K. Vasanthakumar and Etc. Vs. the State and anr.

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Court : Kerala

Decided On : Jul-30-1986

Reported in : 1987CriLJ1307

Judge : K. Sreedharan, J.

Appellant : K. Vasanthakumar and Etc.

Respondent : The State and anr.

Judgement :
ORDER

K. Sreedharan, J.

1. Same questions of law arise in these two revision petitions. So they are disposed of by this common order. Accused in S.T. 2875/85 on the file of the Judicial II Class Magistrate's Court, III, Kozhikode is the petitioner in Crl. R.P. No. 313/86. He was the conductor of stage carriage bearing Reg. No. KRZ 594. A petty case was filed against him for offences under Rules 70 and 243, Kerala Motor Vehicles Rules read with Section 112, Motor Vehicles Act 1939. The substance of the allegation was that while the said bus was operating service on 20-7-85 with the petitioner as conductor, it reached Corporation bus stand at 11.30 A.M. instead of 11.40 A.M. which is the schedule time and that the petitioner was not having in his possession his conductor licence. Summons to the accused was issued on 4-10-85 directing him either to appear before court on 15-1-86 or to pay

a sum of Rs. 75/- either in cash or by money order in case he pleads guilty. The petitioner opted to contest the case by engaging a counsel to defend him. After trial, the learned Magistrate found the petitioner guilty of the offences and sentenced him to pay a fine of Rs. 75/- each on the said two counts and in default of payment of fine to undergo simple imprisonment for 10 days. Hence this revision petition.

2. Crl. R.P. 314/86 is at the instance of accused in S.T. Case No. 4036/85 on the file of the same court. He was the conductor of the stage carriage bearing Reg. No. KRZ/6941. A petty case was charged against him for offences under Rules 181 and 253, Kerala Motor Vehicles Rules read with Section 112, Motor Vehicles Act 1939. The allegations made against him were that the vehicle did not carry a first aid box and a complaint book. Summons was issued to the petitioner directing him to appear before court on 20-1-86 or to pay a fine of Rs. 50/- in case he pleads guilty. Since the petitioner considered the charge to be false, he opted to contest the case and engaged a counsel. After trial, the learned Magistrate found the petitioner guilty of the offences and imposed a sentence of fine of Rs. 75/- each on the two counts and in default of payment of fine to suffer simple imprisonment for 10 days. The conviction and sentence are under challenge.

3. The questions raised in these revision petitions are whether the learned Magistrate was justified in placing reliance on the check reports prepared by the Sub Inspector of Police and whether the learned Magistrate was correct in imposing a sentence of fine more than the amount mentioned in the summons.

4. The Sub Inspector of Police who detected the offences in these cases was examined as P.W. 1 in both cases. He proved the check reports prepared by him. They were marked respectively as Ext. PI. Those reports contain the defects found out at the time of the checking. They were signed by the respective petitioners. Those check reports were relied on by the learned Magistrate. The petitioners were found guilty of the offences mainly on the basis of the respective check reports. According to the learned Counsel the check report containing the signature of the accused should not have been allowed to be used for any purpose as it hits the provisions of Section 162, Criminal P.C. I , am not inclined to accept

the said contention. The prohibition contained in Section 162 of the Code is only against the use of the statements made in the course of investigations under Chap. XII of the Code. Section 154 deals with the receipt of information by the police in cognizable offence and Section 155 deals with receipt of information in non-cognizable offences. Section 156 says that the police officer can investigate any cognizable offence without order of a Magistrate; whereas the police officer can investigate into a non-cognizable case only if so directed by a Magistrate. In either case the commencement of the investigation should be only after compliance with the conditions stipulated in Section 157. Under that Section the Police Officer shall first send a report to the Magistrate who is competent to take cognizance of the offence upon a police report. Then and then alone can the police proceed to investigate.

5. At the time when the check report was prepared there was no investigation into any offence. Only by the preparation of the check report the petty offences were revealed. Thus the check reports can never be considered as statements recorded in the course of investigation much less an investigation of an offence under Chap. XII of the Code. In this view the bar contained in Section 162 of the Code is not applicable to Ext. PI marked in the case. Hence the court below was perfectly justified in placing reliance on Ext.Pl. I do not find any ground to discard the check reports.

6. Clause (1) of Section 130, Motor Vehicles Act 1939 reads as follows:

(1)The court taking cognizance of an offence under this Act,

(i) may, if the offence is an offence punishable with imprisonment under this Act, and

(ii) shall, in any other case, state upon the summons to be served on the accused person that he

(a) may appear by pleader and not in person, or

(b) may, by a specified date prior to the hearing of the charge plead guilty to the charge by registered letter and remit to the court such sum (not exceeding the

maximum fine that may be imposed for the offence) as the court may specify:Provided that nothing in this sub-section shall apply to any offence specified in Part A of the Fifth Schedule.

It is common case that offences charged in these cases do not relate to those specified in Part A of the Fifth schedule to the Act. The offences alleged against the petitioners are not punishable with imprisonment under the Act either. So the court should state in the summons to the accused that he may plead guilty to the charge by registered letter and remit to the court the fine specified therein. Accordingly in these cases the learned Magistrate called upon the petitioners to remit Rs, 75/- and Rs. 50/- respectively. An offer was made to have the cases closed on payment of the amounts on the petitioners pleading guilty. It was a bargain for a plea of guilty. That plea bargain was not accepted by the petitioners. They wanted to contest the matter. Then the question arises is whether the court will be justified in imposing a greater sum as fine if the case ends in conviction after trial.

7. The provision contained in Section 130, Motor Vehicles Act is one aimed to relieve an accused of the botherations to come to court on the appointed day. That provides an option to the accused either to have the case closed by pleading guilty and by paying the fine indicated in the summons or to contest the case and take the verdict. If he opts for the latter course he cannot have both advantages i.e. to contest the case and if found guilty to pay a fine as limited in the summons. Contest of a petty case involves the time of the court and also the costs incurred by the State. So the statute provides a relief to an accused in such cases which is conditional on his acceding to the offer. But if he does not accede to the offer, the Magistrate is not found by the limit of fine indicated in the summons. When the Magistrate finds the accused guilty of the charge he can impose a sentence in exercise of his judicial discretion. In the instant cases the learned Magistrate has not imposed fine over and above the maximum prescribed for the offences charged against them. Therefore I do not find any illegality in the sentence awarded to the petitioner.

Result therefore is these revision petitions fail. They are accordingly dismissed.