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Court : Gujarat

Decided On : Feb-01-1954

Reported in : 1955CriLJ739

Judge : Chhatpar and; Baxi, JJ.

Appellant : Mohan Waghji and ors.

Respondent : State

Judgement :

Baxi, J.

1. These revisions arise out of Criminal Appeals Nos. 37 and 38 of 1953 in the Court of the Sessions Judge, Central Saurashtra Division by which he confirmed the convictions of the applicants Under Sections 66 (b) and 65 (a), Prohibition Act, by the First Class Magistrate, Rajkot. The learned Magistrate had sentenced them to consecutive terms of imprisonment for nine months in respect of each offence in addition to ordering them to pay fine. The learned Sessions Judge however set aside the sentence of fine in respect of the offence Under Section 66 (b) and ordered the substantive sentences of imprisonment in respect of both the offences to run concurrently.

2. According to prosecution the four applicants had gone to Anjar in Cutch on 24-4-52 to buy country liquor, bought 50 bottles of country liquor there and returned to

Rajkot on the early morning of 27-4-52 by train. On alighting at the station they hired a tonga of one Gagji. 3 of them had each a steel trunk and one had a cloth bag. These were placed in the tonga but as the tonga walla objected against all the four taking their seats in the tonga the applicants Babu Mohan and Mohan Sidi sat in the tonga and the applicants Mohan Waghji and Amratlal Laxmichand followed on foot. The tonga was however stopped near the Octroi post by Sub-Inspector Desai in the presence of Panchas. Babu and Mohan Sidi each produced a key with which two of the trunks were opened and they were found to contain several bottles of liquor. Mohan Waghji and Amratlal Laxmichand were arrested in the meantime and brought to where the tonga was standing. They had no luggage with them.

It was stated that the key of the third trunk was with Amratlal but as no key was found with him the. third trunk was broken open and several bottles of country liquor were recovered from it. These bottles are reported by the Chemical Analyser after examination to have contained alcohol. On these facts a common charge sheet was sent up against all the applicants for offences Under Sections 65(a) and 66(b) of the Prohibition Act and they were tried jointly for these offences and convicted and sentenced by the learned Magistrate. They preferred two separate appeals against their conviction and sentence. The learned Sessions Judge after carefully going through the evidence confirmed the learned Magistrate's findings and it is not open to this Court to interfere with them in revision. The learned Advocate for the applicants however questioned the legality of the trial and submitted that the trial' was vitiated on account of certain irregularities committed by the learned Magistrate.

3. The applicants were tried summarily and a formal charge was not framed against them. Mr. J. R. Anjaria, who appeared for the applicants Nos. 1 & 2 in Criminal Revision Application No. 62/53, argued that although Under Section 263(f), Cr.PC a formal charge need not be framed, it was nevertheless incumbent upon the Magistrate to explain to the accused the particulars of the offence charged. According to him failure to explain the particulars of the charge to the accused in summary trials amounted to a contravention of Section 255, Cr. P, Code, the provisions of which the learned Magistrate was bound to follow and the

trial was vitiated thereby.

He referred to - 'Abdul Shakoor v. Rex' : AIR1950 All223 . In that case the Magistrate had mentioned only the sections under which the accused persons had been prosecuted. There was the illegality in recording a joint statement of the accused and the learned Magistrate had failed to record the reasons for the conviction, in his judgment. The accused's conviction was therefore set aside. There were therefore many illegalities in the trial of that case in addition to omission to explain the particulars of the charge and the case therefore has no application there. In our opinion, though the Magistrate j merely mentioned Sections 65 (a) and 66 (b), Prohibition Act, in Column 6, and though it would [have been better if he had briefly stated the particulars of the offences charged, none of the accused, seem to have been prejudiced by the omission and consequently the irregularity would be cured by Section 527, Cr.PC

As regards the applicant Amratlal Laxmichand, Mr. Sinroja argued that the learned Magistrate did not comply with the provisions of Section 342, Cr.PC when examining the accused. This applicant was examined Under Section 342, Cr.PC but his examination consisted of the following questions and answers :

Q. What have you got to say about the evidence which has been led against you?

A. I have not committed any offence.

Q. Do you wish to say anything else?

A. Nothing was recovered from my possession.

Mr. Sinroja argued that the learned Magistrate should have questioned the applicant and obtained his explanation on the evidence of the prosecution that he had jointly hired the tonga with the other applicants. As the Courts below acted upon that evidence in convicting him without giving him an opportunity of explaining that evidence the trial was vitiated. This point is now concluded by a decision of the Supreme Court in - 'Ajmer Singh v. State of Punjab' AIR 1953 SO 76 (B), where their Lordships held that omission to comply with the provisions of Section 342 did not necessarily vitiate a trial. Such errors fall within the category of

curable irregularities and the question whether trial is vitiated depends upon the degree of the error and upon whether prejudice has been or is likely to have been caused to the accused.

The evidence of the tongawalla Gagji, who deposed to the applicant having hired the tonga, was recorded in the presence of the applicant and his pleader and Gagji was cross-examined by the appellant's pleader. The applicant therefore fully knew the evidence upon which the charge was based and there was nothing to prevent him from explaining it if he was so minded during his. examination by the First Class Magistrate. Under the circumstances the applicant could not have suffered any prejudice by this error and consequently his conviction cannot be set aside. In the result both' the revisions fail and are ordered to be dismissed.

Chhatpar, J.

4. I agree.

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