

State Vs. Bhagwana

State Vs. Bhagwana

SooperKanoon Citation : sooperkanoon.com/754972

Court : Rajasthan

Decided On : Jan-13-1958

Reported in : AIR1959Raj248; 1959CriLJ1214

Judge : D.M. Bhandari, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 173, 190, 251A and 252; [Rajasthan Excise Act, 1950](#) - Sections 44(2), 54 and 67

Appeal No. : Criminal Revn. No. 27 of 1957

Appellant : State

Respondent : Bhagwana

Advocate for Def. : Ramsingh, Adv.

Advocate for Pet/Ap. : B.C. Chatterjee, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

D.M. Bhandari, J.

1. This is a revision application on behalf of the State against the order of the learned Sessions Judge, Jhunjhunu dated 29-9-1956, by which he set aside the

order of conviction of Bhagwana opposite party passed by the learned Sub Divisional Magistrate, Nawalgarh and remanded the case to him with the direction to undertake fresh trial in accordance with law.

2. The Excise Inspector Shri Bhawani Prasad submitted a report in the court of the Sub Divisional Magistrate, Nawalgarh, that two bottles of illicit liquor were recovered from the house of the accused and further some liquid and instruments of distillation were taken possession of from his field and that thereby he had committed an offence under Section 54 of the Rajasthan Excise Act (hereinafter to be called the Act). The learned Magistrate on the presentation of the report recorded the statement of Bhagwana. Bhagwana admitted the prosecution case and he was straightway convicted under Section 54 of the Act and was sentenced to three months simple imprisonment and to pay a fine of Rs. 500/-, in default to undergo further simple imprisonment for three months.

3. Bhagwana filed an appeal to the court of the Sessions Judge, Jhunjhunu, and the learned Sessions Judge accepted the appeal and sent the caseback for retrial.

4. It may be mentioned that an offence under Section 54 of the Act is punishable with imprisonment for a term which may extend to two years or with fine which may extend to Rs. 2000/- or with both. The learned Sessions Judge is of opinion that the accused should have been tried in accordance with the procedure provided under Section 252 Cr. P. C. and the subsequent sections and since that procedure was not followed, the trial was illegal.

5. In this revision petition on behalf of the State it is urged that the trial court was justified in recording the statement of the accused as the procedure to be adopted in this case was as provided in Section 251-A and under Section 251A(2) the Magistrate could examine the accused. It may be said at once that the learned Magistrate could convict the accused, even if he followed the procedure provided in Section 251A, only after framing the charge and after the charge has been read and explained to the accused and he had pleaded guilty to it. In this case no charge was framed and as such the Magistrate was obviously wrong in convicting the accused even if he followed the procedure provided in Section 251A Cr. P. C.

6. But in my opinion the magistrate should have followed the procedure provided for the trial of warrant cases in Section 252 and subsequent sections. The procedure provided in Section 251A can be adopted only in a case instituted on a police report. In a case instituted otherwise than on a police report, the procedure is laid down in Section 252 and the subsequent sections. It is argued by the Assistant Government Advocate that a case, the cognisance of which is taken by the Magistrate on the report of the Excise Officer as laid down in Section 67 of the Act, must be taken to have been instituted on a police report within the meaning of Section 251A Cr. P. C. Reliance is placed in this connection on Section 44 of the Act which lays down the powers of the officers of the Excise Department to investigate into the offences punishable under the Act, It is provided in Section 44(1) that any officer of the Excise Department not below such rank as the Government may prescribe under the Act may investigate into any offence punishable under the Act, committed within the limits of the area in which such officer exercises jurisdiction.

Under Section 44(2) any such officer may exercise such powers in respect of such investigation as an officer incharge of a Police Station may exercise in a cognisable case under the provisions of Chapter XIV of the Cr. P. C. 1898 of the Central Legislature as adapted to Rajasthan, On the strength of this section it is urged that the Excise Officer investigating the case does so in accordance with the provisions of the Criminal Procedure Code and the report submitted by him must be placed on the same level as a report submitted by a police officer under Section 173 of the Cr. P. C. and if the Magistrate takes cognisance of the case on such a report, he must be deemed to have taken cognisance of a case upon a report in writing made by a Police Officer and if the case is a warrant case, the trial should proceed in accordance with the procedure provided under Section 251A Cr. P. C. In my opinion this contention is not sound.

7. In the first place Section 44(2) of the Act does not make it necessary that an investigating officer in charge of investigation should submit a report to the Magistrate as is laid down in Section 173 Cr. P. C. in respect of a report of a police officer investigating any case. Section 44(2) confers on an excise officer in charge of investigation some powers in respect of investigation but does not make it

incumbent on that officer to submit a report to the Magistrate as required by Section 173, Cr. P. C. It is on such report of a Police Officer that cognisance of the offence is taken by a Magistrate under Section 190 Cr. P. C. and it is only in a case instituted on a Police report that the procedure specified in Section 251A is to be followed.

8. In the second place a report by an Excise officer cannot be placed on the same level as a report by a Police officer. The procedure for the trial of warrant cases by Magistrates has been bifurcated on special considerations. To ensure speedy disposal of cases instituted on a police report, it was considered proper to provide the procedure under Section 251A. On a comparison of the procedure provided in Section 251A and the procedure provided in other provisions of Chapter XXI of the Code, it becomes apparent that it is not necessary for the Magistrate to examine any witnesses for the purpose of framing a charge if the procedure under Section 251A is followed. The documents which are to be furnished to the accused under Section 173 takes the place of the evidence which is required to be recorded in the case of a private complaint.

This has been done for the purpose of eliminating delay in a case instituted on a police report. It is based on the consideration that a department of the Government which is well organised and manned by competent officers who can form reliable opinion in the course of investigation have dealt with the case at the investigation stage in accordance with the provisions of the Cr. P. C. The procedure provided under Section 251A, therefore, takes into account two important matters. One is that a competent department of Government has investigated the case and the other is that investigation has been in accordance with the provisions of the Cr. P. C. The Legislature did not place investigation carried on by the officers of the Excise Department on the same level as that carried on by the Police for the purpose of trial of warrant cases, otherwise there would have been an amendment in the provisions of Sections 251, 251A and 252 Cr. P. C. by clearly specifying that the report of an excise officer stands on the same level as the report of the Police.

The reason may be that in the matter of efficiency of investigation and the reliability of the opinion of the officers who investigate the case and submit a report

the Legislature wanted to place more confidence in the officers of the Police Department than in the officers of the excise department. There was also the consideration that officers of the Police department have to carry on the investigation in accordance with the provisions of the Cr. P. C. and have to follow carefully the various provisions of law in regard to investigation.

9. In my opinion a report by an Excise officer under Section 67 of the Act on which the Magistrate takes cognisance of the offence cannot be placed on the same level as the report of a police officer in regard to the trial of warrant cases. The same view is taken by the Madras High Court in the case of *In re Pavadai Goundan* AIR 1957 Mad 292 in a case under the Madras Prohibition Act.

10. In this view of the matter the revision has got no force and is hereby dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com