

State Vs. S.N. Mehra, Office of the Divisional Engineer Telegraphs

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SooperKanoon Citation : sooperkanoon.com/754772

Court : Rajasthan

Decided On : Jan-02-1953

Reported in : 1953CriLJ1310

Judge : Nigam, J.C.

Appellant : State

Respondent : S.N. Mehra, Office of the Divisional Engineer Telegraphs

Judgement :

Nigam, J.C.

1. S.N. Mehra, Camp Cleric in the Office of the Divisional Engineer Telegraphs, Ajmer, was prosecuted for charging travelling allowance for three Journeys which he had, it was so alleged, performed without purchasing railway tickets. The journeys were as under.

- (i) On 8-9-1948 from Ajmer to Abu Road,
- (ii) On 15.9.1948 from Ajmer to Reengas and
- (iii) On 24.12.1948 from Ajmer to Loharu.

A sum of Rs. 62/9/- was claimed as travelling allowance by the charged Officer. The travelling allowance bills contained the usual certificate of the charged officer stating that he travelled in the class for which travelling allowance was claimed.

The Police took up the investigation on some information received by them. After the investigation it was found that a case could be proved against the accused in respect of six journeys between 7.4.1948 and 24.12.1948. Two separate charge-sheets relating to three journeys each were submitted after the necessary sanction for the prosecution had been obtained from the Divisional Engineer Telegraphs at Ajmer. In appeal the learned Sessions Judge allowed both the appeals and gave the accused the benefit of doubt. The State has not filed an appeal against the order of acquittal in one appeal but against the order of acquittal in Criminal Appeal No. 300 of 1951 of the Court of the Sessions Judge, the 'present appeal (Criminal Appeal No. 3 of 1952) has been preferred. In this appeal I have heard the learned Public Prosecutor and the learned Counsel for the accused. The learned Magistrate recorded finding of guilty in respect of two journeys and, as such this Court is concerned with the two journeys which had been performed on 8.9.1948 and 15.9.1948.

2. The accused admitted that, he did not purchase any class board second class ticket or got any reservation made for his journey. His case, however, was that those were difficult days and quite often he had to purchase a third class ticket and then to pay excess charge for travelling in the second class. On other occasions, he could not get time to purchase a ticket and had to board the train without purchasing a proper ticket and purchased the ticket for the destination from the Travelling Ticket Examiner. In still other cases the accused could not manage to purchase a ticket for the entire journey due to non-availability of card board tickets and contented himself with purchasing a ticket for a part of the journey and getting it extended by the train staff. The accused's plea was that he had performed many journeys during the year 1948 and it is not possible for him now in the year 1950 to remember exactly what had happened in each journey and he could not therefore give any details of the purchase of the tickets by him.

3. The learned Public Prosecutor has argued on the basis of Section 108, Evidence Act, and the evidence on the record, that once the prosecution had proved a prima facie case against the accused and had discharged the burden beyond reasonable doubt If the accused wants to plead any special circumstances it was for him to prove them. The learned Counsel for the accused has referred me

to *Shewaram Jethanand v. Emperor* AIR 1939 Sind 209 (A) which lays down.

Section 106 was never intended to be used to place upon the accused the burden of proving their innocence. Section 106 is not a proviso to the rule that the burden of proving the guilt of the accused of proving a particular fact or a particular defence is a different matter. Section 106 does not enable the Judge to say to the jury that the accused must explain this and that he must satisfy him on this point or that or be found guilty

4. The next ruling to which I am referred is - *Attigalle v. The King* AIR 1936 P.C. 169 (B). The head-note reads

'Where, the Judge in his charge to the Jury states that the burden of proving certain facts, which are within the special knowledge of the accused and which the accused allege, do not amount to an offence, is on them and the effect of the direction is that the Jury might think that the burden is on the accused to prove that no crime has been committed, the direction does not correctly state the law and: amounts to a misdirection. The law does not cast on the accused the burden of proving that no crime has been committed.'

5. I have also been referred to the ruling on page 289 in the same volume (- *Stephen Seneviratne v. The King* AIR 1933 PC 289 (C). The portion on which the learned Counsel relies reads:

'Where the material passage in the charge to the jury was not primarily or at all a general comment on the fact that the accused was not galled to give evidence nor was it a direction that any specifically named fact was one which fell within Section 106, Evidence Ordinance, with the result that the onus of proving that fact was on the accused but it was a direction as-to facts generally, and the relevant passage was expressed thus : 'He has got to explain.... In the absence of explanation the only inference is that he is guilty.

Held: that the direction was defective as its tendency was to lead the jury to suppose that if anything was unexplained which they thought the accused could explain, they not only might, but must find him guilty, and more specially so in the

particular case which was exceptionally mysterious and in which the area of the unexplained was extensive:'

6. I have also been referred to - Rambharosey v. Emperor AIR 1936 All 833 (D), - Lachman Singh v. King AIR 1949 Cal 235 (E), - State v. Pranjivan Gandadal AIR 1952 Sau 35 (F) and - Subburaya v. Govt. of Mysore AIR 1952 Mys 8 (G). This last ruling lays down that the burden of proof lies on the prosecution and Section 106, Evidence Act cannot be availed of against the accused. Both the learned Counsel have relied on the ruling as reported in - Emperor v. Santa Singh AIR 1944 Lah 339 (H). This ruling deals with Section 106, Evidence Act, at page 346. After discussing: the case law the ruling lays down

'The cases to which Section 106, Evidence Act, is applicable are those similar to the two cases given in the illustration to that section. Where a person is found travelling without a ticket and is charged with so travelling, the prosecution need not and indeed cannot prove that the man never had a ticket. Once it is proved that he was travelling without a ticket a prima facie case against him is established. If the accused person once had a ticket and lost it, then such a fact is especially within his knowledge and it is for him to prove such fact.... If there are facts entirely within the knowledge of the accused which would explain his conduct, such facts must be proved by him if he wishes to rely on them. That, however, does not mean that the onus of proving his innocence is cast on an accused person. The prosecution must prima facie establish his guilt in all cases. It is not sufficient for the prosecution to establish facts which only give rise to a suspicion and then by reason of Section 106, Evidence Act, attempt to throw the onus upon the accused to establish his innocence'.

7. It appears to me that the last passage quoted above lays down the law correctly. If by the evidence produced by the prosecution a prima facie case is made out against the accused, then it will be for him to prove the special circumstances and facts within his knowledge which would prove his innocence. If, on the other hand, facts proved by the prosecution only raise a suspicion against the accused, the burden of proving the guilt of the accused will remain on the prosecution and the accused will not be called upon to prove his innocence by

virtue of Section 106 of the Evidence Act. In the present case, the question is whether it was for the prosecution to adduce evidence that the accused had not purchased a ticket from the travelling staff or had not paid excess charges on a lower class ticket or even got a ticket for a certain journey extended. The learned Public Prosecutor has argued that it was for the accused to have proved the circumstances. The learned Counsel for the accused has referred me to - 'AIR 1949 Cal 235 (E)', which lays down that

'Section 106 refers to cases where the fact is within the knowledge of a person and of nobody else. It cannot be attracted where the fact in question, having regard to its nature, is such as to be capable of being known not only by the accused but also by others if they happen to be present when it took place'.

The learned Counsel has argued that as the fact of purchase of ticket must be within the knowledge not only of the accused but also of the railway staff it was for the prosecution and not for the accused to have proved it. The learned Counsel suggests that the prosecution should have proved that the accused did neither purchase a card board printed ticket nor get a ticket for part of the journey extended nor purchase a ticket from the travelling staff nor even get a lower class ticket converted into a second class ticket by payment of excess charges. I am of opinion that the facts and circumstances of the case relied upon by the learned Counsel are entirely different from those of the present case. The prosecution has produced evidence to show that no ticket was issued by the booking-office for the journeys with which we are concerned. The normal natural conclusion is that no second class ticket was purchased 'for either journey. The prosecution cannot be expected to make roving enquiries. If there are certain facts within the knowledge of the accused it was for him to prove them in support of his defence. Otherwise the court would be justified in drawing the natural normal conclusion 'from the evidence produced by the prosecution.

8. The next point argued by the learned Counsel is that the charge-sheet as framed is defective. The learned Counsel's contention is that all the three cases should have been dealt with in separate charges though they could be tried together. The learned Counsel has not pointed out how the accused has been

materially prejudiced and, in the circumstances, I am unable to attach much importance to this.

9. The, learned Counsel for the accused also argued that the sanction granted by the Divisional Engineer Telegraphs under Section 6(6) of Act 2 of 1947 was not a proper sanction. The learned Counsel has referred me to - Gokul Chand Dwarkadas v. The King AIR 1948 P.C. 82 (I). To me it appears this ruling will not apply to the facts of the present case. The learned Counsel urges that the sanction was mechanically granted at the behest of the police. The other ruling relied on by the learned Counsel is - Karim Bux v. Rex : AIR1950 All494 . The head-note reads

'It is true that the Act does not prescribe any particular form of sanction; but sanction to prosecute a particular person for an offence implies, first, a full knowledge of the facts upon which it is sought to prosecute him and, secondly, a deliberate decision of the sanctioning authority that he may be prosecuted. These two things are necessary to be proved before it can be said that a particular order amounts to a sanction for prosecution'.

In this particular case, the Superintendent of Police, though he knew about the case and it was at his instance that the investigation had been taken up and later the charge-sheet was sent to the court actually did not sanction the prosecution.

In the case before me, the Dy. Superintendent of Police who was in charge of the investigation sent a letter to Shri Section Sankara Raman, The Dy. Superintendent of police also sent a copy of the final report of his case and a draft sanction-order. Shri S. Sankara Raman has stated that

While giving the sanction for prosecution, there was no discretion left to me. According to the rules, once information has been given to the Police, further action to be taken rests entirely with the Police and giving of sanction is only a formality'.

The learned Public Prosecutor has, on the other hand, pointed out that Shri S. Sankara Raman went through the enclosures of the letter sent by the Dy. Superintendent of Police and then accorded the sanction Ex. P/12. It is argued

that, in the circumstances, inspite of what Shri S. Sankara Raman states he should be deemed to have accorded a sanction satisfying the requirements of the law. It appears to me that though Shri S. Sankara Raman may have been a little mechanical in granting a sanction he had all the necessary material before him and if he perused all the papers placed before him he must be deemed to have exercised his mind about it. In these circumstances, I am unable to see anything defective about the sanction.

10. The last point argued by the learned Counsel is that the accused had put in an application for issue of a commission to examine Mr. W.J.S. Houston, who was the Divisional Engineer Telegraphs Ajmer, from 14 8 1947 to 29 11 1948. This application has not been properly dealt with and the accused has been prejudiced by the omission to examine this witness.

11. The learned Magistrate who disposed of this application, dated 10 5 1951 on 26 7 1951 rejected It on the ground that the acceptance of this application would unnecessarily delay the case. I am of opinion that this was not a sufficient ground for rejecting the application. Section 257 of the Code of Criminal Procedure lays down that a Magistrate 'shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice'. The learned Magistrate did not state that the application was given for that purpose. In fact, I am inclined to the view that if a commission had issued in May 1951, it might have been received back by the time the learned Magistrate passed the order on 26.7.1951. I am not inclined to agree with the learned Public Prosecutor that I should discuss the question as to whether the evidence of Mr. Houston could be of material help to the accused. I do not know what evidence Mr. Houston would be able to give and I am inclined to the view that if the accused considers Mr. Houston's evidence necessary he should not be deprived of the opportunity to examine Mr. Houston on commission unless Section 257, Criminal P.C., justifies the refusal.

12. In the circumstances, I accept this appeal and remand the case to the Special Judge who alone in view of the recent amendment is competent to try such cases. The accused is on bail and he will remain on his present bail-bonds till his first

appearance in the Court of the learned Special Judge. The accused is directed to appear before him on 12.1.1953 at 11 a.m. sharp.

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