

In Re: K.G. Jagannathan

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Court : Chennai

Decided On : Jan-16-1958

Reported in : AIR1958Mad333; 1958CriLJ903; (1958)IMLJ242

Judge : Somasundaram, J.

Appellant : In Re: K.G. Jagannathan

Judgement :

ORDER

Somasundaram, J.

1. This is a revision against the conviction of the petitioner for an offence under Section 121 of the Railways Act.

2. The accused is said to have got down from the train at Mambalam and when the ticket was demanded he is said to have got annoyed and refused to show the ticket. He was subsequently handed over to the railway sainik. Two witnesses were examined in support of the prosecution who speak to the above facts. The second witness says that after refusing to show the ticket the accused went into the station master's room and the ticket examiner handed him over to the sainik.

Even then he refused to show the ticket. The first witness was cross-examined as to whether he knew that the accused had luggage. Immediately an enquiry was conducted by the special Honorary Presidency Magistrate at the station itself and

a judgment was pronounced convicting the petitioner.

3. Two questions arise in this case. One is whether on the facts disclosed it amounts to an offence under Section 121 of the Railways Act-S. 121 of the Railways Act is as follows:

If a person wilfully obstructs or impedes any railway servant in the discharge of his duty, he shall be punished with fine which may extend to one hundred rupees.

4. The contention of Mr. Venkatanarasimham is that the refusal to show the ticket will not fall within the scope of this Section 121. It seems to me that the refusal to show the ticket will certainly impede the railway servant in the discharge of his duty. It will amount to an offence under Section 121.

5. The second question is far more important, and it is one which relates to procedure. After the witnesses were examined the accused does not appear to have been questioned under Section 342, Orl. P. O. In fact no statement appears to have been recorded from him. I am not able to find from the records that the accused has been questioned at all, and that perhaps is the reason why no statement is recorded from him.

It is an elementary principle in the procedure that the accused must be questioned with regard to the circumstances that appear against him. This is a case in which the accused has not been questioned at all. This failure to question him about the circumstances against him has vitiated the entire proceeding. For aught we know he might have a very satisfactory explanation. If the statement has been recorded then it will be a matter for consideration, whether from the statement and the prosecution evidence, it can be stated that the offence has been made out or not.

In the absence of any such statement which should have been recorded, but not recorded, I am unable to know what the defence is and the accused is not to be blamed for this failure on the part of the court to question him and record his statement. This is an illegality which cannot be cured by Section 537.

6. The conviction and sentence are, therefore, set aside, and the fine, if paid, will be refunded.

7. The special Honorary Presidency Magistrate will do well to flow the procedure. Honorary Magistrate must remember that one of the elementary principles that must be observed is that after the evidence is taken the accused also must be questioned on the evidence as to what he has got to say. Failure to do so is an illegality which will vitiate the entire trial.

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