

Doongarshi Das Vs. the State

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Court : Kolkata

Decided On : Feb-06-1964

Reported in : AIR1965Cal215,1965CriLJ426

Judge : Amaresh Roy, J.

Acts : [Motor Vehicles Act, 1939](#) - Section 130(1); ;Motor Vehicles (Amendment) Act, 1955; ;Code of Criminal Procedure (CrPC) - Section 242

Appeal No. : Criminal Revn. No. 1137 of 1962

Appellant : Doongarshi Das

Respondent : The State

Advocate for Def. : Bimal Chandra Chatterjee, Adv.

Advocate for Pet/Ap. : Ambica Charan Bhattacharya and ;Kashi Kant Moitra, Adv.

Judgement :

ORDER

Amaresh Roy, J.

1. This Rule is directed against the summons that has been issued by the learned Magistrate in a case involving an alleged offence under Section 123 of the Motor

Vehicles Act and also certain other orders in a proceeding which has remained pending in that Court. Upon a 'prosecution report the learned Magistrate took cognizance of an alleged offence under Section 123 of the Motor Vehicles Act against two persons. The summons that was issued by the learned Magistrate in the Form No. 1 Schedule V of the Code of Criminal Procedure read in the material part, 'You are hereby required to appear in person by pleader'. Both the alternatives, that is appearance in person or, appearance by pleader, were allowed to remain without any one of them being scored out, and that summons was issued under the' signature of the learned Magistrate.

2. On the very next date, that is on 9th May, 1960 when the accused were absent, the learned Magistrate directed issue of warrants of arrest against both the accused. It does not appear whether before that date the Summons had been Served on the accused persons or, whether it had been returned unserved. That warrant of arrest did not succeed in apprehension of the accused persons when the learned Magistrate issued fresh warrant of arrest by his order dated 28th September, 1961. When the execution report of that warrant was not received, by his order dated 25th April, 1962 the learned Magistrate stopped the proceeding under Section 219 Cr.P.C. Several months thereafter, on 38th August, 1962 an application was filed before the learned Magistrate on behalf of both, the accused persons purporting to plead guilty under Section 130 of the Motor Vehicles Act. But the learned Magistrate did not accept that plea of guilt for the reason that the accused persons had not appeared on the dates fixed for appearance earlier and by that order made on 28th August, 1962 the learned Magistrate directed, 'Let the accused appear in person by pleaded on any date for answering charges in accordance with the principle laid down in summons procedure cases namely, examination under Section 242 Cr. P. C.' By a later order also passed on the same date the learned Magistrate directed warrantsof arrest to be reissued against both the accused persons and fixed 15.10.62 for return after execution. On 13.9.62 the accused No. 2 Doongarshi Das alias Doongarshi Das Modi surrendered before the learned Magistrate by a petition. He was released on bail and process against him was directed to be recalled. At that stage of the proceeding the accused No. 2 Doongarshi Das alias Doongarshi Das Modi moved this Court in revision and the present Rule issued.

3. The main contention raised on behalf of the petitioner in this case is that the case being one for an alleged offence under Section 123 of the [Motor Vehicles Act, 1939](#), Section 130 of that Act will apply to the case because, the offence alleged is not one within Part A of Schedule 5 of that Act. Therefore, it is contended that it was incumbent) upon the learned Magistrate to issue summons as prescribed by Section 130 of the Motor Vehicles Act and not in the form No. 1 of Schedule V of the Code of Criminal Procedure. That not having been, done, the whole proceeding has suffered illegality and that to the grave prejudice to the accused persons because, the purpose of Section 130 of the Motor Vehicles Act is to lighten the hazard of the, accused persons who may be summoned for alleged offences to which that section will apply.

4. Appearing to oppose this Rule on behalf the State, the learned Advocate Mr. Bimal Chandra Chatterjee has not denied that the offence alleged in the present case is not an offence within Part A of Schedule 5 of the Motor Vehicles Act and, therefore, Section 130 of the Motor Vehicles Act will apply to this case. Mr. Chatterjee, however, raised an argument that the two Clauses (a) and (b) of Section 130 (1) are alternatives to each other and summons issued by including one of those alternatives would be sufficient compliance with the provision of that section. Mr. Chatterjee's argument is that otherwise the conjunction 'or' at the end of Clause (a) would really be bearing meaning of 'and'. Mr. Chatterjee, therefore, contended that the summons, as issued in the present case, had included Clause (a) of Section 130 (1) of the Motor Vehicles Act and was, therefore, quite in order. This argument of Mr. Chatterjee cannot be accepted as good or possible interpretation of Section 130 of the Motor Vehicles Act. The true construction of Sub-section (1) of that section is that the Parliament has enjoined that a summons issued in a case, to which the section applies, must include both the alternatives in Clauses (a) and (b). The choice thereby given is not a choice of the court issuing a summons but is a choice of the accused to whom the summons has been issued. The reason for that provision in this Act, which has been made mandatory by the Parliament by the amending Act of 1956 by substituting the word 'may' in the substantive part of Sub-section (1) to the word 'shall', is that in cases where that section is applicable, law does not compel an accused person to either appear in person or even by pleader and gives such accused a choice to plead guilty by

registered post and sending by money order order the money mentioned as the amount of fine on the summons itself and thereby bring an end to his troubles and the proceeding by way of prosecution.

5. That being the true meaning of Section 130 (1) of the Motor Vehicles Act, there is no doubt that the learned Magistrate has committed a grave error by not issuing summons in that form. On examining the records, however, I find that) not only the accused has been subjected to the grave prejudice by that omission of the learned Magistrate, but also warrant of arrest had been issued without even noting in the order sheet whether the summons that had been issued by the learned Magistrate had in fact been served on the accused. The learned Magistrate has gone a step further when on 28th August, 1962 this petitioner along with the other accused person had appeared before the learned Magistrate by a pleader and made an application for pleading guilty under Section 130 of the. Motor Vehicles Act, seeking to correct the error of the learned Magistrate himself, The learned Magistrate persisted in his error and refused to accept that plea of guilt on a reason which is not at all a reason for refusing to accept that plea. More astonishing is the later order passed on 28th August, 1962 by which, even when the accused had appeared by application filed through a pleader, the learned Magistrate issued fresh warrant of arrest. The processes of law are for enforcing the attendance of the accused persons according to law. In the present case that law is contained in Section 130 of the Motor Vehicles Act. Yet the learned Magistrate has employed the processes of law as weapon of tyranny in a manner which is directly opposed to the very basic reason of Section 130 of the Act enacted by the Parliament. Prejudice to the accused could not have been more serious.

6. I have already mentioned that even in; the form in which the learned Magistrate had issued the summons, the two alternatives, that is appearance in person or by pleader, had been maintained. Therefore, when this petitioner appeared' before the learned Magistrate through a pleader for making that application of 28th August, 1962 obeying the Magistrate's own summons, though erroneous in law, yet the learned Magistrate was determined to make the harassment of the accused harder by the orders he had chosen to make. He has referred to the

procedure of Section 242 Cr. P. C. But a dent in that procedure has been made by the Parliament for enacting the present Section 130 of the Motor Vehicles. Act which is the special law applicable to this type of cases. When the special law is applicable the learned Magistrate cannot ignore that special provision and insist on the general law in the Code of Criminal Procedure.

7. For the reasons stated above, this Rule must be made absolute. All the orders of the learned Magistrate beginning from the order dated 9th, May 1960 up to the order dated 13th September, 1962, both inclusive, are set aside. The only order that remains is the order of taking cognizance and directing issue of summons. I direct that fresh summons in compliance with Section 130 of the Motor Vehicles Act shall be issued against both the accused persons and the case will be proceeded with and concluded according to law,

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