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Ajit Kumar Chowdhry Vs. the State of Bihar

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Court : Supreme Court of India

Decided On : Jul-28-1972

Reported in : AIR1972SC2058; 1972CriLJ1315; (1972)2SCC451

Judge : H.R. Khanna and; I.D. Dua, JJ.

Acts : Code of Criminal Procedure (CrPC) - Sections 342; Indian Penal Code (IPC) - Sections 379 and 411

Appeal No. : Criminal Appeal No. 124 of 1968

Appellant : Ajit Kumar Chowdhry

Respondent : The State of Bihar

Advocate for Def. : B.P. Jha, Adv.

Advocate for Pet/Ap. : R.K. Garg,; S.C. Agarwal and; R.N. Sachthey, Advs

Prior history : From the Judgment and Order dated Febuary 13, 1968 of the Punjab and Haryana High Court in Criminal Revn. No. 203 of 1968

Judgement :

I.D. Dua, J.

1. The only point raised on behalf of the appellant by his learned Counsel Shri A. K. Nag is based on the argument that the provisions of Section 342, Criminal

Procedure Code were not complied with by the trial court.

2. The appellant was charged under Section 411, Indian Penal Code and under Section 3 of the Railway Stores (Unlawful Possession) Act, 195. According to the prosecution case on January 7, 1967 Shri K. K. Venkateswaram, Sub-Inspector of Railway Police Force Chakradharpur, along with others, was coming to Chakradharpur in a third class bogey of 328 Down Nagpur-Chakradharpur Passenger train. They heard some knocking sounds emanating from the adjoining bogey when the train was between Jaraikela and Manoharpur railway stations. As soon as the train reached Manoharpur station Venkateswaram. along with P. Y. Kundulu, Head Rakshak and D. Bhas-kar Rao, went into the adjoining bogey and found the accused alone there. On inspection of the bogey they detected that the mirror of its latrine had been taken out. They questioned the accused about the missing mirror but he denied all knowledge about it. Thereafter the bag of the accused was searched and from it a mirror bearing the mark 'IR' was recovered. On these facts the police registered a case under Sections 379/411, Indian Penal Code. But in the trial court the charges were confined to Section 411. Indian Penal Code and Section 3 of the Railway Stores (Unlawful Possession) Act. 1935. The trial court convicted the appellant under both the sections and sentenced him to undergo rigorous imprisonment for six months under each count, the sentences to run concurrently.

3. On appeal the learned addi tional Sessions Judge, Singhbhum at Chaibassa affirmed the order of the trial court.

4. The appellant took the matter on revision before the Patna High Court but the same was dismissed in limine.

5. As already observed, in this Court the only objection raised on behalf of the appellant, is that the provisions of Section 342. Cr PC have not been fully complied with.

6. The trial court put the following two questions to the accused under Section 342. Cr.P.C.:

Q. 1: It is stated that on 6-9-67 (?) (7-1-67) at about 6-1/4 p.m. at Manoharpur railway station a mirror was discovered from you in the third class compartment in 328 Down Nagpur Chakradharpur. What have you to say?

A: No.

Q. 2; It is stated that the abovesaid mirror recovered from you on the abovesaid date was broken by you. What have you to say?

A: No.

The third and the last question related to the first information report which does not concern us.

7. The language and form of the question No. 1 as printed in the printed paper book does seem to sug gest that there was no proper compliance with Section 342, Cr.P.C. We, there fore, looked at the original record There we find that the question was differently worded and the translation in print is incorrect in material particulars. The original question reads:

Kaha jatahai ki ta: (Tarikh) 7-1-67 ke karib save 6 baje sandhya Manohar-pur railway station main 328 down Nagpur-Chakradharpur train ke third class compartment main ap ke pas se railway ka ek aina baramad hua tha. Ap ko kya kahana hai?

The answer was, as already observed, 'No'.

8. The question as actually put to the accused does refer to the mirror recovered from him to be a railway mirror.

9. When confronted with this form of the question the learned Counsel for the appellant had practically nothing to say in support of this grievance, In a half-hearted manner, however, he contended that reference should also have been made in the question put to the accused to the allegation that the mirror was stolen railway property, because this is an essential ingredient for invoking Section 411, I.P.C. and failure to do so has vitiated the trial and the conviction. We are unable to agree with the learned Counsel.

10. The facts of the case are simple and free from any complication- It is difficult to hold that merely be cause it was not put to the accused that the mirror was stolen, the appellant's examination under Section 342, Cr PC was not adequate. It is no doubt true that courts must take care to put all the relevant mate rial circumstances appearing in evi dence to the accused so as to enable him to say in his defence what he wants, in respect of the prosecution case and explain any circumstances appearing in evidence against him, but at the same time, as observed in Ram Shankar Singh v. State of West Bengal : AIR 1962 SC1239 every error or omission in complying with Section 342, Cr.P.C. does not necessarily vitiate the trial. Unless injustice results from an irregularity in complying with Section 342, interference on this ground would not be justified. In the present case when the appellant denied the recovery of railway mirror in answer to question No. 1 no prejudice or injustice can be considered to have been caused to him by the court's failure to refer to the fact of the mirror being stolen. In view of his answer to the first question, it was, in our opinion, futile to ask him any further questions about the mirror being stolen. see Keki Bejonji v. State of Bombay. : [1961]2SCR515 . In the circumstances of the case it cannot be said that the appellant did not. get adequate opportunity to say what: he wanted to say in respect of the prosecution against him.

11. This appeal accordingly fails and is hereby dismissed, The appellant must surrender to his bail bond to serve out the remaining sentence.

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