

Jeeta Ram Vs. State

Jeeta Ram Vs. State

SooperKanoon Citation : sooperkanoon.com/756422

Court : Rajasthan

Decided On : Feb-26-1971

Reported in : 1971WLN147

Judge : Kan Singh, J.

Appeal No. : S.B. Criminal Revision No. 284 of 1970

Appellant : Jeeta Ram

Respondent : State

Judgement :

Kan Singh, J.

1. This is a revision application by one Jeetaram. He was convicted by the learned Muniff Magistrate, Pali, on his plea of guilty on three counts namely, under Sections 420, 465 and 468 Indian Penal Code. He was awarded one year's rigorous imprisonment on each count and a fine of Rs. 1,100/- in addition for the offence under Section 468 Indian Penal Code, in defaulted. It one month's further rigorous imprisonment. All the three substantive sentences were ordered to run concurrently. He appealed to the court of learned Sessions Judge, Pali against his conviction and sentences, but without success.

2. The prosecution case, in brief, was that the accused had approached the complainant Hastimal Kothari of Pali on 22-1-70 with a lottery ticket bearing No. B-155027 of the State Lottery of Jammu & Kashmir and told him that in the third draw of the Lottery on 11-1-70. the second prize of rupees one lac had been declared on the aforesaid ticket. The accused requested Hastimal to advance him a loan of Rs. 6000/- on the security of the ticket in question. There was then a talk about the collection of the amount of rupees one lac from the Government of Jammu and Kashmir. It was suggested by the accused that a duly authorised person be sent to Srinagar for collecting the amount and out of the amount when collected the expenses of going to Srinagar as also the amount of the loan be recovered by Hastimal. Hastimal's nephew Shri Lalchand and was an Advocate at Pali and it was decided that Shri Lalchand and one Kherra who enjoyed the confidence of the accused should proceed to Srinagar for the purpose of collection. Hastimal had handed over the ticket together with the newspaper cutting showing the declaration of the result of the draw in an envelope and on the outer side of the envelope accused acknowledged the receipt of Rs. 6000/-, A power of attorney in favour of Lalchand was also given by the accused. Shri Lalchand and Khema then went to Srinagar and there contacted the Director of the State Lotteries. They produced the ticket after filling in a certain form of declaration. As the Director had already received a ticket bearing the same number, he suspected the genuineness of the ticket produced by Shri Lalchand. Eventually the Director of Lotteries reported the matter with the Kashmir police and a case was registered against Lalchand and Khema. On coming to know of what had been done to himself and his nephew by the accused, Hastimal lodged a complaint in the court of learned Munsiff Magistrate, Pali. The learned Munsiff Magistrate forwarded the so-called complaint under Section 156(3) Cr.P.C., to the police for investigations. The police then registered a case under Sections 420, 465 and 468 Indian Penal Code against the accused and investigated the matter. On 3-4-70, the challan was put up against the accused. The statement of the accused was recorded under Section 251A(3) Criminal Procedure Code and then the learned Magistrate framed charges against the accused for all the three counts which the accused pleaded guilty and learned Magistrate accordingly convicted and sentenced him as aforesaid. The learned Sessions Judge while dismissing the appeal observed thus

in his judgment:

Before parting with the judgment, I cannot help mentioning certain facts which speak themselves and emit some foul odour coming out from the investigation. The complaint was lodged, say after two months of the occurrence. During this period, no section was taken by the complainant. The alleged forged ticket is said to have been presented before the authority of the State Lottery department of Jammu & Kashmir, who had produced that ticket there and under what circumstances and what was its condition, a thorough investigation needed to have been made by the police. From the perusal of the case diary which, I sent for, I find no steps were taken in this connection. P.S.I. put an endorsement intimating the investigating agency that the document in question i.e. the ticket has not been obtained. Having put these objections, he submitted challan with a note that as the accused is ready to plead guilty according to the I.O., the case be put up. In my view, in an important case like this, proper investigation has not been made, for reasons best known to the prosecuting agency, the challan was put up in a haphazardly manner. In my opinion, it requires series probing in the matter. A copy of the judgment be sent to the District Magistrate, Pali for such action as he may deem, proper.

3. In assailing the conviction of the accused learned Counsel has submitted that there was no material whatsoever for showing that the ticket in question was forged or that the accused had forged and used the same knowing it to be forged. He submitted that in the absence of any material furnished by the police in the statements or documents submitted along with the challan the learned Magistrate was not entitled to examine the accused with the result that whatever was stated by the accused could not be used for framing a charge. In the second place, it was contended that on the facts as presented by the police prima facie an offence under Section 467 or one under Section 471 Indian Penal Code was also disclosed and which was exclusively triable by the court of Sessions with the result that the learned Magistrate was not competent to record the plea of guilty himself. It is pointed out that a ticket which would enable a person to obtain the prize from the State Government was valuable X security within the meaning of Section 467 Indian Penal Code. It is maintained that it was not open to the learned Magistrate

to have just framed a charge for a minor offence and then proceed to try the case himself.

4. I have gone through the statements of Hastimal and Lalchand recorded by the police under Section 161 Criminal Procedure Code. Sub-section (2) of Section 251A Criminal Procedure Code, inter alia, lays down that if upon consideration of all the documents and making such examination, if any, of the accused as the Magistrate thinks necessary, if the Magistrate considers the charge against the accused to be groundless, he shall discharge him. Sub-section (3) provides that if, upon such document being considered, such examination, if any, being made the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under Chapter XXI, which such Magistrate is competent to try, he shall frame in writing a charge against the accused. The examination of the accused under Section 251 A Criminal Procedure Code cannot be equated with the examination of an accused under Section 342 Criminal Procedure Code, where the learned Magistrate is required to place the entire evidence properly before the accused to enable him to explain the same. The statements recorded by the police under Section 161 Criminal Procedure Code are not evidence in the case. Section 162 Criminal Procedure Code lays down that no statement made by any person to a police officer in the course of an investigation be used for any purpose save as hereinafter provided at any inquiry or trial in respect of any offence under investigation at the time when such statement was made. The exception is indicated in the section itself in the proviso which lays down that if any witness is called for the prosecution, the statement may be used by the accused for cross-examination of the witness and with the permission of the court by the prosecution to contradict such witness in the manner provided by section 145 of the Evidence Act. In other words, the prosecution can use the statement only for the limited purpose of contradicting the witness with a view to showing his un-reliability and not for the purposes of furnishing evidence in the case. Under Section 342 Criminal Procedure Code what has to be put to the accused is legally admissible pieces of evidence in the case. Under Section 251A Criminal Procedure Code the purpose of examining the accused is only with a view to seeing whether on the police papers the accused should be discharged or a charge be framed. The ambit of Section 251A cannot

be extended to other purposes. The statements given by Lalchand under Section 161 or that of Hastimal were such as introduce certain matters regarding the genuineness of the ticket. The learned Magistrate could, therefore, properly examine the accused regarding such matters as were brought in by Hastimal & Lalchand about the genuineness of the ticket in question. 1 Apart from the genuineness of the ticket these witnesses had stated about what was represented by the accused to Hastimal or Lalchand. It cannot, therefore, be said that the accused was not properly examined under Section 251A Criminal Procedure Code. I may, however, make it clear that normally this provision for examination of the accused is not to be used as a trap for the accused to make him admit even such facts as have not been brought in the police papers themselves which are produced before the learned Magistrate. The present case cannot be said to be of that character.

5. Learned acounsel went to the length of arguing on this point that the counsel who appeared for him on that day was not known to the accused and had not been engaged by him. I am not impressed by this submission. Many times litigants coming from remote places engage counsel who are not known to such litigants. Members of the legal profession have a certain code of conduct of their own and the fact that a counsel is engaged is, by and large, a guarantee that he would be doing his best for the person for whom he is appearing. In the absence of anything it cannot be presumed that he is acting as an instrument or tool of any other party whose interests are in coufflict with the person for whom the counsel is ostensibly appearing. If such were the case of the accused, the minimum that was expected of him was to such in an affidavit that the counsel who appeared for him in the trial court had not been engaged by him and was not a person known to him. In the circumstances I repel the contention.

6. The second contention is, however, a substantial one. There is no manner of doubt that a lottery ticket the production of which will enable the person holding the ticket to receive the amount of the prize is a valuable security. Now forgery of a valuable security will fall under Section 467 Indian Penal Code and the use of a forged valuable security as genuine w 11 fall under Section 471 Indian Penal Code. These offences are exclusively triable by the court of Sessions according to

the second schedule of the Criminal Procedure Code. Therefore, when the offence that was constituted prima facie by the facts was one of forging a valuable or using the forged valuable security as genuine was exclusively triable by the court of Session, in my view, it was not open to the learned Magistrate to frame a charge for a minor offence under Section 465 or 468 Indian Penal Code and then proceed to record the plea of guilty of the accused. The Magistrate in the circumstances could not come to the conclusion that no offence exclusively triable by the court of sessions was committed. Earned Counsel for the opposite party cited : 1966 CriLJ700 Thakur Ram v. State of Bihar for showing that the Magistrate could have framed a charge for the lesser offence and then tried it himself.

7. After dealing with the various steps required to be taken in committal enquiries under Sections 207 and 207A Criminal Procedure Code their Lordships observed as follows:

It will thus be seen that where the police report suggests the commission of an offence which is exclusively triable by a Court of Sessions, the Magistrate can nevertheless proceed to try the accused for an offence which is triable by him if he is of the view that no offence exclusively triable by a Court of Sessions is disclosed.

8. I have underlined the words which, to my mind, would govern the present matter. If a committing court after making an inquiry comes to hold that the offence exclusively triable by Sessions is not made out but some lesser offence is made out which such court is competent to try then it is open to the committing court to frame a charge for the lesser offence and then proceed to try the case himself accordingly. But this will not be permissible where the facts prima facie found by the committing court disclosed an offence which is exclusively triable by a court of sessions.

9. It is true in the present case the police did not mention Section 467 or 471 Indian Penal Code in the challan and also they did not ask for commitment of the accused, but that to my mind is not of the essence of the matter. Where the requisite facts constituting the offence are there in the challan as also in the proceedings taken by the learned Magistrate then not mentioning the correct

section of the offence will not entitle the Magistrate to usurp the jurisdiction of the Sessions, if on the facts prima facie found the offence is one that is exclusively triable by the court of Sessions. In the present case the charge framed by the learned Magistrate itself indicated that it was the accused who had forged the lottery ticket by changing the figure '1' to '7' in it. Such being the case the offence was undoubtedly triable exclusively by the court of Sessions and consequently it was not open to learned Magistrate to have proceeded to record the plea of guilty on the charge. Thus, the learned Magistrate has acted without jurisdiction regarding the charge relating to the forgery of the lottery ticket when he recorded the plea of the accused thereon and then he eventually convicted him, though he did not mention the right section in his order.

10. In the result, therefore, I allow the revision application in part, set aside the conviction and sentences of the accused for all the offences and hereby remand the case to the court of Munsif Magistrate, Pali with the direction that the learned Magistrate shall make a committal enquiry under Section 207A Criminal Procedure Code and then proceed further according to law. The accused is on bail and he is directed to appear before the learned Magistrate on 26.3.71.