

State of M.P. Vs. Brijnarayan and Another

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Court : Madhya Pradesh

Decided On : Dec-14-2000

Reported in : 2001(1)MPHT377; 2001(2)MPLJ158

Judge : Mr. Fakhruddin, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 231(1), 242(3), 309 and 378; Madhya Pradesh Excise Act, 1915 - Sections 13, 16, 34, 36 and 37

Appeal No. : Criminal Appeal No. 116/93

Appellant : State of M.P.

Respondent : Brijnarayan and Another

Advocate for Def. : Shri T.C. Bansal, Adv.

Advocate for Pet/Ap. : Shri S.M.A. Naqvi, Dy. G.A.

Disposition : Criminal appeal allowed

Judgement :

Fakhruddin, J.

1. The State/appellant has preferred this appeal against the acquittal of the respondents/accused for the offence under Sections 13 and 16 of the Excise Act, punishable under Sections 34, 36 and 37 of the said Act.

2. It was alleged that during inspection by the officials of the Excise Department, on 13-9-92, they found that the respondents/accused without paying requisite excise fees, collected 400 bottles of liquors in the stock of the shop. The case was filed. The accused-persons pleaded not guilty on 20-11-92 on the date of framing of charge. Thereafter the case was fixed for prosecution evidence on 15-12-1992. On 15-12-92 it was adjourned to 18-12-92. On 18-12-92, the case was adjourned as the witnesses could not be summoned. The summons were accordingly issued for the next date, i.e., 27-1-93 as reflected in the order-sheet. On 27-1-93, the prosecution witnesses were present, but the learned Magistrate could not examine them, as he was busy in other matter as mentioned in the order-sheet dated 27-1-93. The order-sheet dated 27-1-93 does not show as to how many witnesses were present and whether they were bound over for the next day. The order-sheet does not disclose that summons were required to be issued. The case was adjourned to 6-2-93. On this date, none had appeared on behalf of the Excise Department whereas witnesses namely Hirasingh and Budharam were present. The learned Magistrate questioned witnesses as to how they were present in Court without there being any summons/notice to them. Their statements were not recorded and the acquittal has been made on the ground that the witnesses were not produced by the prosecution while this is not correct position.

3. Shri S.M.A. Naqvi, Dy. Govt. Advocate appearing for the State/appellant contended that the procedure adopted by the Trial Magistrate is illegal and contrary to law. Shri T.C. Bansal, learned counsel for the respondents/accused on the other hand supported the order of acquittal.

4. Having carefully gone through the record especially the order-sheet dated 27-1-93, it is manifestly clear that the witnesses were present on 27-1-93 before the Trial Court but the learned Magistrate could not examine them as he was busy in some other matter. Thus, it was not fault of the prosecution. On that date, the State was well represented through an A.P.P. The order-sheet dated 27-1-93 does not show which of the witnesses were present and which of the witnesses were not present. The case was adjourned to 6-2-93. On 6-2-93, the witnesses were present namely Hiralal, Budharam. The learned Magistrate asked them as to how they were present without there being summons/warrants and their statements

were not recorded. The procedure adopted by the learned Magistrate is illegal. The Magistrate discharged the witnesses without recording their evidence, and recorded the finding of acquittal that the prosecution has failed to adduce evidence in support of its case. The learned Magistrate acted mechanically, without application of mind, and the acquittal which is recorded in the manner indicated above is not sustainable in law at all. It is wholly illegal and contrary to law.

5. This Court is conscious of the fact that the jurisdiction of the Appellate Court in dealing with an appeal against an order of acquittal is circumscribed by the limitation that no interference can be made with the order of acquittal unless the approach made by the Lower Court is vitiated by some manifest illegality but where the approach made by the Lower Court, vitiated by some manifest illegality or the conclusion recorded by the Court-below is such which could not have been possibly arrived at by any Court acting reasonably and judiciously, the interference has to be made by the Appellate Court.

6. As discussed above, 27-1-93, the witnesses were present before the Trial Court but they could not be examined as the learned Magistrate was busy in some other matter, and then the case was adjourned to 6-2-93. On 6-2-93, the witnesses namely Hiralal and Budharam were present before the Court; the learned Magistrate asked them as to how they were present without there being summons/warrants and their statement were not recorded and the acquittal is recorded on the ground that the prosecution has failed to produce witnesses after giving so many opportunity. This is incorrect statement of the fact, and the acquittal recorded on that ground is liable to be set aside and the case deserves to be remanded back to the Trial Court for retrial. The learned Magistrate has to be very careful while exercising the power.

7. In view of what has been stated above, the appeal is allowed. The case is remitted back to the Trial Court for retrial.

8. Learned counsel for the respondents submits that the matter is old one, therefore it be directed to be decided as expeditiously and the date may be fixed for the appearance of the respondents before the Trial Court.

9. Accordingly, it is directed that the respondents accused shall appear before the Trial Court on 1-2-2001 and on such further dates as may be fixed by that Court. The prosecution shall produce the witnesses before the Trial Court on the dates fixed and the learned Magistrate shall accordingly issue summons/warrants for the production of the witnesses.

10. Learned counsel for the respondents pointed out that earlier on behalf of the Excise Department none appeared and the case was required to be adjourned on that count. In that view of the matter, the Commissioner of the Excise shall look into the matter and will depute a responsible officer to prosecute the case. The case shall be decided by the Trial Court as expeditiously as possible preferably within a period of four months from the date of appearance before it.

11. In the result, the appeal is allowed. The order of acquittal passed by the Trial Court is set aside.

12. C.C. as per rules.

13. Photocopy to the State-counsel.

14. Criminal Appeal allowed.