

Man Singh Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Nov-23-1989

Reported in : 1990(1)WLN507

Judge : M.B. Sharma, J.

Appeal No. : S.B. Criminal Revision Petition No. 109 of 1988

Appellant : Man Singh

Respondent : State of Rajasthan

Disposition : Petition allowed

Judgement :

M.B. Sharma, J.

1. The accused petitioner is aggrieved against the judgment dated 4th May 1988 of the learned Additional Sessions Judge, Bharatpur by which the learned Additional Sessions Judge allowed the appeal of the accused petitioner and the case was remanded back to the learned Magistrate for fresh trial in accordance with law.

2. It may be stated that the petitioner is not aggrieved against the conclusion of the learned Magistrate that the trial of the offence being summary trial, the learned Magistrate could not have acted on the evidence recorded by the other Magistrate

as provisions of Section 326 Cr. PC are not applicable. The only grievance of the accused petitioner is that it is the case of the year 1976 and the petitioner is a petty milk vendor and, thereafter a period of 12 years the learned Sessions Judge should not have remanded the case for retrial. Under the first proviso to Section 16A in case of any conviction in summary trial it shall be lawful to award a sentence of imprisonment for a term exceeding one year. Therefore, there can be no doubt that the offence Under Sub-section (1) of Section 16 of the PF Act are to be tried in a summary manner only. A perusal of the record will show that on 17-10-1977 the learned Magistrate after reading the substance of accusation ordered that all the witnesses of the prosecution be summoned. Statement of Haridutt Sharma PW 1 was recorded on 7th June, 1979, then the statement of Kishni PW 2 was recorded on 25th June, 1979 by another Magistrate. The statement of Magan Singh was recorded by yet another Magistrate. The statement of the accused petitioner was recorded and defence witness was examined and judgment was pronounced. A look at Section 263 Cr. PC will show that in every case tried summarily the Magistrate shall enter, in such form as the State Government may direct the following particulars, namely:

- (a) the serial number of the case
- (b) the date of the commission of the offence
- (c) the date of the report or complaint
- (d) the name of the complaint (if any)
- (e) the name, parentage and residence of the accused
- (f) the offence complained of and the offence (if any) proved, and in cases coming under clause (ii), clause (iii) or clause (iv) of Sub-section (1) of Section 260, the value of the property in respect of which the offence has been committed
- (g) the plea of the accused and his examination (if any)
- (h) the finding
- (i) the sentence or other final order

(j) the date on which proceedings terminated. This record in the summary trial has to be maintained in such form as the State Govt. may direct but Sub-section 263 is not being followed and no particulars as required Under Section 263 are being entered into in any such form. The Magistrate is required Under Section 264 Cr. PC to record the substance of the evidence and not the evidence as a whole and also the judgment containing a brief statement of the reasons for the findings. Thus, though the case is triable summarily but the learned Magistrate are not following the procedure provided Under Sub-section 262 to 265 (both inclusive). Be that as it may, in view of Sub-section (3) of Section 326 Cr. PC the provisions contained in Sub-section (1) and (2) are not applicable to summary trial. The law is settled that the accused has a right that his case should be heard and decided by the same Magistrate.

Therefore, the learned Sessions Judge was right when he agreeing with the submission made by the learned Counsel for the petitioner allowed the appeal, set aside the judgment of the trial court.

3. But in my view in a case of present nature when the accused petitioner is a petty milk-vendor and the sample of milk was taken from his possession on 12th May, 1976 almost more than 13 years ago, the learned Sessions Judge should not have remanded the case back for fresh trial to the learned trial court. In this case the criminal trial had remained pending for six years. The accused had to appear in the court on all dates on which the case is fixed and has to incur expenses as the trial did not conclude within the reasonable time. Therefore, in a case of present nature, if 13 years have elapsed and if by the time the learned Appellate Court decides the case, 12 years elapsed, it is not a case for exercise of discretion of the learned Sessions Judge when he ordered for remand of the case.

4. Consequently, I hereby allow the revision petition, set aside the order of the learned Sessions Judge that the case shall be remanded back to the learned Magistrate for fresh trial in accordance, with law and the order of learned trial court. The accused is acquitted of the charge Under Section 7/16 of the PF Act.