

Lala and ors. Vs. the State

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Court : Rajasthan

Decided On : Dec-15-1950

Reported in : AIR1951Raj61

Judge : Nawalkishore, C.J. and; Gupta, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#); [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 221 and 439; Defence of India Rules - Rule 81

Appeal No. : Criminal Revn. No. 28 of 1950

Appellant : Lala and ors.

Respondent : The State

Advocate for Def. : Sumerdan, Adv.

Advocate for Pet/Ap. : Hastimal, Adv.

Disposition : Revision allowed

Judgement :

Nawalkishore, C.J.

1. On 29-4-1948, Lala, Kasamdin, Nagarmal, Ibrahim, Munir, Mohammad and Chhotusingh, in all seven persons, were challaned under Rule 81, Defence of India Rules, in force in the former State of Bikaner, in the Ct. of Mag. 1st Class

Rajgarh, on the ground that they were attempting to smuggle fourteen bags of rice on seven camels out of the State to Shekhawati on the night between the 1 & 2-3-1947. All these persons were convicted by the learned Mag. on 12-7-1948, & sentenced to a fine of Rs. 400 each. The camels belonging to them & the bags of rice seized from their possession were confiscated. An appeal was filed in the Ct. of the learned Ses. J. Churu, but was dismissed on 20-4-1949. Thereafter, only four persons, namely, Ibrahim, Munir, Mohammad & Chhotusingh moved the H. C. in revision with the result that on 18-11-1949 the order convicting & sentencing them was set aside on the principal ground that the charge as framed by the Mag. was defective as specific particulars of the manner in which the offence was committed & the precise nature of the offence were not mentioned; after holding that this omission had prejudiced the accused in their defence, the convictions & sentences qua the above mentioned four persons were set aside.

2. After a lapse of nearly two months from the date of the above order of the H. C. in revision & after more than nine months from the date on which the learned Ses. J. had dismissed the appeal, the present appln. for revision has been preferred in this Ct. on behalf of the remaining three accused persons, namely, Lala, Kasamdin and Nagarmal and it is urged by the learned counsel on their behalf that the case against all the accused being identical, there is no reason why the order passed by the learned Mag. of the trial Ct. convicting & sentencing them should not also be set aside. This contention of the learned counsel raises the question whether it is not open to a Judge or Judges of this Ct. sitting singly or in Division Bench to take in the same case a view which is different from that of another Judge who has dealt with a revision petn. preferred on a previous occasion. The learned counsel was unable to support his argument by any authority on the point. He, however, relied upon the provisions of Section 439, Criminal P. C. & argued that the learned Judge who heard the former revision petn. was competent to deal with the cases of the present petnrs. & to acquit them even though they had not applied in revision & therefore any other Judge or Judges of the H. C. while dealing with the cases of those who had not applied in revision must conform to the judgment of that Judge. We are unable to accept the contention. As it is, though one Division Bench should regard itself bound by the decision of another Division Bench on a question of law, a Judge deciding a case singly is certainly not bound on a

question of law by the view of another Judge sitting singly on a previous occasion & is at liberty to differ from it. (Vide Full Bench decision reported in Seshamma v. Venkata Narasimharao, A. I. R. (27) 1940 Mad. 356 : (I. L. R. (1940) Mad. 454 F. B.). The case of a Division Bench differing from the view taken by a Judge sitting alone stands on stronger footing. As has been observed by Leach C. J. in the above decision,

'the Division Bench is the final Ct. of appeal in an Indian H. C., unless the case is referred to a Full Bench'

& it can safely be laid down that it is not bound by any view taken by another Judge of the H. C. sitting alone on some previous occasion. In our opinion, it makes no difference whether the cases thus dealt with are entirely independent or connected with each other. Normally speaking, it would indeed be proper that if on a revision preferred by some of the accused persons, a Judge of this Ct. sitting in Single Bench has taken a view favourable to them & acquitted them, another Judge dealing with another revision on a subsequent occasion by a different set of the accused persons should, as far as possible, fall in line with the view which has already prevailed on the previous occasion but if he finds, with due deference to the Judge who dealt with the case on that occasion, that it is not possible to do so, then we are definitely of the view that he is at liberty to strike a different line altogether. The case of a Division Bench is entirely different and, in our opinion, a Division Bench is not at all fettered by any such considerations but is free to disregard altogether the view taken by a Judge sitting alone. In our view, we would not be justified to feel ourselves bound in this case by the view of the Judge who disposed of the former revision unless we were satisfied that that view was correct.

3. The offence in this case consisted of the transport of grain from the territories of the former State of Bikaner to Shekhawati in Jaipur, an act which was prohibited by an order passed under Rule 81, Defence of India Rules, published by means of notifns. No. 16 of 20-3-1942, & no. 46 of 30-6-1943. These notifications are not embodied in the charge. The learned Judge in Single Bench who disposed of the former revision was of the view that the charge which had been framed against the

accused was defective because it did not give specific particulars of the offence & the precise nature of the offence. Accordingly, the learned counsel argues that as already held by the said Single Judge the charge is defective & must be so held by us as well. According to his contention, the charge must not only contain the act which is alleged to have been committed but must further mention the particular order which is said to have been infringed. In our opinion, a perusal of the charge, as framed in this case, leaves no doubt whatsoever that all the necessary particulars, not only of the act but also of the law, are definitely mentioned there. The charge is sufficiently detailed inasmuch as it mentions that the accused had been caught transporting bags of rice on camels on the night between & 1 & 2-3-1947, from the territories of the former State of Bikaner to Shekhawati. The exact place where they were caught is mentioned as Rohi Magahu which lies on the road to Shekhawati & the distance from the border, where they were caught, was mentioned as one & a half miles. The law under which they were punishable was mentioned in the charge as Rule 81, Defence of India Rules. According to Section 221, Criminal P. C., the charge must state the offence with which the accused is charged & if the law which creates the offence does not give it any specific name, then so much of the definition of the offence must be stated as will give the accused notice of the matter with which he is charged. Further, the law & section of the law against which the offence is said to have been committed, shall also be mentioned in the charge. In our opinion, all these requisites of the charge, as it ought to be framed according to Section 221 are all there in the charge which has been framed against the accused. The learned counsel urges that it was incumbent that the actual notifications by which the transport of grain was prohibited should also have been mentioned in the charge, but we consider that this would have made the charge unnecessarily cumbersome & these notifications need not at all have been incorporated in it. A perusal of the charge, as framed, does not leave the slightest doubt regarding the offence for which the accused were being proceeded against & therefore, we are wholly unable to understand how can it be urged with any reason or show of reason that there was an error or omission in the framing of the charge & that, accordingly, there was a failure of justice. Even according to Section 537, Criminal P. C., assuming for a moment that there was something lacking in this charge, it is not open to this Ct to reverse

the order passed by the learned trial Mag. unless it is shown that there has been a failure of justice. The explanation added to Section 537, makes it clear that in determining whether an error or omission has occasioned a failure of justice, the Ct. should take into consideration the fact whether the objection could & should have been raised at an earlier stage in the proceedings. It was certainly open to the accused after the charge had been framed, to bring it to the notice of the trial Mag. that they did not exactly understand the offence for which they were being proceeded against but this was not done. From whatever aspect the case is considered, we are wholly unable to hold that any prejudice had been caused to the accused on account of the alleged omission in the charge, although elsewhere we have taken the view that the charge was properly framed & it did not suffer from any defect whatsoever.

4. The learned counsel has next urged that on the merits a case for conviction has not been made out & in this connection, he has taken us at length through the evidence which has been produced by the prosecution for the purpose of showing that it has not been established beyond all manner of doubt that the accused were taking the bags of rice to Shekhawati. His contention is that they were caught within a mile from the border of the Bikaner State at Rohi Hugahu from where there are five or six roads going outside as well as inside that State. He has further contended that according to the statements of the accused themselves, the rice was being taken to a village called Sankhu where, according to the prosecution witnesses themselves it was selling at a much higher price than at Sekhawati. He has, in this connection, drawn our attention to the statements of P. Ws. 3 & 4. He has further referred to the statements of P. Ws. 1 & 2 for the purpose of showing that the footprints of the accused on the road leading to Shekhawati had been shown to the Motbirs but urged that according to the statements of these Motbirs, this was wrong.

5. According to notifn. No. 16 dated 20-3-1942, the export of rice outside the limits of the Bikaner State either by road or rail was prohibited but in order that the conviction of the petnrs. may be upheld, it must be established beyond all doubt that they were exporting the bags of rice seized from them outside the limits of the State. On the evidence produced by the prosecution, this cannot be said to have

been established. As stated above, the accused were caught at a place from where several roads branch out in different directions &, therefore, it is impossible to hold that at the time the destination of the accused was Shekhawati. The evidence to the effect that there were footprints of the accused on the road leading to Shekhawati is not reliable inasmuch as it has been contradicted by the Motbirs. In any case, even if some footprints were found on the road mentioned above, there is nothing on the record to show that they were, covered & got compared with those of the accused. The learned Public Prosecutor has frankly conceded that on the evidence, as it stands on the record, the case against the accused is at best doubtful inasmuch as this evidence does not point conclusively to the fact that the accused were caught while exporting the grain to Shekhawati. He has, however, drawn our attention to notfn. No. 68 dated 12-5-1948. It has been described as Prevention of Smuggling Order, 1948, and made applicable to the whole of the 'prohibited area'. The 'prohibited area' has been mentioned as meaning the area extending inside five miles from the border line of the State or where there is no inhabited locality within this area, the nearest inhabited locality outside this area within the State. Accordingly, the learned Public Prosecutor urges that since the accused were caught within a mile from the border of the Bikaner State which, according to the above mentioned order, should be deemed to be 'prohibited area', it should be held that the accused were there for the purpose of exporting the grain from the State of Bikaner. The contention of the learned Public Prosecutor is not without force but it may be noted that the Prevention of Smuggling Order has been made applicable to commodities which may be declared and notified as essential, by His Highness's Government from time to time. It appears that there is no notification of the Govt. of Bikaner by which rice was ever declared to be an essential commodity and notified as such. In any case, it has not been brought to our notice. In the circumstances, the Prevention of Smuggling Order, 1948, is of no avail in this case.

6. We accordingly, accept this revision, set aside the order convicting & sentencing the accused and hereby acquit them.

Gupta, J.

7. I agree.

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