

State Vs. Allapicha

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Court : Kerala

Decided On : Apr-01-1953

Reported in : 1953CriLJ1814

Judge : Govinda Pillai and; Vithayathil, JJ.

Appellant : State

Respondent : Allapicha

Judgement :

Vithayathil, J.

1. The State is the appellant. The accused in this case was tried by the Kottar First Class Magistrate for offences punishable under Sections 3, 14(1) and 17 of Act 5 of 1950 read with Sections 7, 17(a) and 20(1) of the Paddy Control Order dated 12.4.1950. The prosecution case is that the accused was found in unlawful possession of 60 pucks of table rice near the Park View Hotel at Nagercoil at about 1 P.M. on 16.10.1950. It was alleged that the rice had been purchased by the accused from some shops in Trivandrum for being sold in the black market at Nagercoil. Five witnesses were examined for the prosecution and a charge was framed against the accused by the learned Magistrate for the offences mentioned above. The accused pleaded guilty to the charge. The learned Magistrate, however, discussed the evidence in the case after raising the points for consideration and convicted the accused of the offences with which he was

charged, and sentenced him to undergo simple imprisonment for 14 days and to pay a fine of Rs. 50/- and in default of payment of fine, to undergo simple imprisonment for a further period of two weeks.

2. The accused appealed from this conviction and sentence before the Sessions Judge of Nagercoil who set aside the conviction and sentence and acquitted the accused, The State has preferred this appeal from the Judgment of the learned Sessions Judge, The Calendar revision also relates to the same matter.

3. The main ground urged on behalf of the State was that the appeal filed by the accused in the Sessions Court from the conviction by the First Class Magistrate was not maintainable. According to the learned Public Prosecutor the accused was convicted by the First Class Magistrate on his plea of guilty and, therefore, an appeal would not lie from the conviction as provided in Section 342, Travancore Criminal P.C., corresponding to Section 412 of the Indian Code. Section 342 reads thus:

Notwithstanding anything hereinbefore contained, where an accused person has pleaded guilty and has been convicted by a Court of Session or Magistrate of the First Class on such plea there shall be no appeal except as to the extent or legality of the sentence.

This argument was advanced on behalf of the State in the lower Appellate Court also but was not accepted by that Court. The question for consideration is whether the accused was convicted by the learned 1st Class Magistrate on his plea of guilty or upon the evidence adduced by the prosecution. A perusal of the judgment of the learned , Magistrate leaves no room for doubt that the conviction is not based on the plea of guilty made by the accused but on the evidence in the case. After referring to the fact that the accused pleaded guilty to the charge the learned Magistrate raised the following points for consideration in the case, viz.,

1. Whether at 1 p. m. on 16.10.1950 the accused was found in possession of 60 puccas of rice near the Park View Hotel, Nagercoil; (2) whether the accused had without proper license or authority transported the same from Trivandrum, and (3) whether the accused possessed the said quantity of rice without proper authority

for sale in the black market.

Then the Magistrate discussed the evidence relating to these three points. It is true that before discussing the evidence, the learned Magistrate has stated that in view of the plea of guilty entered by the accused he did not 'attempt at an elaborate discussion of the evidence for the prosecution'. He, however, discussed the evidence of all the prosecution witnesses and also considered the documents produced on behalf of the prosecution and came to the following conclusion:

I have carefully examined the evidence in this case. The prosecution was not able to adduce satisfactory evidence in support of points 2 and 3 and it is now a matter to be presumed from the other circumstances of the case. I answer 'all the points in the affirmative.' Accordingly he convicted the accused of the offences with which he was charged.

In the circumstances it cannot be said that the conviction was based on the accused's plea of guilty. The Magistrate did go into the evidence and the conviction was based on an appreciation of the evidence although the Magistrate took into consideration the fact that the accused pleaded guilty to the charge.

4. Under Section 252(2), Travancore Criminal P.C. corresponding to Section 255(2) of the Indian Code

if the accused pleads guilty the Magistrate shall record the plea, and may in his discretion convict him thereon.

The Magistrate is not bound under the section to convict the accused on his plea of guilty. Section 342, Criminal P.C. (Travancore) will apply only to cases in which the conviction is based on the accused's plea of guilty and not to cases in which the conviction is based upon the evidence.

Learned Public Prosecutor argued that if the Magistrate did not propose to convict the accused on his plea of guilty he would have proceeded under Section 254, Criminal P.C., (Travancore) corresponding to Section 256 of the Indian Code, and that since the Magistrate has not done so, it should be taken that he has convicted the accused on his plea of guilty. The question whether the conviction is based on

the plea of guilty made by the accused or on the evidence has to be determined with reference to the judgment itself. The failure of the Magistrate to observe the procedure prescribed by Section 254, Criminal P.C. (Travancore) cannot convert a conviction which, on the face of the judgment, is based on the evidence adduced in the case into one based on the accused's plea of guilty. We are, therefore, of opinion that Section 342, Criminal P.C. (Travancore) does not apply to the case and that the appeal filed by the accused in the Sessions Court from the conviction by the 1st Class Magistrate was maintainable.

5. It was next argued for the State that the learned Sessions Judge has in any case gone wrong in acquitting the accused and that the case ought to have been remanded to the Magistrate's Court for fresh trial. According to the learned Public Prosecutor if the Magistrate does not propose to convict the accused on his plea of guilty the procedure to be adopted by the Magistrate is that prescribed by Section 254, Criminal P.C., (Travancore). Section 254 reads thus:

254(1). If the accused refuses to plead, or does not plead, or claims to be tried, he shall be required to state at the commencement of the next hearing of the case or, if the Magistrate for reasons to be recorded in writing so thinks fit forthwith, whether he wishes to cross-examine any, and, if so, which of the witnesses for the prosecution whose evidence has been taken. If he says he does so wish, the witnesses named by him shall be re-called and, after cross-examination (if any), they shall be discharged. The evidence of any remaining witnesses for the prosecution shall next be taken, and, after cross-examination and re-examination (if any) they also shall be discharged. The accused shall then be called upon to enter upon his defence and produce his evidence.

(2) If the accused puts in any written statement, the Magistrate shall file it with the record.

Although the section expressly refers only to cases in which the accused refuses to plead or does not plead or claims to be tried, it was argued that it applies also to cases in which the accused pleads guilty but the plea is not accepted by the Court. In England where the Court does not think it expedient to act upon the accused's plea of guilty the usual procedure is to advise him to withdraw his plea of guilty

and to plead not guilty. But in India, the general trend of rulings is that the accused may in such cases be treated as if he had pleaded not guilty and that the trial may be proceeded with in the ordinary manner. Vide - Abdul Kader v. Emperor AIR 1947 Bom 345 at p. 354 (SB) (A) and - Queen Empress v. Chinia Pavuchi 23 Mad 151 at 154 (B)). We accept this argument of the learned Public Prosecutor. If the Magistrate did not choose to act on the accused's plea of guilty, he ought to have proceeded under Section 254, Criminal P.C. (Travancore) and ought not to have convicted the accused on the evidence adduced by the prosecution before the charge was framed.

6. It was, however, argued for the accused that no prima facie case was made out against him by the prosecution, that the Magistrate ought to have discharged the accused without framing any charge against him, that the only evidence adduced by the prosecution relates to possession by the accused of 60 puccas of table rice and that possession of rice is by itself not an offence. But P. W. 1 has sworn to the fact that the accused brought table rice from Trivandrum and kept it in the public road near the Park View Hotel gate at Nagercoil, apparently for sale in the black market. It cannot, therefore, be said that the Magistrate was not justified in framing a charge against the accused in this case. In the result, we set aside the judgment of the learned Sessions Judge and remand the case to the trial Court for fresh disposal according to law and in the light of the observations made above.

7. The Criminal Appeal is allowed in the manner stated above. The Calendar Revision also is disposed of accordingly.

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