

Shanker Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jul-20-1983

Reported in : 1983WLN352

Judge : S.S. Vyas, J.

Appeal No. : S.B. Criminal Jail Revision No. 93/80

Appellant : Shanker

Respondent : State of Rajasthan

Disposition : Petition allowed

Judgement :

S.S. Vyas, J.

1. This revision reveals the deplorable manner, in which the trial in a warrant case, was conducted by the judicial Magistrate and the jail appeal was disposed of has time in a mechanical and routine way by the learned Session Judge.

2. Accused Sbanker was convicted under Sections 454 and 380/75, IPC and sentenced to two years rigorous imprisonment with a fine of Rs. 2,000/- in default of payment of fine to further undergo one year's like imprisonment under the first court and three years' rigorous imprisonment with a fine of Rs. 5,000/- in default of payment of fine to further undergo one year's like imprisonment under the second

count by the learned Munsif and Judicial Magistrate, Begun vide his judgment dated November 22, 1982. He filed a Jail appeal challenging his conviction, but the same was dismissed by the learned Sessions Judge, Pratabgarh on January 17, 1983.

3. It would be proper to briefly read all the facts and circumstances giving rise to this revision petition. The police submitted a cballan against the accused on November 20, 1982 in the court of learned Munsif and Judicial Magistrate, Begun for the offences under Sections 454 and 380/75, IPC. The accused submitted an application on that very day before the Magistrate that he admitted the prosecution case and his case be disposed of with out delay. The learned Magistrate, there upon, convicted him under Sections 454 and 380, IPC, on the same day (20-11-1982). It would be profitably to reproduce the order of the learned Magistrate:

20&11&82 , ih ih us ;g pkyku f[kykQ eqyfte 'kadj twes 454&380@75 vkbZ ih lh es izLrqr fd;k eqdnek ntZ jftLVj es A eqyfte 'kadj tSy ls gkftj vk;k pkyku dh udys nh xbZ vfHk;qDr us tqeZ Lohdkj djus dh nj[okLr izLrqr dh A ftl ij vfHk;qDr dks vijk/k /kkjk 45&380 vkbZ ih lh dk nks'kh ekuk tkrk gS Altk ds ftUrq ij vfHk;qDr o , ih ih dhs lquk x;k A , ih ih us tkfgj fd;k fd vfHk;qDr iwoZ es ltk ;kQrk gS AjsdM+ es ns[kk x;k vr okLrs lquus tqeZ /kkjk 75 vkbZ ih lh fnukad 22&11&82 dks is'k dh A

4. On 22.11.1982, the learned Magistrate framed a charge against the accused for purpose of Section 75, I.P.C. in the folio wing manner:

;g fd vkus rkjh[k 2&11&82 dks lqcg 11 cts ds yxHkx pksjh dh vkSj muds }kjk vkus ,slk vijk/k fd;k tks Hkkjrh; n.M+ lafgrk dh /kkjk 454&380 Hkk n l- ds v/khu n.M+uh; gS vkSj vki 'kadj firk ojnkh Mkaxh ij ;g Hkh vkjksi gS fd vki mDr vijk/k djus ls iwoZ eq-u- 49@71 o 195@76 vUrZxr /kkjk 475] 380 Hkk n la es eqfUIQ ,oa U;kf;d eftLVsV fuEckgsM+k /kkjk Hkkjrh; n.M+ lafgrk ds v/;k; 17 ds v/khu rhu o'kZ dh vof/k ds fy, dkjkokl ds n.Muh; vijk/k ds fy, vFkkZr jkf= xqlr Hksnu ds ,oe~ pksjh ds vijk/k ds fy, nks'kf;r fd;s x;s tks nks'k fl) vc rd iw.kZr;k izLrqr vkSj izekf.kr vkSj vki Hkkjrh; n.M+ lafgrk dh /kkjk 75 ds v/khu ifjofrZRk n.M+ us n.M+uh; gS A

vkSj es blds }kjk funsZ'k nsrk gwW Afdss vkids fo:) vufo{kk dh tkos A

iz'u ua- 1%&----

iz'u ua- 2%& D;k vki vkjksi Lohdkj djrs gS ;k vufo{kk pkgrs gS A

mRrj %& gkW eq>s fuEckgsM+k dks VZ es pksjh djus dh fy, ltk gqbZ Fkh A

5. The accused was, thereafter, convicted and sentenced as mentioned above. The accuse filed a jail appeal before the learned Sessions Judge Prasabgarh. He contended before him that he did not plead guilty before the Magistrate. But his contention was repelled and the appeal was dismissed. Hence this revision.

6. It the fore-front of his arguments, the first point taken by the learned Amicus Curiae is that the whole trial stands vitiated for the simple reason that the learned Magistrate did not follow the procedural mandate enshrined in Sections 240 and 241, Cr.P.C. It was argued that neither charges under Sections 454 and 380, IPC were framed nor the plea of the accused was recorded The learned Magistrate simply acted on the admission of the accused made by him at the time when the challan was filed. This has resulted in a miscarriage of justice. There is considerable force in the contention.

7. A perusal of the case file and the order dated November 20, 1982 reproduced above, clearly shows that no charges under Sections 454 and 380, IPC were framed against the accused and yet, he was convicted there under.

8. Section 240 of the Code of Criminal Procedure lays down in explicit terms that when an accused has not been discharged under Section 239, Cr PC the Magistrate, upon consideration of the material before him, shall frame in writing a charge against the accused. When a charge has been framed under Section 240, Cr.P.C. the next duty cast en the Magistrate in Sub-section (2) is that-.(2) The charge shall then be read and explained to the accused, and he shall be asked whether he pleads guilty of the offence charged or claims to be tried.

9. When the charge has been read over and explained to the accused, his plea in respect of the charges is to be recorded. If the accused pleads guilty, such a plea must be recorded. Section 241, Cr.P.C. reads as under:

Conviction on plea of guilty (1). If the accused pleads guilty, the Magistrate shall record the plea and may, in his discretion convict him there on.

10. A bare reading of Sections 240 and 241, Cr PC makes it amply clear that framing of the charge and recording the plea of accused are knitted together. The provisions of these sections are express, explicit and mandatory in command. They admit no exception. The framing of the charges, their being read over and explained to the accused recording of his plea cannot be abdicated, simply because the accused admitted the prosecution case at a prior stage. Before accused is convicted in a warrant case on his plea of guilty, the procedure laid down in Sections 240 and 241, Cr PC must be faithfully adhered to.

11. Sections 238 to 243, Cr.P.C correspond to Section 251A of the Code of Criminal Procedure, 3898. While construing the provision of Section 251A of the Old Code, it was observed in State v. Bhagwana that under Section 251, the Magistrate can convict an accused only after framing the charge and after the charge has been read and explained to the accused and he had pleaded guilty to it. It would be wrong for the Magistrate to convict the accused on his admission without framing any charge.

12. In State v. Thombi 1971 Cr.L.J 734, it was held that the conviction can not be sustained on a plea of guilty allegedly entered by the accused, but not recorded specifically.

13. Averting to the instant case as discussed above, the learned Magistrate framed no charges under Sections 454 and 380, IPC and consequently, no charges could be read over and explained to the accused. It is evident from the record that no plea of accused was recorded under Section 240 Cr.P.C for the apparent reason that no charges were framed against him. The procedure adopted by the learned Magistrate was, thus, erroneous and can not be sustained.

14. The learned Public Prosecutor made an attempt to impress that the charge framed by the learned Magistrate on November 22, 1982 should be taken sufficient. There is an insurmountable hurdle in accepting the contention of the learned Public Prosecutor. Section 248 of the Code of Criminal Procedure lays

down the procedure when a previous conviction is charged against the accused. The proviso added to it, reads as under:

Provided that no such charge shall be read out by the Magistrate nor shall the accused be asked to plead there to nor shall the previous conviction be referred to by the prosecution or in any evidence adduced by it, unless and until the accused has been convicted under Sub-section (2).

15. Thus, a charge of previous conviction is not to be framed before an accused is convicted and the accused can not be asked to plead about the previous conviction unless and until he is convicted in a subsequent case.

16. There is yet another reason to repeal the contention of the learned Public Prosecutor. As re-produced above, the charge framed on 22-11-1982 shows that the accused had simply admitted that he was once convicted in a theft case. There is nothing more in the reply, he gave before the Magistrate. There is nothing in the plea of the accused recorded on the charge of previous conviction that he also pleaded guilty to the charges under Sections 454 and 380, IPC.

17. It was next argued by the learned Amicus Curiae that in appeal, the accused raised the contention that though, he had not pleaded guilty before the Magistrate and yet, he was convicted. His this contention was summarily rejected. The contention is again not without force. A perusal of the judgment of the learned Sessions Judge shows that the accused did raise the above contention before him but due regard was not paid to it. It appears that no importance was given to this contention of the accused and it was summarily dismissed by the learned Sessions Judge.

18. The manner in which the trial was conducted by the learned Magistrate can not be appreciated. The procedural errors committed by him are grave and incurable to vitiate the whole trial.

19. In the result, the revision petition is allowed. The convictions and sentences of accused Shanker are set aside. The case is remanded to the trial court for fresh trial according to the provisions of law.

