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Court : Allahabad

Decided On : Dec-08-1930

Reported in : AIR1931All262

Appellant : Emperor

Respondent : Bansidhar and ors.

Judgement :

Kendall, J.

1. This is a reference made by the learned Additional Sessions Judge of Etawa recommending that a conviction by a Bench of Magistrates which has been upheld by the District Magistrate should be quashed and the sentences set aside. The facts are not of importance. The reference is made on the ground that the Bench Magistrates refused the applications made by the accused under Section 162, Criminal P. C, to be supplied with copies of the statements made by the witnesses for the prosecution to the police.

2. The application made to the Bench for copies of these statements was rejected after the Magistrates had perused the police diaries on the ground that what was recorded in the diaries consisted not of the statements of the witnesses at length but merely of a memorandum of such statements taken down by the investigation officer.

3. Under proviso. 1, Section 162 (1), Criminal P. C:

When any witness is exiled for the prosecution in such an enquiry or trial whose statement has been reduced into writing as aforesaid the Court shall on the request of the accused direct that the accused be furnished with a copy thereof in order that any part of such statement if duly proved may be used to contradict such witness...

4. It is only in two cases that the Court can refuse the copies as proviso! 2 shows, namely when it is of opinion (1) that any part of any such statement is not relevant or (2) that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest.

5. In these cases the law directs that the Court shall record such opinion.

6. In the present case the Court that is to say the Bench of Magistrates did not record any such opinion. It merely recorded that the statements were not full statements but only amounted to a memorandum. If the copies were to be denied to the accused under provision 2, Section 162 then the procedure laid down was not followed because the Court did not record such opinion.

7. Nevertheless it may be argued that this would be only an irregularity, and. if an examination of the record showed that the real reason of the Court for refusing the copies was the reason laid down by the law then the mere fact that the Court had not recorded its opinion would not vitiate the trial. This may be so but in the present case 'it is clear that this was not the reason. The Court has recorded the reason for refusing the copies viz. that the statements are not full statements but only a memorandum.

8. It may be and has been argued before me on behalf of the counsel for the complainant in this case that where there is only a memorandum and not a full Statement the Court is under no obligation to provide the accused with a copy. To this argument I cannot accede. The object of the law is to enable the accused to contradict a witness in Court by making use of a previous statement of his and it may be that the memorandum in the police diary is just as effective for that

purpose as a full statement would be. The learned District Magistrate who went into the facts of the case very carefully has remarked that the accused demanded statements of the prosecution witnesses 'for the purposes of cross examination and not of contradicting the witnesses' and that the accused had not been in any way prejudiced through the absence of copies. The application for the copies may have mentioned that the copies were needed for cross-examination but that would not exclude the purpose of contradicting the witnesses and as I have said above a memorandum might be quite sufficient for this purpose and it is therefore not possible to say that the accused were not prejudiced.

9. In any case the law appears to me to be perfectly clear. There is a definite provision under which the Court was obliged to supply the copies or direct that they should be supplied. The omission to supply the copies may have prejudiced the accused and in any case the Court acted illegally in not following a mandatory provision of the statute. That is sufficient to vitiate the proceedings.

10. It has been contended on behalf of the complainant that if the procedure was illegal a re-trial ought to be ordered. The Additional Sessions Judge has however considered this point and has not recommenced a retrial. The case was not a particularly serious one and the accused have already been put to a good deal of inconvenience and expense as well as having been in jail for some small portion of the period to which they were sentenced. For these reasons I accept the reference and quashing the convictions by the Bench Magistrates Set the sentences aside. As the convictions have been set aside it follows that an application which has been made by the complainant for enhancement of the sentences must be and is hereby rejected.