

The State Vs. Bachan Singh

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Court : Rajasthan

Decided On : Jan-14-1955

Reported in : 1956CriLJ1

Judge : Nigam, J.C.

Appellant : The State

Respondent : Bachan Singh

Judgement :

ORDER

Nigam, J.C.

1. Bachan Singh was found guilty of an offence under Section 33(f) of the Excise Regulation 1 of 1915 and sentenced to pay a fine of Rs. 300/- with 1 1/2 months rigorous imprisonment in default. Against his conviction and sentence he tiled an appeal before the learned Sessions Judge who reduced the fine to Rs. 25/- only but maintained the conviction. Now the State has come up in revision seeking; an enhancement of the sentence imposed on Bachan Singh. In this revision, I have heard the learned Counsel for Bachan Singh and the learned Public Prosecutor.

2. The first contention of the learned Counsel for the accused is that the conviction cannot be maintained. It is urged that the whole trial is vitiated inasmuch as the learned Magistrate did not properly explain the ingredients of the offence and did not himself record the statement of the accused. The learned Counsel has referred

me to - 'Ladu v. Phul Chanel 1937 AMLJ 140 (A) and Fateh Chand v. Munna Lal', 1938 AMLJ 17 (B). In the earlier ruling the practice of Magistrate directing his clerk to perform the Magistrate's duty of verifying the complaint and making a preliminary enquiry under Section 202, Criminal P.C. was condemned.

In the latter ruling the Magistrate's conduct in not recording the statement of the applicant in accordance with the requirements of Section 356, Criminal P.C. was condemned. In my opinion, neither of these rulings will help the learned Counsel. This case is governed by the provisions of Sections 242 and 243, Criminal Procedure Code. Under Section 242, the Magistrate had to explain the particulars of the offence to the accused and to ask him to show cause why he should not be convicted. The Magistrate was called upon by the learned Sessions Judge to submit a report.

The original report is on the tile of 'Criminal Appeal No. 94 of 1954, but covers this case also. The learned Magistrate therein has stated that the particulars of the offence were read over and explained to the accused individually and the plea has been recorded from his dictation at the accused's instance. Section 243, Criminal P.C. requires the admission of the accused to. be recorded has nearly as possible in the words used by him. The Code does not specifically provide that the necessary memorandum or record should be prepared by the Magistrate in his own handwriting.

But I am clear in my mind that no careful Magistrate would delegate this function to his clerk. Judicial work must be performed very carefully and it is essential that the Magistrate should himself make a record of the fact that the particulars of the offence were explained to the accused and should himself record the admission made by the accused as nearly as possible in the words used by the, accused. I, therefore, severely condemn the method adopted by the learned trial Magistrate in this particular case. I hope he would be more careful otherwise he may not be considered fit. to discharge magisterial functions.

3. So far as this particular case is concerned, I am, however, of the view that no prejudice has in fact been caused to the accused and the record prepared is substantially correct. The Magistrate has submitted a report and no affidavit has

been filed nor any evidence has been led to show that the statement made by the Magistrate is not correct. In this connection ray attention has further been drawn to the fact that the learned Sessions Judge in his appellate judgment noted that the accused had pleaded not guilty. Obviously, this is a clerical mistake.

The fact is that the learned Magistrate had noted in his judgment that the accused had pleaded guilty and while it was for the learned Sessions judge to decide whether the plea of guilty had to be taken as such or not, the fact remains that the accused had pleaded guilty. I am therefore, unable to attach any weight to the contention that the learned Sessions Judge was of opinion that the accused's plea of guilty should not be taken as such merely because he has in his judgment stated that the accused pleaded not guilty.

4. The learned Counsel has next urged that the permission to make a search for the incriminating articles was not proved. He has urged that no permission is on the record. It is also urged that the possession of the house has not been proved to have been with the accused. In my opinion, these Questions cannot be gone into in view of the provisions of Section 412, Criminal P.C. which restricts the scope of the appeal to the extent or the legality of the sentence only.

5. The next contention of the learned Counsel is that the recovery of the incriminating articles did not make out any offence. This plea is not open to the learned Counsel in view of the provisions of Section 412, Criminal P.C. However, I would like to point out that Section 33(f) of Regulation I jot 1915 makes the possession of any 'materials' and 'utensil' for the purpose of manufacturing any 'excisable article, other than 'tari' an offence.

The suggestion of the learned Counsel is that fermented 'gur' is not such a material. I am unable to agree. The statement of the accused himself makes it clear that he was in possession of the incriminating articles for the purpose of illicit distillation.

6. The last point for my consideration is whether the sentence should be enhanced. The learned Counsel has referred me to several rulings. It is however necessary to refer to only one - Emperor v. Kesri Chand AIR 1945 All 207 (C).

Head note (g) reads:

The High Court is very reluctant in criminal revisions to differ from the discretion exercised by the Courts below unless the discretion can be said to have been perversely exercised. Where the punishment awarded is manifestly inadequate or there has been a grave miscarriage of justice, the High Court may, in very exceptional cases, substitute its own discretion for the discretion of the Courts below.

7. In this particular case, the learned trial Magistrate imposed a fine of Rs. 300/-. The learned Sessions Judge reduced the fine to Rs. 25 only. The learned Public Prosecutor urges that this fine is manifestly inadequate. Regard being had to the circumstance that the houses of eight persons in this village were raided on that day and the prosecution allege that all of them were found in possession of materials for illicit distillation, it appears that illicit distillation is rather common.

In the circumstances, the fine imposed by the learned Sessions Judge is in my opinion manifestly inadequate. I am however not prepared to impose a sentence of imprisonment in view of the fact that this is the accused's first offence. I, however, enhance the fine from Rs. 25/- (Rupees twenty-five) to Rs. 100/- (Rupees one hundred only) with two weeks rigorous imprisonment in default.

8. No other point has been pressed before me.

9. I allow a fortnight's time for payment of the fine. The fine is to be paid in the Court of the trial Magistrate

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