

**Ram Lochan Vs. State**

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**Court :** Allahabad

**Decided On :** Dec-08-1977

**Reported in :** 1978CriLJ544

**Judge :** V.N. Varma, J.

**Appellant :** Ram Lochan

**Respondent :** State

**Judgement :**

ORDER

**V.N. Varma, J.**

1. This revision is directed against an order dated 22-3-1972 passed by Sessions Judge, Gorakhpur, confirming the conviction and sentence recorded against the applicant Under Section 112 of the Indian Railways Act,

2. At the relevant time the applicant was employed as a callman, Mechanical Loco Shed, N. R. Railway, Gorakhpur. As a railway employee, he held a third class pass for five persons for travelling from Gorakhpur to Lucknow- This pass was valid upto 1-8-72. On 5-8-1972 he was found travelling by 1 Up Lucknow Mail train on his expired pass. The Ticket Travelling Examiner caught him and asked him to pay railway fare. The applicant, however, managed to dodge the Ticket Travelling Examiner and managed to slip away when the train stopped at Man-kapur Railway

station. The Ticket Travelling Examiner reported the matter to the authorities concerned and eventually the applicant was sent up to stand his trial Under Section 112, Indian Railways Act.

3. The applicant denied the allegations made against him. He alleged that he had not been travelling by 1 Up Lucknow Mail train on 5-8-1972, but was actually on duty at the Loco Shed.

4. The learned Magistrate found the case against the applicant to be fully established and he, therefore, convicted him Under Section 112, Indian Railways Act and sentenced him to pay a fine of Rs. 100/-; in default, he was to undergo one month R.I. The applicant went up in appeal to the Court of Session. The Sessions Judge dismissed his appeal and hence this revision.

5. Before I take up the case of the applicant on merit, I may mention here that the record of the trial court has not been made available to this Court for perusal. The report of Sessions Judge Gorakhpur shows that the record of the trial court has been weeded out. The Sessions Judge was then asked to reconstruct the record and he has again reported that as no papers of the case were available, reconstruction of the record was not possible. The result is that I have to decide this case without there being any record of the case to look into. Undoubtedly this will greatly prejudice the applicant in the fair disposal of this revision. There are certain facts, however, about which there is no dispute. The judgment of the Sessions Judge shows that the applicant was tried summarily. Summary procedure, though legal is most inappropriate in cases in which government servants are concerned as accused persons, because their conviction is likely to result in their dismissal from service which is a serious loss to them. It was, therefore, not at all proper on the part of the trial court to have decided this case summarily. Normally, I would have remanded the case for retrial, but I do not propose to do so because the record of the entire case, including all the material exhibits, has been weeded out. Therefore, no useful purpose would be served by ordering retrial of that case. Apart from the fact that the accused was tried summarily, I find that his summary trial also was not done properly. The judgment of the Sessions Judge shows that the applicant was not examined by the trial

Court Under Section 342 Cr. P. C- Undoubtedly provisions of Section 342, Cr, P. C apply to summary trials also. The learned Sessions Judge has remarked that the trial Court was bound to examine the applicant Under Section 342. Cr.PC but despite that I find that he, has not attached any importance to his non-examination under that section. According to him, as no prejudice has been caused to the applicant, his non-examination under Ss 342, Cr. P. C was just an irregularity which stood cured Under Section 537 Cr.PC I am afraid I cannot persuade myself to agree with this view of the learned Sessions Judge. The non-examination of the applicant Under Section 342, Cr.PC was not an irregularity, but it was an illegality which went to the root of the case. By not examining him Under Section 342 Cr. P. a, the trial Court did not give opportunity to the applicant to explain the incriminating circumstances appearing against him. Again, I may say here that, normally, I would have remanded the case and asked the trial Court to examine the applicant Under Section 342, Cr.PC but I am not doing so because of the reason given above.

6. Thus, from a perusal of what I have mentioned above it is clear that the trial of the applicant in this (case) has not been done in a proper and legal manner. As no useful purpose would be served by remanding the case for retrial because of the weeding out of the record of the trial court, I acquit the applicant of the charge Under Section 112 Indian Railways Act.

7. In the result, I allow this revision and set aside the conviction and sentence passed against the applicant Under Section 112, Indian Railways Act. Any fine, if paid, shall be refunded to the applicant.

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