

Sheo Nath and ors. Vs. the State

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Court : Allahabad

Decided On : Nov-01-1973

Reported in : 1975CriLJ463

Judge : K.B. Srivastava, J.

Appellant : Sheo Nath and ors.

Respondent : The State

Judgement :

ORDER

K.B. Srivastava, J.

1. This revision raises an interesting question of law.
2. The opposite party Krishna Kumari had grown Berra crap on a certain plot of hers which was cut and carried away b the petitioners on March 29. 1970, She made a F. I. R., on the same date and followed it up by the institution of complaint in Court on May 1 1970. The trial was held by Sri D. B. Mathur, Judicial Magistrate. First Class, in the summary manner under Chapter XXII. of the Code of Criminal Procedure,, and the petitioners were convicted under Section 379. of the Indian Penal Code, and sentenced to pay a fine of Rs. 30/- each. They went up in revision to the Court of Session, and there raised a plea that the offence was not triable summarily inasmuch as the value of the stolen crop exceeded the sum

of Rs. 200/- and. therefore, the Magistrate had no jurisdiction to try the case summarily and the trial was void under Clause (q) of Section 520. of the Code. The learned .Sessions Judge. however, repelled this contention and dismissed the revision, which has occasioned the institution of the present revision in this Court.

3. Section 530 (q) says that if any Magistrate, not being empowered by law in this behalf tries an offender summarily. his proceedings shall be void. The learned counsel argued that 'the words 'not being empowered by law in this behalf, may mean two things, that is to say. (1) either not empowered to try cases in a summary manner, or (2) empowered to try summarily, but trying a case which is not triable in a summary manner. Section 316, of the Code, refers to ordinary powers, while Section 37 refers to additional powers of Magistrates Under Section 36, all District Magistrates. Sub-Divisional Magistrates, and Magistrates of the first, second and third classes, have the powers respectively conferred upon them and specified in the third schedule. Such powers are called their 'ordinary powers'. Under Section 37. In addition to his ordinary powers, any Sub-divisional Magistrate or any Magistrate of the first, second or third class may be invested by the State Government or the District Magistrate, as the case may be. with any powers specified in the fourth schedule a 9 powers with which he may toe invested by the State Government or the District Magistrate. The powers with which a Magistrate of the First Class may be invested by the State Government are specified in schedule IV, Part I. sub. Part (IA). Item No. 11 relates to power to try summarily under Section 260. It will thus appear that it is not Magistrates of the First Class who can try a case summarily but it is only such a Magistrate who has been empowered in this behalf by the State Government under item No. 11 of the said schedule. It is not disputed that Sri D. B. Mathur was empowered by the State Government to try cases summarily under Chapter XXII of the Code. The next Question is whether the instant case was triable in a summary manner. This brings me to Section 260(1)(d) of the Code, which provides that notwithstanding anything contained in the Code, any Magistrate of the First Class specially empowered in this behalf by the State Government may if he thinks fit, try in a summary way an offence of that under Section 379. Where the value of the property stolen does not exceed two hundred rupees. That being so. Sri D. B. Mathur was competent to try An offence under Section 197 provided that the value of the property stolen

namely of the Berra crop, did not exceed that amount. The amount of the stolen crop that was given in the F. I. R. and which was repeated in the complaint was Rs. 200/-. Krishna Kumari stated under Section 200. of the Code, also that the amount was only that much. Her two witnesses, in their statements under Section 202. of the Code, also made a similar statement. It is on the basis of the value given in the F, I. R. the complaint. and the statements aforementioned, that the Magistrate decided to hold a summary trial. In evidence at the trial, however, Krishna Kumari assessed the value of the stolen crop at Rs. 225 and it is on the basis of that casual statement made by her that that argument was raised before the learned Sessions Judge, as also in this Court, that the jurisdiction of the learned Magistrate hold the trial in a summary manner came to an end and it was his imperative duty to have stayed his hands and to have held a regular trial.

4. I can visualise four situations. There may be a case where a Magistrate of the First Class has no summary powers and still tries an offence which is triable in a summary manner in that manner. There can be a second case where Magistrate has summary powers., but tries an offence which is not triable summarily. There may then be a third case where a Magistrate has summary powers, and where the offence is also triable summarily, but he tries it in the regular manner and not under Chapter XXII. Lastly, there may be a case where a Magistrate has summary powers; the case is also triable in a summary manner when the trial commences, but subsequently, on the basis of fresh evidence, it appears that the trial is not permissible under the summary manner. The question is as to what would be the result in the four cases. In the first case, the trial would be obviously illegal under Section 530(a) of the Code. The judgment recorded in such a trial would be void for the simple reason that there is a mandatory provision contained in Section 520 which enjoins that no Magistrate of the First Class can try a case summarily, unless he is vested with summary powers. In the second case also, the position of law would be the same because even though the Magistrate has jurisdiction to try certain offences summarily, the offence which he actually tries is not triable in that manner. Section 530 (a), when read conjointly and harmoniously with Section 260, will inevitably lead to that result. The trial in the third case will, however, be perfectly valid. Section 260 gives a discretion to the Magistrate to try a summary case in the summary manner or in the regular manner, and if he decides to try it in

the regular manner, the law permits him to do so Section 260 (1) says that the Magistrate 'may', 'if he thinks fit', try the case in a summary way. It would be obvious that the discretion is his and if he tries an offence triable summarily, not in that manner but in a regular way. the trial would be valid. The difficulty arises in the situation posed in No. (iv). There may be a case in which before the commencement of the trial, the evidence before the Magistrate may indicate that the case is triable in the summary manner and he may decide to try it in that manner. Can it be said in such a situation that he had no jurisdiction to try it in that manner? I am of the view that such a contention would be untenable in law. He has summary powers, and here is a case triable summarily and that being so. it would be futile to contend that he cannot 'try the case summarily. The jurisdiction depends upon the allegations and averments made till before the commencement of the trial. After all. a Magistrate has to take a decision before the commencement of the trial as to whether the procedure for 'the trial of warrant cases or summons cases or summary cases will govern a particular case. That decision has to be based on the evidence before the Magistrate. In the instant case, the entire evidence indicated that the valuation of the stolen property did not exceed Rs. 200/-. The Magistrate had. therefore, jurisdiction to start the trial in a summary manner. The next question is as to whether or not this jurisdiction will be ousted, if during the course of the evidence, it appears that the value possibly exceeds Rs. 200/-. I think that 'there should be no change with regard to the competency of the Magistrate to continue the trial in a summary manner. Section 530(a) or Section 260 will not take away the jurisdiction. Sub-section (2) of Section 260 will also make no difference. It says that when in the course of a summary trial it appears to the Magistrate that the case is one which is of a character which renders it undesirable that it should be tried summarily, the Magistrate shall recall any witness who may have been examined and proceed to rehear the case in manner provided by the Code. The utmost that can be said about this Sub-section is that the Magistrate, when such a contingency arises, will have to take a decision whether it would be desirable to continue the trial in a summary manner or to change 'the procedure, and if he decides to change the procedure, he shall have to recall the witnesses who might have been examined already and to rehear the case. It does not. to my mind, oust the jurisdiction altogether. The case remains a

case triable legally in the summary way but the undesirability of the continuance of that procedure gives a discretion to the Magistrate to change the procedure. The matter does not infringe the jurisdiction but only touches the question of his discretion. The Magistrate might have thought that the casual statement made by Krishna Kumari was of no consequence. The procedure adopted by him in continuing the trial in a summary manner, is also, cured by' Section 537 of the Code. No finding, sentence or order passed by a Court of competent jurisdiction can be reversed or altered on the revisional side of this Court on account of any error or irregularity in proceedings during the trial, unless such error or irregularity has in fact occasioned the failure of justice. In determining whether any error or irregularity in any proceeding has occasioned a failure of justice, the Court shall have regard to the fact whether the objection (could and should have been raised at an earlier stage in the proceedings. No objection was raised before the learned Magistrate. No prejudice, much less material prejudice and no failure of justice, has been occasioned.

5. The result is that this revision is dismissed

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