

Mayadhar Paik and ors. Vs. State

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SooperKanoon Citation : sooperkanoon.com/529792

Court : Orissa

Decided On : Dec-05-1977

Reported in : 45(1978)CLT102; 1978CriLJ1054

Judge : R.N. Misra, J.

Appellant : Mayadhar Paik and ors.

Respondent : State

Judgement :

ORDER

R.N. Misra, J.

1. The four petitioners have been convicted under Section 24 of the Cattle Trespass Act by learned Sub-Divisional Judicial Magistrate of Bargarh and each of them has been directed to pay a fine of Rs. 50/- or in default suffer rigorous imprisonment for fifteen days. As the learned Magistrate inflicted a non-appealable sentence, this revision has been carried directly against the original conviction.

2. Having heard Mr. Patnaik for the petitioners at length on merits of the matter, I am not impressed that it is a fit case for interference so far as the conviction is concerned.

3. Mr. Patnaik, however, relies upon the provisions of Sections 360 and 361 of the Code of Criminal Procedure of 1973 in support of his contention that the learned Magistrate should have applied Section 360 of the Code in the facts of the case and in case she was not inclined to do so, she should have recorded special reasons in the judgment for not having done so, as required under Section 361 of the Code.

4. The learned Additional Government Advocate meets this point by contending that cognisance of the offence in this case was taken on 23-7-1973, long before the new Code came into force and by virtue of Section 484(2)(a) of the new Code, the provisions of the new Code are not applicable to the case. Therefore, Mr. Patnaik's objection is not sustainable.

5. Mr. Patnaik, however, does not accept the stand of learned Additional Government Advocate for the opposite party and according to him even if cognisance had been taken before the new Code came into existence, yet, the new Code will apply to the trial inasmuch as the accused did not appear before the learned Magistrate till the latter part of 1976 and it was only on 26-11-1976 that the accusation had been explained to them and then followed the trial.

6. Admittedly the charge in this case is triable according to the summons procedure and as has been indicated in a series of authorities trial begins in a case governed by the summons procedure when the accused appears before the court and the accusation is explained to him and he either admits or denies the same. In this case, trial, therefore, must be deemed to have begun after the new Code came into force.

7. The next aspect for consideration is whether the old Code applies or the new Code. Section 484(2)(a) of the new Code runs thus:

Notwithstanding such repeal.-

(a) if, immediately before the date on which this Code comes into force, there is any appeal, application, trial, inquiry or investigation pending, then such appeal, application, trial, inquiry or investigation shall be disposed of, continued, held or

made, as the case may be, in accordance with the provisions of the Code of Criminal Procedure, 1898 (5 of 1898). as in force immediately before such commencement, (hereinafter referred to as the old Code), as if this Code had not come into forces:Provided that

There is good authority for the position that the old Code would be applicable to the named proceeding as indicated in Clause (a) and not to the entire case. If investigation be pending at the time when the new Code comes into force, investigation has to be disposed of in terms of the old Code, not the subsequent proceedings. If enquiry is pending or trial is pending, to those the old Code would apply but not to the subsequent proceedings. A Full Bench of the Gujarat High Court in the Case of Hiralal Nanse v. State of Gujarat 1976 Cri LJ 84 (FB) has taken that view. My learned brother Mohanti, J, has also taken the same view in the case of Mohan Sundar Das v. Khetrabasi Das 1976 Cut LR, 1. A learned Single Judge in the Patna High Court has also expressed the same opinion in the case of Vasudeo Agrawal v. State of Bihar 1977 Cri LJ (Notes) 55. On these authorities. I would accordingly hold that to the trial in the instant case the new Code applied and the learned Magistrate was, therefore, obliged to give reasons as to why she did not apply section 360 of the new Code to the facts of the case.

8. Section 360 of the Code as far as relevant provides:

(1) When any person not under twentyone years of age is convicted of an offence punishable with fine only or with imprisonment for a term if conviction is proved against the offender, if it appears to the Court before which he is convicted, regard being had to the age, character or antecedents of the offender, and to the circumstances in which the offence was committed, that it is expedient that the offender should be released on probation of good conduct, the Court may, instead of sentencing him at once to any punishment, direct that he be released on his entering into a bond, with or without sureties, to appear and receive sentence when called upon during such period (not exceeding three years) as the Court may direct and in the meantime to keep the peace and be of good behaviour:Provided that....

Admittedly there is no allegation of a previous conviction in the police report and there is no other material which would warrant that the petitioner may not be released on probation. It has already been held by the Supreme Court in the case of Rattan Lal v. State of Punjab : 1965 CriLJ360 that a revisional court is entitled to admit any accused to probation. On the facts of the case, I am inclined to agree with the submission of Mr. Patnaik that the petitioners are entitled to an order in terms of Section 360(1) of the Code.

9. I would while upholding their conviction under Section 24 of the Cattle Trespass Act, set aside the sentence of imprisonment imposed by the learned Magistrate and In lieu thereof direct that each of them be released on his entering into a bond with one surety to appear and receive sentence when called upon during a period of one year and in the meantime to keep the peace and be of good behaviour, The learned trying magistrate is authorised to take steps to implement the order. If any of the petitioners fails to give the bond as directed, the sentence of fine shall operate forthwith. The revision application is dismissed subject to the modification on the question of sentence.