

**Mohammad Sayeed Vs. the State**

**Mohammad Sayeed Vs. the State**

**SooperKanoon Citation :** [sooperkanoon.com/471449](http://sooperkanoon.com/471449)

**Court :** Allahabad

**Decided On :** Apr-01-1976

**Reported in :** 1977CriLJ902

**Judge :** K.B. Asthana C.J.

**Appellant :** Mohammad Sayeed

**Respondent :** The State

**Judgement :**

ORDER

K.B. Asthana C.J.

1. The applicant Mohd. Sayeed stands convicted for an offence under Section 3(a) Railway Property (Unlawful Possession) Act and has been sentenced to a fine of Rs. 100/- and in default to undergo two months' rigorous imprisonment.

2. The main point urged in support of this revision is that despite an application having been made by the applicant before the Magistrate trying him the statements of the prosecution witnesses recorded under Section 161. Criminal P.C. were not supplied to him thereby causing great prejudice to him to put his defence. When 1 had heard this revision a month ago and left it part-heard the intention was that learned Government Advocate would examine the matter and find out whether any documents, as required by the Code of Criminal Procedure, were supplied to the applicant.

3. Today at the further hearing of this revision the learned Government Advocate could only point out that an application on behalf of the applicant is on record, but there does not appear any order having been passed on it by the Magistrate. However, the learned Government Advocate submitted that despite nothing having been done on the application of the applicant if the trial continued and he took part in the trial and cross examined the prosecution witnesses and produced witnesses in his defence this Court ought not declare the trial to be vitiated unless the applicant establishes to the satisfaction of the court that he has been actually prejudiced.

4. Under law the duty is cast on the prosecution to supply the documents which include statements recorded under Section 161 Criminal P.C. by the investigating agency with the object of affording an opportunity to the applicant to know as to what is the evidence against him which the prosecution at the trial could adduce. There is no doubt that if the nature of the evidence and the persons who are likely to come in witness box is known to the applicant he would be in a better position to prepare his defence after taking proper legal advice. A cross examiner would also be in a position of advantage. The court itself also, who holds the trial will find great facility if it knows from before-hand the nature of the case, nature of the evidence, and other things connected with particular prosecution. The provisions of the Code of Criminal Procedure which require the supply of documents and statements, prepared at the investigation; stage, cannot be treated as mere superfluity; or an empty formality. Those provisions have been enacted by the Legislature with a definite object and that is why a duty is cast upon the prosecution. I am not prepared to accept the argument that failure by the prosecution to comply with the mandatory provisions of the Code in this regard would not vitiate the trial unless the applicant establishes actual prejudice. To my mind, an omission to follow any mandatory provision of law would result in prejudice which is inherent in the situation. Thus the prejudice would be presumed. The accused loses a valuable right to contradict the prosecution witnesses on the basis of any statement given by them to the investigating agency. That by itself is a factor causing prejudice, In the case of *Indal Singh v. State* (1972 All Cr. J, 188) a similar view has been taken. That was also a case under Railway Property (Unlawful Possession) Act and in somewhat similar circumstances this court

acquitted the accused in exercise of its revisional jurisdiction. The learned Government Advocate has not been able to satisfy me that the decision requires re consideration. He has not placed before me any valid reason why should I not follow the same course as this Court followed in Indal Singh's case (Supra).

5. Moreover, even on merits I find that the evidence is far from satisfactory. It is a fantastic case which the prosecution brought before the court that this accused who was about to retire from service took away a pair of shoes from the gunny bag in the brake van, threw away his own pair of shoes which he was wearing in the brake van or near about and flaunted at the railway platform with a new pair of shoes telling, everybody what he had done. Every thing seems to have been facilitated for the prosecution. They recovered the did pair of shoes and there was also a public exhibition of the stolen property by the applicant. The two main witnesses who are railway Rakshaks have contradicted themselves and I do not agree with the learned Sessions Judge when he observed that contradictions were not material. I am conscious that in my revisional jurisdiction I cannot lightly interfere with the findings of fact. I do not intend to do so and I am setting aside the conviction on the question of law discussed above When the case itself, as set up by the prosecution, appears to be so fantastic and unnatural the Court's conscience is always aroused. This is the only reason that I have made a reference to the nature of the prosecution case.

6. For the reasons given above I allow the revision, set aside the' conviction and sentence of the applicant and acquit him of the charges.

7. Fine, if paid, shall be refunded.