

Khushi Ram Vs. the State

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Court : Allahabad

Decided On : Oct-30-1958

Reported in : AIR1959All778; 1959CriLJ1388

Judge : A.N. Mulla, J.

Acts : Prevention of Adulteration Act, 1947 - Sections 21; [Code of Criminal Procedure \(CrPC\), 1898](#) - Sections 347

Appeal No. : Criminal Appeal No. 105 of 1957

Appellant : Khushi Ram

Respondent : The State

Advocate for Def. : M.L. Trivedi, Adv. for ;Addl. Govt. Adv.

Advocate for Pet/Ap. : K.S. Verma, Adv.

Disposition : Appeal allowed

Judgement :

A.N. Mulla, J.

1. Khushi Ram appellant has been convicted under Section 7(i) and 7(iii) of the Prevention of Food Adulteration Act by the Additional Sessions Judge of Bara Banki and sentenced to one year's rigorous imprisonment and a fine of Rs. 200/-

in default further rigorous imprisonment for six months under each count. The two sentences of imprisonment awarded to Khushi Ram have been made to run concurrently.

2. It is not necessary to give the facts of the case at all, as I have come to the conclusion that the order passed by the learned Additional Sessions Judge was without jurisdiction and the case is being remanded for retrial before a competent Magistrate. I now proceed to discuss only the legal aspect involved in this case.

3. The Magistrate committed tin's case to the Court of Session by his order dated the 24th July, 1956, under a misapprehension. The Magistrate observed: '

'Therefore it will be seen that this is the third offence which has been committed by the accused. The punishment which is laid down in this is as follows: in Section 16(i),(ii) of the Prevention of Food Adulteration Act 'for a third and subsequent offences, with imprisonment for a term which may extend to four years and with fine:Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the court, such imprisonment shall not be less than 2 years and such fine shall not be less than three thousand rupees.'

As I have only power to fine up to Rs. 2000/-only and in this case the minimum fine to be awarded is Rs. 3000/- only, so I am committing this case, to the Court of Sessions on the-charges under Section 7(i) and 7(iii) read with Section 16(1)(a) and (iii) of Prevention of Food Adulteration Act under Section 346 Cr. P. C.'

4. The first error, committed by the Magistrate was that he depended upon a provision of the Code of Criminal Procedure for committing the case to the Court of Session which did not empower him to do so. Section 346 only empowers a Magistrate to stay proceedings when the evidence appears to him to warrant a presumption that the case should be committed for trial to the Sessions Court or be tried by some other Magistrate and he can only submit a report explaining the nature of the case to the Magistrate to whom he is subordinate. He cannot commit the case to the Court of Session.

Perhaps the Magistrate intended to act under Section 347 of the Code of Criminal Procedure which empowers him to make such a commitment if he for some valid reason felt that the case ought to be tried by the Court of Session. Where a Magistrate cannot pass an adequate sentence upon an offender looking to the gravity of the offence and the requirements of law, it is a valid reason for making such a commitment. But in this case when the Magistrate passed this order, he also completely overlooked the provisions of Section 21 of the Prevention of Food Adulteration Act. Section 21 reads as follows:

'Notwithstanding anything contained in Section 32 of the Code of Criminal Procedure, 1898 (Act V of 1898), it shall be lawful for any Presidency Magistrate or any Magistrate of the first class to pass any sentence authorised by this Act, in excess of his powers under Section 32 of the said Code,'

This section makes it abundantly clear that the normal limitations placed upon the powers of the Magistrates are removed and for the purposes of the prevention of Food Adulteration Act he can pass all the sentences mentioned in that Act when he finds an accused person guilty. It is surprising that the Sessions Judge also did not see the provisions of Section 21 quoted above. Perhaps, if he had done so he would not have proceeded to assume jurisdiction but would have remanded the case back to the Magistrate.

Section 21 makes it quite obvious that the trial is to be conducted by a Magistrate and in no circumstances the case is to be committed to the Court of Session on the ground that an adequate sentence could not be passed. A Sessions Court can try only those cases which are legally and properly committed to it by the Magistrate. Where the commitment is illegal, the Sessions Judge cannot proceed with the trial. As I read Section 21 it appears to me to be not only an enabling provision but also a disabling provision. It confers jurisdiction upon the Magistrate to give enhanced punishments and at the same time it implies that no commitment should be made to the Court of Session on the ground that an enhanced punishment is to be awarded.

The legislature clearly wants a speedy disposal of such cases and therefore it conferred these special powers upon the Magistrates so that the proceedings may

not take long. The very purpose of the enactment would be defeated if such commitments are held to be legal and permissible, I am, therefore, of the opinion that the Sessions Courts could not have exercised jurisdiction in trying this case.

No doubt the Sessions Judge observed in his decision that the learned committing Magistrate should not have committed this case at all to the Court of Session but he fell in error when he observed that the mistake committed by the Magistrate was only due to the fact that the offence committed by the accused was only a second offence and not his third offence. This seems to indicate that in the opinion of the Sessions Judge if this had been a third offence, then the commitment order was proper. There is nothing in the Prevention of Food Adulteration Act which warrants this inference. Where a special Act has made a special provision for punishment to be awarded by a Magistrate irrespective of the limitations placed upon his powers under the Criminal Procedure Code it amounts to an abrogation of the general law and the provisions of Section 347 of the Criminal Procedure Code cannot be applied to such a case. The Legislature by making a special provision under Section 21 made it very clear that the Magistrate cannot commit a case under this Act to the Court of Session on the ground that he cannot adequately punish the offender, for he himself has been made competent to award the maximum punishment and it follows that he alone has the jurisdiction to try the case. There was no necessity to confer this special jurisdiction upon him if the jurisdiction of the Sessions Court by a commitment under Section 347 of the Code of Criminal Procedure was intended to be maintained. In view of what I have observed above, I am of the opinion that the trial of the offender by the Sessions Judge was illegal and without jurisdiction. As such the order passed by the Sessions Judge cannot be upheld. It has to be set aside.

5. I, therefore, direct that this case be remanded to the Court of the District Magistrate, of Bara Banki and the District Magistrate should transfer it to the Court of a Competent Magistrate for trial and disposal. This Magistrate should be other than the Magistrate who committed him to the Court of Session. The order of conviction and sentences imposed upon the appellant is set aside. The appellant is on bail and shall continue to remain on the same bail.