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Amar Nath Vs. Alfa

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Court : Delhi

Decided On : Apr-22-1968

Reported in : AIR1969Delhi133; 1969CriLJ598; 4(1968)DLT473

Judge : Jagjit Singh, J.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 123, 397, 397(1), 411 and 457; Prevention of Food Adulteration Act, 1954 - Sections 16(1); Reformatory Schools Act, 1897 - Sections 32; Code of Criminal Procedure (CrPC) (Amendment) Act, 1955; Indian Penal Code (IPC) - Sections 401

Appeal No. : Criminal Ref. No. 18 of 1968

Appellant : Amar Nath

Respondent : Alfa

Advocate for Pet/Ap. : K.C. Pandit, Adv

Judgement :
ORDER

1. The respondent in this case, Alfa by name, was tried separately in two cases under section 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954. Against him complaints were filed by a Food Inspector for selling adulterated rnilk. One of those cases was decided by the Magistrate. First Class, Chamba, on November 7, 1967 and the respondent was sentenced to six months' rigorous imprisonment and

fine of Rs. 1,000/-. The second case was decided on November 13, 1967 and the sentence awarded was six months' rigorous imprisonment and fine of Rs. 500/-. While deciding the second case the learned Magistrate ordered that the sentence of imprisonment shall run concurrently with the sentence in the previous case which was being undergone by the convicted person.

2. A revision was filed by the Food Inspector concerned in the court of the Sessions Judge, Kangra. Shri Chet Ram, the learned Sessions Judge, made a report recommending setting aside of the order of the Magistrate by which he had directed that the subsequent sentence shall run concurrently with the previous sentence. According to the learned Sessions Judge as the cases against the respondent were separate ones and were decided on different dates the sentence in the case decided on a latter date could nto be ordered to run concurrently with the sentence which was already being undergone in the case which was decided earlier, Batan Singh v. Emperor Air 1925 Lah 334 was relied upon in support of that view.

3. Section 397 of the Code of Criminal Procedure, hereafter referred to as the Code, reads as under:

'(1) When a person already undergoing a sentence of imprisonment is sentenced on a subsequent conviction to imprisonment or imprisonment for life, such imprisonment or imprisonment for life shall commence at the expiration of the imprisonment to which he has been previously sentenced, unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence:

Provided that where a person who has been sentenced to imprisonment by an order under section 123 in default of furnishing security is, whilst undergoing such sentence, sentenced to imprisonment for an offence committed prior to the making of such order, the latter sentence shall commence immediately. (2) When a person already undergoing a sentence of imprisonment for life is sentenced on a subsequent conviction to imprisonment or imprisonment for life, the subsequent sentence shall run concurrently with such previous sentence.'

4. It will be seen that section 397, as it now stands, gives power to a Court to direct that a subsequent sentence shall run concurrently with a previous sentence. Before the amendment of the Code in the year 1923, except where several sentences were passed at one trial or where in the case of a youthful offender, section 32 of the Reformatory Schools Act, 1897 (VIII of 1897) applied, there was no provision by which a subsequent sentence could be made to run concurrently with a previous sentence. Section 397, prior to its amendment in that year, was in the following terms:

'When a person already undergoing a sentence of imprisonment, penal servitude or transportation is sentenced to imprisonment, penal servitude or trans portation, such imprisonment, penal servitude or transportation shall commence at the expiration of the imprisonment, penal servitude or transportation to which he has been previously sentenced.

Provided that if he is undergoing a sentence of imprisonment, and the sentence on such subsequent conviction is one of transportation, the Court may, in Its discretion, direct that the latter sentence shall commence immediately, or at the expiration of the imprisonment to which he has been previously sentenced.'

5. By Amendment Act Xvii of 1923 the words 'unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence' were added at the end of the first paragraph of section 397 of the Code and it was only thereafter that it became competent for a Magistrate in cases tried separately and even decided on different dates to which section 32 of Act Viii of 1897 did nto apply, to order that the subsequent sentence shall run concurrently with a previous sentence.

6. Section 397 of the Code was substituted by a new section by the Amendment Act of 1955, but sub-section (1), which is the relevant provision for purposes of this case remained substantially the same as the old section after the amendments made in the year 1923.

7. In Mahadeo v. Emperor, Air 1926 Nag 426 as a result of separate trials the accused were sentenced in one case under sections 457 and 411 and in the other

case under section 401 of the Indian Penal Code. It was held that in view of the provisions of section 397 of the Code the sentences could be ordered to run concurrently. A reference may 33 well be made to Surja v. The State Air 1951 Rai 68 and Emperor v. Nea Po Thaung Air 1924 Rang 307. With great respect I arn of the opinion that the view taken in Eatan Singh's case was nto correct. No reference was made to the provisions of section 397 as they existed after the amendments made in the year 1923. It seems that the addition to that section of the words 'unless the Court directs that the subsequent sentence shall run concurrently with such previous sentence', made by the Amendment Act Xvii of 1923, were nto brought to the notice of the Court.

8. Under section 397 of the Code It was competent for the Magistrate, First Class, Chamba, to order that the subsequent sentence shall run concurrently with the previous sentence. Shri K. C. Pandit, learned counsel for State, also did nto support the recommendation made by the learned Additional Sessions Judge.

9. The order made by the learned Magistrate was within his competence. No interference is, thereforee, called for. The reference is. accordingly, declined. Reference rejected.

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