State Vs. C.K. Joseph

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Court : Kerala

Decided On : Mar-31-1958

Reported in : AIR1959Ker10; 1959CriLJ45

Judge : Sankaran and; Raman Nayar, JJ.

Acts : Code of Criminal Procedure (CrPC) , 1908 - Sections 263, 264 and 417

Appeal No. : Criminal Appeal No. 176 of 1957

Appellant : State

Respondent : C.K. Joseph

Advocate for Pet/Ap. : Public Prosecutor

Judgement :

Raman Nayar, J.

1. This appeal by the State is against the acquittal ordered in C. C. No. 789 of 1956 on the file of the First Class Magistrate, Meenachil. The case was tried summarily under the provisions of Chapter XXII of the Criminal Procedure Code, and all that the learned magistrate has said against columns (h) and (i) of the register kept under Section 263 of the Code, namely, the columns for recording the finding and the sentence or other final order, is that the accused is not guilty and that he is acquitted under Section 245 of the Criminal Procedure Code.

2. The accusation was of three offences; the first under Section 19(h) of the Travancore-Cochin General Sales Tax Act XI of 1125 for failure on the part of the accused to renew his dealer's registration for the year 1953-54 as required by Section 10(3) of the Act and Rule 8(7) of the rules made thereunder; the second under Section 19(f) of the Act for collecting sales lax in contravention of Section 11(1) (during what period is not specified); and the third (and this would really appear to be three offences) under S, 19(b) for failure to pay the tax assessed for the years 1950-51. 1951-52 and 1952-53. (Here we must observe that the entry against column (f) of the register showing the offence complained of is merely, 'S. T. Act' which is certainly not a proper way of filling in that column).

3. The trial of all these offences at one that certainly amounts to misjoinder; and in view of this, and in view also of the fact that the evidence regarding the first two accusations is not altogether satisfactory, the learned Public Prosecutor does not press this appeal so far as those accusations are concerned. He presses it only in so far as the 3rd accusation, namely, the offences under Section 19(b), for failure to pay the tax for the three years 1950-51, 1951-52 and 1952-53, is concerned.

4. So far as this accusation is concerned, we think that prima facie there is evidence in support of the accusation. But whether the learned magistrate has considered the evidence, and if so why he declined to accept it, we are unable to say since his order says nothing beyond that the accused is not guilty and is acquitted. There is moreover the objection of misjoinder. In the circumstances we set aside the order of acquittal in respect of these offences under Section 19(b) of the Act and direct that the accused be retried for those offences by the District Magistrate of Kottayam or such other magistrate of competent jurisdiction as the District Magistrate may direct.

5. It might be as well to say a word or two regarding the scope of Sections 263 and 264 of the Criminal Procedure Code in view of the criticism levelled against the learned magistrate for not having given any reasons for the acquittal. Obviously he has taken shelter under Clause (h) of Section 263 which requires a brief statement of the reasons for the finding only in the case of a conviction. It is urged by the learned Public Prosecutor that every case of acquittal is a case where an appeal

lies at the instance of the State Government under Section 417(1) of the Criminal Procedure Code, and, that therefore all cases of acquittal are governed by Section 264 rather than by Section 263.

In that view the application of Section 263 is restricted to those cases where a conviction is recorded, but the sentence passed is one which shuts out an appeal by reason of Section 414, We do not think that this is the correct position, for, a perusal of Ss. 263 and 264 will show that, even before he proceeds to record the evidence, the magistrate has to decide whether the case falls within the one or the other of these two sections, and obviously this cannot depend on the eventual decision in the case. It can depend only on whether an appealable decision is at all possible and, obviously, in deciding this, the possibility of an appeal against acquittal must be excluded, or else every case would be a case where an appeal lies.

We think that when Sections 263 and 264 speak of cases in which an appeal lies or in which no appeal lies, they have in mind only an appeal against conviction (which is the ordinary kind or criminal appeal) and not the special kind of appeal against acquittal contemplated by Section 417. (See Narayanswamy v. Blake, 3 Cri LJ 433 (Rang) (A) arid Emperor v. Sugnomal Bhojraj, AIR 1942 Sind 52 (B). If the case is one in which no appeal can possibly lie on conviction, in other words, if the maximum sentence possible is a fine of Rs. 200 or less, then the case tails within Section 263 of the Criminal Procedure Code. But if, on the other hand, the case is one in which, on conviction, it is possible to pass an appealable sentence then the case falls within Section 264. The present case comes within the latter class, for, the punishment provided by Section 19 of the Travancore-Cochin General Sales Tax Act is a fine which may extend to one thousand rupees.

6. This however does not lead to the conclusion that the learned magistrate ought to have given reasons for his order of acquittal. As we have already seen Section 263 of the Code requires a brief statement of the reasons for the finding only in the case of a conviction; and all that Section 264 requires in addition (apart from the recording of the evidence) is that a judgment shall be recorded before passing any sentence, which can only be on conviction The two sections read together show

that in a summary trial no judgment or other order giving reasons is necessary for an acquittal whether the case falls under Section 263 or Section 264. (See Gorachand Das v. Nitai Das, AIR 1951 Cal 308 (C)).

The decisions in 3 Cri LJ 433 (Rang) (A) and AIR 1942 Sind 52 (B) seem to lose sight of the fact that Section 264 requires a judgment to be recorded only before a sentence is passed, in other words, only in case of conviction. These two sections make special provision for trials under Chapter XXII of the Code and are exceptions to the general rule that every decision of a court must be supported by a written order giving the reasons therefor. As pointed out in AIR 1942 Sind 52 (B), the two decisions relied upon by the learned Public Prosecutor in support of the view that a judgment giving reasons should be written even in cases of acquittal at a summary trial, namely, Ainuddi Sheikh v. Queen Empress, ILR 27 Cal. 450 (D) and Emperor v. Akbarali AIR 1934 Oudh 177 (2) (E) do not take note of the provisions of Sections 263 and 264 of the Code.

7. At the same time we think that although it is not illegal for a magistrate to pass an order of acquittal at a summary trial without giving reasons therefor, he ought, as a matter of practice, to write a short judgment giving the reasons at least in cases falling under Section 264 of the Criminal Procedure Code, that is, in cases where, on conviction, a sentence more severe than a fine of Rs. 200 is possible. When the Code was enacted it was probably thought that only petty cases, in which the Government would not think it worth-while to prefer an appeal against acquittal, would be tried under the provisions of Chapter XXII. But, increasingly, more serious offences are now being tried under that Chapter and in some of them, as for example in cases of the present kind, the Government is very much interested in the result. Although appeals against acquittals are hardly ever preferred in cases failing under Section 263 of the Criminal Procedure Code, they are frequent enough in cases falling under Section 264 to require the writing of a judgment in such cases so that the court sitting in appeal (as also the Government before directing the filing of an appeal) might know the reasons for the acquittal.