars of the offence of which he is accused shall be stated to him and he shall be asked, if he has any cause to show, why he should not be convicted; but it shall not be necessary to frame a formal charge.

Then follows Section 243 which lays down that if the accused admits that he has committed the offence of which he is accused, his admission shall be recorded as nearly as possible in the words used by him; and if he shows no sufficient cause why he should not be convicted, the Magistrate may convict him accordingly. The present cases being summons cases the learned Magistrate was bound to follow the procedure prescribed for the trial of summons cases, except in so far as that procedure was made inapplicable by any specific provision of the Code.

I have not been able to discover anything in the Code which makes Sections 242 and 243 inapplicable to summons cases tried summarily. It seems to me therefore that it was the duty of the learned Magistrate to have recorded the admission of the applicants as nearly as possible in their own words if the learned Magistrate

thought that the statement of the applicants amounted to an admission of their guilt. It is true that Section 263 of the Code provides that in cases tried summarily where no appeal lies a Magistrate need not record the evidence of the witness or frame a formal charge but that he shall enter in such form as the Provincial Government may direct, certain particulars. One such particular which is lettered as (g) is ;

'Plea of the accused and his examination, if any.'

In my view Section 263 (g) is neither in conflict with the provisions of Section 243, nor does it override it. Having regard to the provisions contained in Section 243, Criminal P. C. the proper construction to place upon Section 263 (g) would be that the plea of the accused if it amounts to an admission of the offence of which he is accused should be recorded as nearly as possible in his own words.

In construing Sections 243 and 263 (g) of the Code I am not unmindful of the provisions of Section 364 which require that when an accused is examined by any Magistrate, the whole of such examination, including every question put to him and every answer given by him shall be recorded in full in the language in which he is examined, but it makes this requirement inapplicable to summary trials by providing :

'Nothing in this section shall be deemed to apply to the examination of an accused person under Section 263, or in the course of a trial held by a Presidency Magistrate.'

10. It is to be borne in mind that whereas Section 243 is confined to the admission of the commission of the offence only Section 364 covers a much wider field, for example if an accused does not plead guilty and is examined under Section 342 of the Code, his examination need not be recorded in full in the language in which he is examined and every question put to him and every answer given by him need not be recorded in full. Section 364 is a general provision dealing with the examination of the accused in general, whereas Section 243 of the Code which would be applicable to summary trials by reason of Section 263, Criminal P. C. contains a special provision.

According to well settled rules of construction this special provision contained in Section 243 of the Code of Criminal Procedure should override the general provision. I am therefore of the opinion that whenever an accused in a summary trial admits to have committed the offence of which he is accused, his admission should be recorded as nearly as possible in his own words. The rule embodied in Section 243 is a very salutary rule, being necessary for the protection of the accused and the proper administration of justice.

The order of a Magistrate convicting an accused person on his own admission is not a final order, inasmuch as it is open to revision by a superior court. The superior court is entitled to be satisfied that what was treated by the Magistrate to be an admission of the offence is really such an admission. It is not difficult to conceive of cases in which the superior court and the Magistrate may differ upon the construction to be placed upon the statement of the accused person. By not recording the admission of the accused as nearly as may be in his own words the Magistrate disregards the provisions of Section 243 of the Code.

11. In the present case there was not only an error on the part of the Magistrate to fail to observe the second part of Section 242, but there was the further error to observe the provisions of the second part of Section 243 of the Code. In the second part of Section 242 what is enjoined is that the Magistrate shall ask the accused if he has any cause to show why he should not be convicted, but it shall not be necessary to frame a formal charge.

The second part of Section 243 likewise enjoins that the admission of the accused shall be recorded as nearly as possible in the words used by him and if he shows no sufficient cause why he should not be convicted, the Magistrate may convict him accordingly. In all these cases the Magistrate never asked the accused if they had any cause to show why they should not be convicted and the Magistrate did not mention that no sufficient cause had been shown by the accused which entitled him to convict them under the provisions of Sections 120 and 121, Railways Act. What happened in these cases was this. The Magistrate formulated two questions which were in the following terms.

Q. 1. Did you on the 29th March, 1955, at about at rail station Char-Bagh, Lucknow at the train, create nuisance by resorting to satyagraha?

Q. 2. Did you on the same date and about the same time and place wilfully obstruct the parcels clerk and the guard of train, in the discharge of their duties?

12. At each trial there were a number of accused. The record of the proceedings of the summary trial maintained by the Magistrate shows that there was a composite answer of all the accused, the answer being 'yes' to both questions. A note was appended by the Magistrate at the bottom of these answers to the following effect:

'The above questions have been put and explained to the accused persons individually in Hindi. The accused persons have pleaded guilty and answered 'yes' to both questions.'

13. An affidavit has been filed in support of these petitions to the effect that at the trial the particulars of the offence had not been explained to the applicants; that during the trial the Magistrate did not put any questions to the applicants separately and individually, and that only one general question 'Whether the applicants on 29th of March, 1955 had resorted to satyagraha at the railway platform' was put at once to all the applicants, in reply to which there was an uproar admitting the fact of satyagraha.

It has further been stated in the affidavit that the applicants never accepted to have caused any obstruction to any railway servant and did not admit to have committed any offence. It will be too much to contend that the Magistrate recorded something in the record of his own without that particular thing having been conveyed to him by the accused. But at the same time there can be no two opinions that the learned Magistrate erred seriously in not recording the statements of the accused persons separately as enjoined in Section 243 of the Code, nor can there be two opinions that this has ended in serious prejudice.

When a Magistrate records one admission for a number of accused persons, the admission is bad. This view was expressed in -- 'Tejmal Hassonmal v. Emperor',

1932 Sind 211 (212) (AIR V 19) (H).

14. It has been laid down by this Court in -- 'Sukhdeo Singh v. State : AIR1951 All410 , and in -- 'Mukandi Lal v. State : AIR1952 All212 , that the provisions of Sections 242 and 243 of the Code are not to be ignored and that whenever an accused in a summary trial admits to have committed the offence of which he is accused, his admission should be recorded as nearly as possible in his own words. In the present case the provisions of these two sections not having been followed, and further the right which was inherent in the accused under Article 22 of the Constitution and Section 340 of the Code having in a sense been denied to them, I am of opinion that there resulted serious prejudice to the accused and their conviction and sentence cannot be upheld.

15. In the result I allow these revisional petitions, set aside the conviction and sentence of the applicants and direct that the fines, if paid, shall be refunded to them.

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