

Kehar Singh Vs. Emperor

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Court : Allahabad

Decided On : Aug-16-1934

Reported in : AIR1935All219; 152Ind.Cas.367

Appellant : Kehar Singh

Respondent : Emperor

Judgement :

1. This is a reference by the Sessions Judge of Meerut recommending that the conviction of the accused under Section 4, U.P. Prevention of Adulteration Act (6 of 1912), be set aside. It appears that the learned Magistrate on 17th December 1933, fixed 3rd January 1934, as the date for the hearing of the case and ordered summons to issue. The summons however was not served till 31st December 1933. The case was heard on 3rd January 1934, and the accused made no protest as to the shortness of the time which he had to meet the prosecution case. The trial ended and the accused was convicted. On his behalf his counsel never suggested to the trying Magistrate that the accused had been prejudiced by the case having been taken up at such short notice. He went up in revision to the learned Sessions Judge and took no fewer than 12 grounds but did not suggest that the accused had been prejudiced by the date having been fixed rather early. There was no point taken that he had been prejudiced by any omission or irregularity in the summons which was served upon him.

2. Section 15, Sub-section (1), provides that no summons shall issue for the attendance of any accused person unless the same is applied for within thirty days from the date on which the order has been made. But Section 15, Sub-section (2) contains a mandatory provision that every summons shall specify the particulars of the offence charged and the name of the prosecutor; and further provides that the day fixed for the hearing of the case shall not be less than seven days from the day on which the summons is served upon the accused. The reference is based on two rulings of this Court. In *Bansri Das v. Emperor* 1930 All. 595, Dalai, J., considered that the omission to mention the charge in the summons was highly prejudicial to the accused and on that ground he set aside the conviction. In *Bohra Raghobar Dayal v. Emperor* 1931 All. 705, Pullan, J., followed the ruling in *Bansri Das v. Emperor* 1930 All. 595, and held that the failure to state in the summons the particulars of the offence charged was fatal to the prosecution and set aside the conviction. On the other hand, in *Emperor v. Ram Chand* 1929 All. 157, Dalai, J., declined to interfere, although the complaint had not been filed within the time prescribed under Section 15, Sub-section (1).

3. Although the provisions of Section 15 are mandatory and ought to be followed by Magistrates, the question is whether, if there is some non-compliance, the conviction is illegal and should be set aside. Now, omission to state the name of the prosecutor or the particulars of the offence in the summons or a delay in the filing of the complaint or the hearing of the case within less than seven days from the date of the service of the summons, would certainly be an irregularity, but that alone is not sufficient to make the conviction illegal. These provisions are subject to the general provisions of Section 537, Criminal P.C., under which no error, omission or irregularity in the summons can justify the setting aside of a finding or sentence or the order passed by a Court of competent jurisdiction on appeal or in revision, unless such omission, error or irregularity has in fact occasioned a failure of ob justice. We would therefore think that the mere fact that certain particulars are not mentioned in a summons, would not in every case be prejudicial to the accused when at the trial he is aware of such particulars. On the other hand, the hearing of a case within less than seven days from the date of the service may in most cases be prejudicial to him and he may not be able to defend himself at such short notice.

4. But in this particular case the accused never appears to have made a grievance of it. When the case was called, on by the Magistrate on 3rd January 1934, there was no protest on his behalf that the summons had been served only a few days earlier. When he went up in revision before the Sessions Judge, in none of the 12 grounds of revision he took was there any suggestion that he had been prejudiced. Had he been prejudiced, he would certainly have raised a ground to that effect. In these circumstances, we accept the finding of the learned Sessions Judge that the accused was not prejudiced in any way. The irregularity therefore is cured by Section 537, Criminal P.C. The conviction and sentence passed on the accused, therefore stand. Let the record be returned.

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