Sukhdeo Singh Vs. State

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Court : Allahabad

Decided On : May-15-1950

Reported in : AIR1951All410

Judge : Seth, J.

Acts : Railways Act, 1890 - Sections 112 and 113; Code of Criminal Procedure (CrPC) , 1898 - Sections 242, 243, 262 and 263

Appeal No. : Criminal Ref. No. 1129 of 1949

Appellant : Sukhdeo Singh

Respondent : State

Advocate for Def. : Asst. Government Adv.

Judgement :
ORDER

Seth, J.

1. This is a reference by the learned Sessions Judge of Banaras, recommending that the conviction of the applicant under Section 112, Railways Act, (hereinafter referred to as the Act) be altered to a conviction under Section 113 of the Act.

2. Proceedings, for the prosecution of the applicant, were initiated by the presentation of a written complaint in the Court of the Special Railway Magistrate of Banaras. A printed form was used for the complaint. The complainant mentioned Sections 112 and 113 of the Act in the space meant for the insertion of 'section or sections of Act under which complaint is lodged', and in the space meant for the insertion of 'description of offence', he described the offence alleged to have been committed by the applicant in the following words; 'Travelled without ticket, refused to pay the railway dues.' This is the whole of the allegation made by the complainant against the applicant on which he desired the applicant to be convicted under Section 112 and 113 of the Act.

3. It is surprising that this complaint was entertained at all, and that it was not immediately rejected on the ground that it did not disclose any offence to have been committed by the applicant. It is all the more surprising that it was entertained by a Special Railway Magistrate, who is expected to be familiar with the Railways Act at least, if not with any other statute relating to criminal law. As observed by the learned Special Magistrate himself, in his explanation, Section 113 of the Act, only provides a procedure for the recovery of railway dues and does not define any offence, The procedure provided by Section 113 of the Act is set in motion by an application and not by a complaint. It is evident, therefore, that the complaint against the applicant under Section 113 of the Act was entirely misconceived and that that section should not have been mentioned in the complaint at all.

4. Section 112 of the Act does not penalise mere ticketless travelling. What it penalises is ticketless travelling with a particular intent, namely, an intent to defraud a Railway Administration. This intent to defraud a Railway Administration is an essential ingredient of an offence under Section 112 of the Act. No such intent was alleged in the complaint filed against the applicant. Thus, the complaint did not disclose that he had committed an offence under Section 112 of the Act, It should, therefore, have been rejected immediately on its presentation for the reason that it did not disclose any ground, for prosecuting the applicant.

5. Nevertheless, this complaint was entertained and the applicant was summarily tried. No evidence was produced at the trial. The applicant is stated to have pleaded guilty. He has been convicted of an offence under Section 112 of the Act on his own plea.

6. The learned Sessions Judge of Banaras, after a very careful examination of the record, did not feel satisfied that the applicant had admitted at the trial that he had travelled without ticket, with intent to defraud the Railway Administration. I may say at once that I also do not feel satisfied upon the point.

7. It is not known what was actually stated by the applicant; nor is it known what question was put to the applicant in answer to which the applicant is said to have pleaded guilty. There is no record of the actual words used by the applicant. The judgment does not state anything beyond, 'he pleads guilty', and the printed form precribed under Section 263, Criminal P. C., records only these two words, 'pleads guilty.' 'Pleads guilty', or 'he pleads guilty' is certainly not a record of any statement made by the applicant.

It is only a record of what, in the opinion of the learned Magistrate, the statement amounted to. It is the record of an inference only which may or may not be well-founded.

8. According to the procedure prescribed by Sections 212 and 243, Criminal P. C., which apply to Summary Trials also by reason of the provisions of Section 262, Criminal P. C., when an accused appears or is brought before a Magistrate, the particulars of the offence of which he is accused should be stated to him and he should be asked if he has any cause to show why he should not be convicted; and that if he admits that he has committed the offence of which he is accused, his admission should be recorded as nearly as possible in the words used by him. In the present case, the learned special Magistrate has completely failed to record the admission of the applicant. He has failed still more to record the admission of the applicant as nearly as possible in the words used by him.

9. In many oases it may be questionable whether the statement made by an accused does or does not amount to an admission of the offence of which he is

accused. The statement may be so worded that different opinions may legitimately be entertained about its meaning. In such a case, it is quite possible that the trying Magistrate may legitimately entertain the opinion that the statement amounts to an admission of guilt, while the appellate Court or the revisional Court may justifiably entertain the contrary opinion. A trying Magistrate, who omits to record the statement of the accused as nearly as possible in his own words, by this omission, prevents the appellate or the revisional Court from examining whether he has or whether he has not correctly interpreted that statement. A Magistrate cannot be permitted to follow such a course. It is, therefore, of the utmost importance that the procedure prescribed by Section 243, Criminal P. C., should be strictly and literally followed and that any departure from it should not be lightly ignored.

10. I have already said that the complaint does not impute any guilty intention to the applicant and that it was entertained by the learned Magistrate in spite of this shortcoming. It seems to me, therefore, that it was neither in the mind of the complainant nor in the mind of the learned Magistrate that an intent to defraud a Railway Administration is an essential ingredient of an offence under Section 112 of the Act. I am, therefore, unable to presume that when the particulars of the offence were explained to the applicant it was pointed out to him that he was alleged to have committed an offence under Section 112 of the Act because it was alleged that he had travelled without a ticket with intent to defraud the Railway Administration.

11. I see no reason why the learned Magistrate should have said anything to the applicant beyond what was contained in the complaint. All that may be presumed is that it was stated to the applicant that it was complained against him that he had travelled without a ticket and that he was asked to show cause why he should not be convicted of an offence under Section 112 of the Act. If this is all that was done, and there is no reason to assume that anything more was done, and the applicant admitted to have travelled without a ticket and, for want of legal advice, failed to show cause why he should not be convicted, his conviction can be hardly justified.

18. The learned Magistrate has attempted to supplement the record by stating in his explanation:

'Every accused is asked whether he admits or denies to have committed the offence of travelling without ticket by this train dishonestly cn;kUrh ls '

This attempt is, however, ineffective to rectify the serious omission discussed above, because (i) I doubt if it is permissible for me to travel outside the record to ascertain facts, (ii) the learned Magistrate only refers to the practice followed by him and does not even now state in his explanation that this question was actually put to the applicant, and (iii) the learned Magistrate does not state what was said by the applicant in reply to this question.

13. The learned Magistrate has referred to Sections 242, 243 and 263 (g), Criminal P. C. in support of his opinion that he was not required to record the statement of the applicant, apart from his plea of 'guilty' or 'not guilty'. I have already discussed the first two sections. It would be manifest from that discussion that while Section 242 only provides what a Magistrate is to do when an accused appears or is brought before him, Section 243, Criminal P. C. specifically enjoins upon him to record the plea of the accused as nearly as possible in his own words. Section 243, therefore, completely refutes the opinion entertained by the learned Magistrate.

14. Section 263 (g) mentions two things, (1) plea of the accused, and (2) his examination (if any). It may be that a Magistrate is not required to examine an accused in every case, and that this is the reason why the words 'if any' have been added within brackets after the words, 'and his examination'. An examination of the accused will be futile when he admits the commission of the offence of which he is accused and does not desire to show cause why he should not be convicted; but it does not follow from this that the admission of the accused is also not to be recorded in his own words as nearly as possible. The admission of having committed the offence is to be recorded as the plea of the accused,

15. In many cases a comprehensive question is put to the accused to find out whether he does or does not admit to have committed the offence of which he is accused, and the accused merely says 'yes' or 'not'. If the accused says 'yes', the mere 'yes' would not be a sufficient record of the admission of the accused, for it would be meaningless without a reference to the question put to him. In such a

case, the record, both of the question put and the answer returned, alone would constitute the record of the admission made by the accused as nearly as possible in his own words. It is thus necessary that in all such cases the question actually put to the accused should also be recorded to comply with the requirements of Section 243, Criminal P. C.

16. Adverting to the recommendation made by the learned Sessions Judge, I fail to understand why he has recommended that a conviction under Section 113 of the Act may be substituted for a conviction under Section 112 of the Act. I have already said that Section 113 of the Act only provides a procedure for the realisation of railway dues and does not define any offence. There can, therefore, be no conviction of the applicant under Section 113 of the Act.

17. In this case no application was made to the Special Railway Magistrate for the realisation of the railway dues. Only a complaint was filed to prosecute the applicant. In the absence of a proper application there seems to be no necessity to make an order for the realisation of the railway dues. The learned Sessions Judge himself considers that in view of the fact that the applicant has needlessly suffered imprisonment for one month and eight days, no order should be made now for the recovery of the eight annas due from him. Under the circumstances, he should have recommended only that the conviction of the applicant be set aside, and he should not have made any further recommendation.

18. For the reasons indicated above, partly accepting the recommendation of the learned Sessions Judge, I order the conviction of the applicant and the sentence awarded to him to be set aside. I do not accept the recommendation of the learned Sessions Judge that the conviction of the applicant be altered to one under Section 113 of the Act. The applicant was released on his executing a personal bond is a sum of Rs. 200/-. This bail bond is discharged. The applicant need not surrender to his bail.