

Madan Mohan Das Vs. the State

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Court : Kolkata

Decided On : Jul-06-1955

Reported in : AIR1956Cal25,1956CriLJ213

Judge : J.P. Mitter and ;Renupada Mukherjee, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Section 362(2A)

Appeal No. : Criminal Appeal No. 1 of 1954

Appellant : Madan Mohan Das

Respondent : The State

Advocate for Def. : J.M. Banerjee, Adv.

Advocate for Pet/Ap. : S.S. Mukherjee and ;Sukumar Mitra, Adv.

Judgement :

J.P. Mitter, J.

1. The appellant was convicted of an offence under Section 7(3) of the Essential Supplies Act 1946 for contravention of Clause 8 of Iron and Steel (Control of Production and Distribution) Order, 1941. The prosecution case against him was as follows: At all material times, he was a Director of Howrart Foundry Works Ltd., which received quota certificate No. SC/321804/SPI dated 22-4-1952 for 17 tons

of structurals and 6 tons of G.C. sheets from the Assistant Controller, Iron and Steel, Government of India.

The holder of a quota certificate being entitled to issue sub-quota certificates, Howrah Foundry Works Ltd., issued two sub-quota certificates, one in favour of Burn & Co., and the other in favour of Martin Burn Ltd. The sub-quota certificate issued to Martin Burn Ltd., was in respect of 6 tons of G.C. Sheets. Howrah Foundry Works Ltd., however, had no funds then to pay for and take delivery of the said quantity of G.C. sheets.

On the authority of certain letters in the printed letterheads of Howrah Foundry Works Ltd.. purporting to have been signed by the appellant as a Director, these goods were taken delivery of from a warehouse of Martin Bum Ltd. The price of the goods amounting to Rs. 4080/-, together with a sales-tax declaration form, was duly deposited and Martin Burn Ltd., had no suspicion that the goods were being taken away without the real authority of Howrah Foundry Works Ltd.

It was when Howrah Foundry Works Ltd., received a formal receipt for the price of the goods that the fraud was discovered. The letters purporting to have been written by Howrah Foundry Works Ltd., marked Exs. 8, 9 and 15, were found to have been forgeries. As a result of a complaint made to the police which the appellant himself signed, an investigation by the Enforcement Branch of the Calcutta Police started, in the course of which the appellant himself was arrested and sent up along with others to be tried under Section 7(3) of the Essential Supplies Act, 1946.

He was convicted as aforesaid and sentenced to suffer rigorous imprisonment for 4 months and to pay a fine of Rs. 500/-, in default, to undergo rigorous imprisonment for 3 months more.

2. Mr. S. S. Mukherjee appearing on behalf of the appellant has argued that on the merits it was impossible to say that the case against the appellant had been established beyond all reasonable doubt. Mr. Mukherjee has referred us to the evidence as to the identity of the signatures appearing on Exs. 8, 9 and 15 with specimen writings taken from the appellant in the course of investigation. Mr.

Mukherjee has characterised as inconclusive the handwriting expert's opinion as to the identity of the questioned signatures.

Mr. Mukherjee has challenged the evidence of one or two Directors of the company who purported to have identified the questioned signatures as those of the appellant. Mr. Mukherjee has next argued that the facts and the circumstances of the case disclosed that the appellant's alleged confession was induced by one or other of the Directors of the company who deposed on behalf of the prosecution and that the alleged confession was, therefore, not admissible under Section 24 of the Evidence Act.

It has also been urged that the appellant's statement, if regarded as a whole, did not amount to a confession of having contravened the Iron and Steel (Control of Production and Distribution) Order, 1941, for the statement in terms refers to a certificate for 6 tons of G.C. sheets of March, 1952, whereas the certificate which was issued to Howrah Foundry Works Ltd., was of 22-4-1952. The last point urged by Mr. Mukherjee is that the learned Magistrate did not comply with the provisions of Section 362, Cr. P. C.

3. The failure on the part of the learned Magistrate to comply with the provisions of Section 362, Cr. P. C., appears to us to be fatal to the appellant's conviction. We have examined the record of the case and are surprised to find that although the printed sheets or form meant to be used for recording the examination of an accused is signed both by the learned Magistrate and the appellant, no record was made of the actual examination of the appellant.

This mistake on the part of the learned Magistrate to record the statement of the appellant under Section 342, Cr. P. C., was repeated in the case of a co-accused of the appellant who, however, was acquitted by the learned Magistrate. At end of the form appears in print the following endorsement:

'The above examination was taken in my presence and hearing and contains a full and true account of the statement made by the accused.'

The learned Magistrate concerned put his signature underneath this endorsement, although the body of the form was then, as it still is, blank. The Order Sheet under date 13-11-1953, however shows that the accused was examined under Section 342, Cr. P. C.

This is an example of gross carelessness on the part of a learned Magistrate. The omission to record the appellant's examination under Section 342, Cr. P. C., is thus responsible for utter waste of time and public money. In view of the provisions of Sub-section (2A) of Section 362, Cr. P. C., which require a learned Magistrate to make a memorandum of the substance of the examination of an accused, we are bound, in the absence of any such memorandum to set aside the conviction of the appellant and the sentence imposed upon him.

In all the facts and circumstances of this case, we think, however, that the appellant should be retried by a learned Magistrate other than the trying Magistrate and we order accordingly.

4. During the pendency of the trial, the appellant will remain on the same bail as before.

Renupada Mukherjee, J.

5. I agree.

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