

Kulwant Singh Vs. State

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Court : Delhi

Decided On : Feb-08-1974

Reported in : 1974RLR195

Judge : Pritam Singh Safeer, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 404

Appeal No. : Criminal Revision Appeal No. 314 of 1972

Appellant : Kulwant Singh

Respondent : State

Advocate for Pet/Ap. : M.L. Khanna and; P.P. Malhotra, Advs

Judgement :

Pritam Singh Safeer, J.

(1) This petition is directed against the judgment made by Shri M.K. Chawla, Additional Session Judge, Delhi on the 2nd of September, 1972 by which he affirmed the petitioner's conviction under section 61 (1) (c) of the Punjab Excise Act and declined to interfere with the sentence imposed by the trial- Court. I have gone through the record and I find that there was no competent appeal before the learned Additional Sessions Judge, who could have dismissed the appeal on the ground that so competent appeal has been preferred.

(2) The petitioner was convicted by Shri P.P. Sharma, Judicial Magistrate 1st Class, Delhi in terms of his judgment made on the 15th of May, 1972. The 'allegation against the petitioner was that on the 9th of January, 1968 a raiding party formed by Shri A.L. Chadha, Inspector, Crime Branch, Delhi Police had found the petitioner working a still in his premises i.e. ihuggi No. B/641 J.J. Colony, New Delhi. After discussing the evidence produced by the prosecution the trial Court came to the conclusion that the guilt has been brought home to the accused and the petitioner was convicted under sections 61(1) (c) of the Punjab Excise Act and sentenced to rigorous imprisonment for six months. A fine of Rs. 200.00 was imposed in default of payment whereof he was to undergo further rigorous imprisonment for a period of 20 days. Aggrieved by his conviction and the sentence imposed in consequence thereof the petitioner filed an appeal. The Appellate Court's record which its index shows that the appeal was filed on the 17th of May, 1972 and the memorandum presented consisted of the grounds of appeal, the bail application and the power of attorney executed in favor of the counsel. In the index the first four pages are those pertaining to it and the grounds of appeal start and finish on page 5. Page 6 is the reverse? blank side of page No. 5 Page No. 7 is the bail application. On page No. 9 appears the first order passed by the Appellate Court wherein it was said that the appeal was being admitted subject to the filing of the certified copy of the impugned order.

(3) It seems that it was represented to the learned Additional Sessions Judge that a certified copy of the impugned order will be filed although no copy attested or unattested had been filed with the memorandum of appeal. I am of the view that the Court below should have declined to deal with the appeal in the absence of the certified copy of the impugned order. The various orders passed by the Court below appear on page 10 as well. Pages 11 to 14 contain the judgment and on page 15 appears the power of attorney in favor of the appellant's counsel. On page 17 is the process issued to the Public Prosecutor, Delhi. As observed earlier the learned Additional Sessions Judge should not have dealt with an incompetent appeal which should have been dismissed on that score. Section 404 in the Criminal Procedure Code, is that no appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force.

(4) That provision with which Chapter starts is pre-emptory. No appeal would lie from any judgment or order except in accordance with the provisions contained in the Code or which may occur in an' other law prescribing the requirements which the aggrieved person may have to comply with while preferring a competent appeal. Section 419 in the afore quoted Chapter, is :-

'S. 419. Petition of appeal :-Every appeal shall be made in the form of a petition in writing presented by the appellant or his pleader, and every such petition shall (unless the Court to which it is presented otherwise directs) be accompanied by a copy of the judgment or order appealed against.

The provision requires that the appeal will be presented in the form of a petition which unless the Court to which it is presented otherwise directs shall be accompanied by a copy of the judgment or order appealed against. No copy attested or unattested was filed along with the memorandum of appeal. There was a breach of sections 404 and 419 of the Criminal Procedure Code.

(5) Why is a copy required to be filed Along with the petition of appeal. Section 421 in the Code, is :- S. 421. Summary Dismissal of Appeal.- (1) On receiving the petition and copy under section 419 or section 420, the Appellate Court shall peruse the same, and if it considers that there is no sufficient ground for interfering, it may dismiss the appeal summarily : The Court which is to deal with the appeal is required by law to peruse the petition of appeal as well as the copy of the impugned order and it is then to exercise the discretion as to whether the appeal is to be dismissed summarily or is to be admitted. While dealing with the question as to what kind of copy was postulated to be filed in compliance with section 419 of the Code, in paragraph 10 of its judgment in State of Uttar Pradesh Vs . C. Tobit and others, : 1958 CriLJ809 it was laid down that the copy must be a certified copy.

(6) The context in which the word 'copy' in a provision may occur will determine as to whether the 'copy' is meant to be a certified copy or not. Wherever the copy of an impugned judgment or order is to be perused and relied upon by the Court for purpose of adjudication it must be certified copy. Section 421 in the Criminal Procedure Code supports the view.

(7) There was no competent appeal before the learned Additional Sessions Judge and the petitioner having never competently invoked section 419 of the Code, cannot be heard in revision.

(8) Turning to the merits the petitioner was found working the still. The police-officers have not been shown to have falsely implicated the petitioner for any reason whatsoever. It is submitted that the liquor which was being produced was not Chemically tested. I have perused the five grounds of appeal on page 5 of the Appellate Court's record. No such ground is there in the memorandum of appeal. Had the petitioner filed the certified copy in compliance with the order passed by Shri M.K. Chawla, Additional Sessions Judge, Delhi on the 18th of May 1972 the appeal would have been urged on the basis of the grounds which appear on page 5 of the Appellate Court's record. The objection, that the concerned liquor was not Chemically tested, was not raised even before the trial Court. As observed by the Supreme Court in : 1970 CriLJ492 in paragraph 5 at page 321 in column 2 an objection not urged even at the appellate stage cannot be allowed to be raised later on. The petitioner has no case on merits. The petition is dismissed.

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