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Court : Rajasthan

Decided On : Oct-09-1958

Reported in : AIR1959Raj191; 1959CriLJ1112

Judge : D.M. Bhandari, J.

Acts : Indian Penal code, 1860 - Sections 266; Code of Criminal Procedure (CrPC) , 1998 - Sections 135(2), 153, 155, 173, 190(1) and 537

Appeal No. : Criminal Revn. No. 37 of 1958

Appellant : Bansidhar

Respondent : State

Advocate for Def. : B.C. Chatterjee, Adv.

Advocate for Pet/Ap. : Nauratanmal, Adv.

Disposition : Revision petition dismissed

Judgement :
ORDER

D.M. Bhandari, J.

1. This is a revision application on behalf of Banshidhar who was convicted by the Magistrate First Class, Sambhar under Section 266 I. P. C. and sentenced to

undergo simple imprisonment for three months and to pay a fine of Rs. 300/- or in defaultof payment of fine to undergo 20 days simple imprisonment. The applicant filed an appeal before the Sessions Judge, Jaipur District Jaipur which was transferred to the Additional Sessions Judge, Jaipur District. The appeal was dismissed on the 19th of February, 1958. Hence this revision application.

2. The applicant is a licenced opium dealer in the town of Sambhar. The Station House Officer, Sambhar received a complaint that the applicant and Radhey Lal kept two sets of weights in their shop and that one set of the weights was less in weight than the standard weight, and that he defrauded the public by using false weights. The Station House Officer made a search of the shop of the accused under Section 153 Cr. P. C. and he recovered two sets of weights. The weights were recovered from beneath the gunny bag on which the applicant was sitting at the time of recovery. The police challaned Bansidhar and Radheylal for offences tinder Sections 265 and 266 of the Indian Penal Code. Radheylal was acquitted but Bansi-dhar was convicted and sentenced as mentioned above.

3. Bansidhar denied that false weights were recovered from his shop.

4. Learned counsel on behalf of Bansidhar has taken up the following points in his revision:

1. That the evidence produced in this case was not sufficient for holding that the applicant knew the weights to be false and that he was in possession of them with the intention that they may be fraudulently used.

2. That the search of the shop of the applicant was illegal as it was contrary to Section 103 Cr, P. C.

3. That the offence under Section 266 I. P. C. is a non-cognisable offence and the Station House Officer, Sambhar was not authorised to investigate the offence in view of Section 155 (2) without the order of a Magistrate First or Second Class having power to try the case.

5. I shall deal with these points in seriatim. As regards the first point it is established by the evidence on record that the applicant was sitting on the gunny

bag beneath which true and false weights were recovered by the Station House Officer. Series of false weights were found at a distance of 4' from the series of true weights- The box containing opium and the scales for weighing it were near the gunny bag beneath which false weights were found. It has also been proved that the applicant was the person who carried on the business of selling opium, at the shop. Even the defence witness Hemraj stated that only Bansidhar sat in the shop. The only inference that can be, drawn from these circumstances is that the applicant possessed false weights knowing them and intending that the same may be fraudulently used. In my opinion there is sufficient evidence on record to hold that an offence under Section 266 I. P. C. is made out against the accused. The first contention raised by the learned counsel has got no force.

6. Coming to the second contention it may be disposed of on the ground that under Section 153 Cr. P. C. any officer in charge of a police station is authorised to enter any place within the limits of such station for the purpose of inspecting or searching for any weights without a warrant.

7. Now I take up the third contention raised by the learned counsel for the applicant. The argument is that under Section 155 (2) no police officer can investigate a non-cognisable case without the order of the Magistrate of the first or second class having power to try case or commit the same for trial or of a Presidency Magistrate. It is urged in this case that the Station House Officer, Sambhar, had not obtained any order of the competent Magistrate and as such the whole investigation in the case was illegal. It is urged that as- the trial proceeded on such an investigation, the trial is bad. In this connection it is also urged that the trial court was not competent to take cognisance of the offence on a report of the police officer who had no power to investigate the matter. Reliance is placed on the authority of the Saurashtra High Court in the case of Labhshanker Keshavji v. State, (S) AIR 1955 Sau 72. It was held in that case that as Section 155 Cr. P. C. prohibited a police officer from investigating a non-cognisable offence, unless authorised by order of a competent Magistrate, any investigation made by the police without a valid order is without jurisdiction and a report submitted on such investigation is not a report upon which the Magistrate can validly take cognisance of the offence under Section 190 Cr. P. C. and the entire trial is vitiated as without

jurisdiction.

8. There are two answers to this argument raised on behalf of the applicant. One is that under Sub-section 2 of Section 153 Cr. P. C. if an officerincharge of police station finds in any place any weights which are false he may seize the same and shall forthwith give information of such seizure to a Magistrate having jurisdiction. Now what the Magistrate is to do after having received this information? Obviously he has (o treat this information as a police report in writing of facts constituting an offence, and take cognisance of the offence under Section 190 (1) (b). It is argued that the report by any police officer referred to in Section 190 (1) (b) is the report under Section 173 Cr. P. C. but in my opinion there is no reason to restrict Section 190 (1) (b) in this manner. Under the Criminal Procedure Code a Police Officer is required to submit a report under various provisions of the Act. Under Section 62, the officer incharge of the police station is required to report apprehensions. Under Section 173 he is required to submit a report of investigation. Under Section 174 he is to enquire and report on suicide etc. Under Section .153 he is to submit the information of the search for false weights and measures, if he finds them at any place which he is authorised to search under Section 153 (1). Now all these reports are included within the meaning of report by any police officer under Section 190 (1) (b). A report under Section 62 Cr. P. C. was held to be police report within the meaning of Section 190 (1) (b) by Johnstone J., in the case of Abdulla v. King-Emperor, 3 Pun Re 1910. His Lordship rejected the contention that the police report meant only a challan. I am of opinion that the information given to the Magistrate under Section 153 (2) is as much a report as A report under Section 173 Cr. P. C. and the Magistrate is empowered to take cognisance on such a report under Section 190 (1) (b).

9. Another reply to the argument raised by the learned counsel is that any irregularity or illegality in the investigation ipso facto cannot make the trial illegal. Learned counsel for the applicant argued that Section 155 (2) is a mandatory provision of law. It is provided that no police officer shall investigate a non-cognisable offence without the order of the Magistrate concerned. Such a provision, it is urged, cannot be treated as directory. In my opinion this argument of the learned counsel, so far as it goes, is correct. It is not proper to ignore such

an emphatic provision by calling it merely directory. A provision of this nature came for interpretation before their Lordships of the Supreme Court in the case of H. N. Rishbud v. State of Delhi, (S) AIR 1955 SC 196. In that case their Lordships were considering Section 5(4) and proviso to Section 3 of the Prevention of Corruption Act, as it stood prior to its amendment by Act 59 of 1952 and the corresponding Section 5A as inserted by Amending Act 59 of 1952. Their Lordships held that all the old provisions were mandatory and not directory and that the investigation conducted in violation thereof bore the stamp of illegality. The provision contained in Section 155 (2) is somewhat on a higher level than the provisions under consideration of their Lordships of the Supreme Court.

10. But the matter does not rest here, Further question that arises is as to what is its effect on the trial. This point has also been discussed by their Lordships of the Supreme Court in the case referred to above. Their Lordships held that cognisance taken by a Magistrate on an invalid report is not prohibited and was not a nullity. Their Lordships laid down that even an invalid report may fall either in damp (a) or Clause (b) of Section 190 (1). Their Lordships further held that invalidity of the investigation has no relation with the competenceof the court. Their Lordships observed as follows : --

'We are, therefore, clearly, also of the opinion that where, the cognisance of the case has in fact been taken and the case has proceeded to termination, the invalidity of the precedent investigation does not vitiate the result, unless miscarriage of justice has been caused thereby.'

11. Now in this case learned counsel for the applicant could not show that there has been any miscarriage of justice in this case. In my opinion the third contention raised by the learned counsel has got no force.

12. Learned counsel asked that his client remained for about a week in jail and this punishment should be deemed sufficient. The offence committed by the applicant is an offence against society and in such cases any leniency will he misplaced. I do not think that any reduction in sentence is called for.

13. The result is that the revision application fails and is dismissed. Learned counsel prays for leave to appeal to the Supreme Court. I do not see any reason for granting such leave. The prayer is refused. The applicant is present and he is taken in custody to be sent to jail for undergoing the remaining part of his sentence.

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