

Phool Singh Tekam Vs. State of M.P.

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SooperKanoon Citation : sooperkanoon.com/510834

Court : Madhya Pradesh

Decided On : Aug-22-2008

Reported in : 2009(2)MPHT509

Judge : Sushma Shrivastava, J.

Appellant : Phool Singh Tekam

Respondent : State of M.P.

Judgement :

Sushma Shrivastava, J.

1. Appellant has preferred this appeal under Section 351 of Cr.PC against the order dated 22-2-94 passed by First Additional Sessions Judge, Satna, in MJC No. 3/94 sentencing him to pay a fine of Rs. 25/-, in default simple imprisonment for three days, under Section 349 read with Section 345 of Cr.PC.

2. The facts of the case lie in a narrow compass. Appellant Phool Singh was posted as Inspector, City Kotwali, Satna at the relevant time. He was directed to produce the case diary of Crime No. 60/94 of P.S. Kotwali, Satna, before First Additional Sessions Judge, Satna on 18-2-94 at 11.00 a.m. for hearing of Bail Petition No. 138/94. Appellant, however, could not produce the case diary before the Court of First Additional Sessions Judge on 18-2-94 when the case was called for hearing at 1 o'clock. The show-cause notice was, therefore, issued to him as to

why action should not be taken against him under Section 349 of Cr.PC for not producing the case diary before the Court on 18-2-94 as directed. Appellant submitted a written reply to the show-cause notice on 22-2-94 explaining that due to mechanical failure of jeep and puncture of its tyre appellant could not appear before the Court to produce the case diary at the scheduled time. The Court below, however, was not satisfied with the explanation and reply submitted by the appellant and found that the appellant deliberately disobeyed the order of the Court and failed to produce the case diary on 18-2-94, therefore, vide order dated 22-2-94 passed in Criminal MJC No. 3/94 registered against the appellant, sentenced him to pay a fine of Rs. 25/-, in default simple imprisonment for three days, under Section 349 read with Section 345 of Cr.PC, which has been challenged in this appeal.

3. Learned Counsel for the appellant submitted that the impugned order sentencing the appellant to pay a fine of Rs. 25/- under Section 349 read with Section 345 of Cr.PC was bad in law inasmuch as the appellant never refused to produce the case diary before the Court. Appellant appeared before the Court on 18-2-94 at 1.30 p.m. and also explained that he could not appear at the time of call, but he was served with a notice under Section 349 of Cr.PC. It was also submitted that appellant had produced the case diary again on 22-2-94 whereupon concerned bail application was disposed of and there was no refusal as such on his part so as to initiate an action under Section 349 of Cr.PC. Learned Counsel for the appellant further submitted that even under Section 345 of Cr.PC the Court has jurisdiction to proceed and award punishment before rising of the Court on the same day and no action could be taken against the appellant under Section 345 of Cr.PC on 22-2-94 in respect of the so-called non-compliance of the order on 18-2-94.

4. Learned Counsel for the respondent, however, supported the impugned order.

5. Now, Section 345 (1) of Cr.PC provides as under:

When any such offence as is described in Section 175, Section 178, Section 179, Section 180 or Section 228 of the Indian Penal Code (45 of 1860) is committed in the view or presence of any Civil, Criminal or Revenue Court, the Court may cause

the offender to be detained in custody and may at any time before the rising of the Court on the same day, take cognizance of the offence and, after giving the offender a reasonable opportunity of showing cause why he should not be punished under this section, sentence the offender to fine not exceeding two hundred rupees, and in default of payment of fine, to simple imprisonment for a term which may extend to one month, unless such fine be sooner paid.

6. Section 349 of Cr.PC reads thus:

If any witness or person called to produce a document or thing before Criminal Court refuses to answer such question as are put to him or to produce any document or thing in his possession or power which the Court requires him to produce, and does not, after a reasonable opportunity has been given to him so to do, offer any reasonable excuse for such refusal such Court may, for reasons to be recorded in writing, sentence him to simple imprisonment or by warrant under the hand of the Presiding Magistrate or Judge commit him to the custody of an officer of the Court for any term not exceeding seven days, unless in the meantime, such person consents to be examined and to answer, or to produce the document or thing and in the event of his persisting in his refusal he may be dealt with according to the provisions of Section 345 or Section 346.

7. It is apparent from the aforesaid provisions that under Section 345 (1) of Cr.PC when any offence, as enumerated in this section, is committed in the view or presence of any Civil, Criminal or Revenue Court, action as provided under Section 345 (1) of Cr.PC may be taken before rising of the Court on the same day.

8. Similarly, Section 349 of Cr.PC postulates that if any witness or person called to produce a document or thing before a Criminal Court refuses to answer such question as are put to him or to produce any document or thing in his possession or power, which the Court requires him to produce, and does not, after reasonable opportunity has been given to him so to do, offer any reasonable excuse for such refusal such Court may, for reasons to be recorded in writing, sentence him for a term not exceeding seven days, unless in the meantime such person consents to be examined or to produce the document or thing.

9. However, in the instant case, as the record reveals, appellant never refused to produce the case diary. Although appellant failed to produce the case diary on 18-2-94 at the time of call by the Court, for which a reasonable explanation was also submitted by him, but failure to produce the case diary at a scheduled time fixed by the Court cannot be equated with refusal to produce the case diary. The certified copies of various order-sheets placed on record also indicate that appellant produced the case diary before the Court on 22-2-94, whereupon the concerned bail petition was also disposed of, and the order impugned was also passed on 22-2-94. Thus, it was not a case of refusal to produce the case diary or a document before the Court so as to warrant imposition of penalty or action under Section 349 of Cr.PC.

10. Similarly, looking to letter and spirit of Section 345 (1) of Cr.PC, the impugned order passed on 22-2-94 sentencing the appellant to pay a fine of Rs. 25/- for his failure to produce the case diary on 18-2-94 was also not warranted by law. Recourse to provision of Section 345 (1) of Cr.PC could not be taken on a subsequent date in respect of non-compliance of the order on 18-2-94.

11. In the wake of aforesaid, the impugned order cannot be sustained in law and facts and deserves to be set aside.

12. Appeal is, therefore, allowed. The impugned order dated 22-2-94 passed against the appellant under Section 349 of read with Section 345 of Cr.PC is hereby set aside.

Appeal stands accordingly disposed of.