

The State Vs. Raghu Ram and anr.

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Court : Kolkata

Decided On : Jan-31-1964

Reported in : AIR1964Cal445,1964CriLJ407

Judge : Amaresh Roy, J.

Acts : [Motor Vehicles Act, 1939](#) - Sections 112, 123 and 130; ;Code of Criminal Procedure (CrPC) - Sections 190, 190(1), 242 and 260

Appeal No. : Criminal Ref. Nos. 26 and 27 of 1963

Appellant : The State

Respondent : Raghu Ram and anr.

Advocate for Def. : Balai Chandra Roy, Adv.

Advocate for Pet/Ap. : Tarini Prasad Bagchi, Adv.

Disposition : Reference accepted

Judgement :

ORDER

Amaresh Roy, J.

1. These two References under Section 438 Criminal Procedure Code are by the learned Sessions Judge of Burdwan, both made by him on the same date in

respect of two orders of conviction and sentence passed by the same Magistrate of Assansol in two trials said to have been held in what has been described as 'Mobile Court' over which that learned Magistrate presided. The two cases have been heard together as they raise same questions of law.

2. It appears from the letters of reference and also from the uncontroverted facts stated in the petitions made by the convicted persons before the learned Sessions Judge that on 7th February, 1963, a Magistrate Sri M. Chanda who was said to be the Sub-divisional Magistrate of Asansol was holding a Mobile Court on the road side. There is nothing however either in the orders or whole of the records to show that the said learned Magistrate was the sub-divisional Magistrate on either of the two dates of the two trials.

3. In Reference No. 26 it appears that on 22nd January, 1963, the two accused persons in that case were the driver Raghuram and Conductor Bhaskar Nayak of a passenger-motor-bus plying on the route. That bus bears the registration number. W. G. H. 3615 and is licenced to carry 30 passengers; but in violation of that condition, 36 passengers were being carried in the said bus at about 9.30 Hrs. on 22nd January, 1963. A Sub-Inspector of the District Enforcement Branch arrested both the accused persons and brought them before the said Magistrate. A report for prosecution in P. R. B. form No. 41, signed by Officer-in-charge of Jamuria P. S. in the District of Burdwan was made to the Magistrate alleging offence under Section 112 Motor Vehicles Act, against both the accused persons. That gave rise to Case No. M. V./ 50 of 1963, in the Court of Magistrate-in-charge of M. V. Cases, Asansol. The Magistrate recorded only one order in the order-sheet by which he took cognizance under Section 190 (1) (b) Criminal Procedure Code, directed issue of summons, recorded that both the accused appeared before him, substance of the accusation was explained to the accused persons, they pleaded guilty, and they were convicted under Section 112 M. V. Act and sentenced each of them to pay a fine of Rs. 25/- in default to S. I. for ten days, and also direction to note the conviction (in the licence presumably) and to inform L. A. (Licensing Authority?). It may be mentioned that the whole order is in rubber-stamp impression in which only the appearance of the accused persons, section under which they were convicted and quantum of sentence have been entered by

the hand of the learned Magistrate, who of course, signed it by his own hand. In the order sheet in the right hand column it has also been noted that the fine was paid. The Magistrate is mentioned there as only 'Magistrate, Asansol' and does not mention at all whether he was the Sub-divisional Magistrate or a Magistrate empowered either under Section 260 or 190 Criminal Procedure Code.

4. In the Reference No. 27, it appears that on 7th February, 1963, the same Driver Raghuram and another conductor Mam Lal Barman were plying the same bus W. G. II. 3615 with 50 passengers, instead of licenced capacity of 30 persons and was going towards Barakar at 8.15 Hrs. Sub-Inspector S. K. Gupta of D. E. B. arrested and produced them before the Magistrate who appears to have held a Mobile Court on that date also on the road side. A report for prosecution in the same form No. 41 signed by Officer-in-charge of Kult F. S. was made to the Magistrate who made exactly similar order by filling up a rubber-stamp impression in all its details, except that in this case the sentence against each of the accused was Rs. 30/-in default S. I. for fifteen days in Case No. M. V./ 117 of 1963, in the Court of Magistrate in charge M. V. Cases, Asansol.

5. The Sessions Judge was moved on 21-2-1963, in both the cases, one being numbered Case No. 20 of 1963 and the other as Case No. 19 of 1963 in the Court of Sessions Judge Burdwan. In both the cases the learned Sessions Judge has made References recommending that the orders of conviction and sentences passed in each of them should be set aside for similar illegalities in both of them in that the pleas of the accused persons have not been recorded in the manner enjoined by Section 243 Criminal Procedure Code. Importance of that in both the cases appear from the fact that in both of them, each one of the accused persons have denied that he pleaded guilty and in his explanation submitted to the learned Sessions Judge in both the cases the learned Magistrate only said that he had nothing to add to what was recorded in the order. The learned Sessions Judge in those circumstances accepted the facts stated by the petitioners in the applications before him, and held that non-compliance with Section 243 Criminal Procedure Code was an illegality which vitiates, the trial on the authority of a decision of this Court reported in : AIR1933 Cal117 Ganesh Chandra Khan v. Corporation of Calcutta and also another decision reported in : AIR1951 All410 ,

Sukhdeo Singh v. State.

6. In both the References in this Court Mr. Balai Roy has appeared to support it, not only on the ground mentioned by the learned Sessions Judge, but also on several other grounds of some importance which flows from the manner of trial by the Mobile Court. Mr. Tarini Prasad Bagchi has appeared for the State to oppose the two References. As the points taken by Mr. Roy were new points of law taken in this Court, of which the learned Advocate for the State may not have been appraised though they arose on materials on the record of the cases, after Mr. Roy had opened his arguments in one of these cases by stating his points, I gave sufficient time and opportunity to Mr. Bagchi to get proper instructions and informations to be prepared to meet those points. But at the resumed hearing also the counsel for the State was neither sufficiently informed on material facts, nor has he made any attempt to answer the reason mentioned by the learned Sessions Judge or other points raised on behalf of accused persons with the result that he only made attempts at some arguments which did not hold even moment's scrutiny.

7. Besides the illegality by non-compliance, with the provisions of Section 243 Criminal Procedure Code mentioned by the learned Judge, Mr. Balai Roy has contended that by the manner of holding a Mobile Court on the road side way, from the usual Court premises there have occasioned many irregularities, some of which are patent illegalities and some others improprieties of grave import that in their very nature do cause and has in fact caused in this case serious prejudice to the accused persons, rendering thereby the whole trial a travesty of justice. The illegalities complained of are:

(1) Though the offence alleged was a non-cognizable offence triable by summons procedure the accused persons were arrested and detained illegally.

(2) Though summonses were directed to be issued by the learned Magistrate as recorded in the Order, no summons in any legal form was either drawn up or served in the cases.

(3) The compelling provisions of Section 130-M V. Act have not been complied at all.

(4) Right to be defended by a lawyer of his choice guaranteed by Article 22 of the Constitution of India has been denied to each of the accused in each case.

(5) Although Section 112 M. V. Act prescribes-only a sentence of fine the Magistrate has awarded sentence of imprisonment in default of payment of such fines.

In cataloguing his points which he says are irregularities amounting to grave impropriety and causing prejudice to accused Mr. Roy has contended that

(6) Ordinary rule is that Courts of Magistrate shall sit in the usual Court houses and he relies on the instruction of this High Court in Rule 63 of Criminal Rules and Orders that Judicial work shall ordinarily be done in public Court houses. According to him not to do so entails grave prejudice because

(a) Accused persons cannot and did not have any legal advice nor could they be defended by any lawyer on the road side.

(b) Accused is put to great disability in exercise of his legal right to defend then and there, because the large number of passengers were detained in the bus on the road side.

(c) Though illegally arrested, and produced before the Magistrate, there was no opportunity to obtain bail on the road side.

(7) The prosecution report alleged a vague offence under Section 112 M. V. Act without disclosing which provision of the M. V. Act or Rule made thereunder was violated, nor did it mention any particular act of the individual accused. The Magistrate also has convicted both the driver and conductor in each of the cases without any material or any finding how the individual accused was concerned in the offence alleged. The learned Magistrate proceeded on an imagined plea of guilt though none of the accused persons had pleaded guilty.

8-9. Each one of these contentions required careful considerations; but before I proceed to do so I may notice the answers to those sought to be given by Mr. Bagchi on behalf of the State. At the outset Mr. Bagchi pointed out that an offence under Section 112 M. V. Act is neither a cognizable case, nor is it a 'warrant case'; but it was a case triable by summons procedure under Ch. XX and may also be tried summarily under Section 260 of the Code. Section 243 Criminal Procedure Code would therefore be applicable to these cases. Mr. Bagchi himself contended that the offence by driver and conductor for driving a motor vehicle with passengers in excess of the number mentioned in the licence would properly be an offence under Section 123 of M. V. Act and not Section 112. Mr. Bagchi made no attempt whatsoever to answer the reason mentioned by the learned Sessions Judge in his letter of reference for setting aside the order of conviction and sentence. Reference therefore merits to be accepted on that ground alone.

10. Regarding legality of arrest, Mr. Bagchi first relied on Section 128 (2) M. V. Act and contended that the present cases must have been governed by the conditions mentioned therein in Clause (a) and Clause (b). He was however candid to admit that there is nothing in the records to provide the basis for his thinking so, and he mentioned that his imagination is the only basis. In so imagining Mr. Bagchi has completely missed that the prosecution reports clearly show that there was no refusal to give the names and addresses; so Clause (a) would not apply at all. There is no mention in the prosecution reports about any reason which is relevant for Clause (b), even if it be assumed that the police officers who effected the arrests were in uniform as required by the opening words of Sub-section (2) of Section 128; Clause (b) would not apply also.

11. Even if Section 128 (2) M. V. Act could apply, it would be bounden duty of the police officers making these arrests of the drivers and conductors in the circumstances of the two cases to take steps for disposal of the vehicles by despatching them under Sub-section (3) of that Section, so as not to keep the passengers in the vehicles detained on the road for any length of time. Nothing to that end appears to have been done. The police officers have not only been guilty of grossly illegal arrests of the drivers and conductors who are accused persons in the two cases, but also that highhanded illegality had caused wrongful detention

and restraint of the large number of passengers on those two occasions on the road side, for how long records do not disclose.

12. It is true that there is nothing in the Code that prevents a Magistrate from holding Court anywhere within his territorial jurisdiction, so long as it is an open Court, as was held by a Division Bench of this Court in the case of *Prasanta Kumar Mukherjee v. The State*, reported in : AIR1952 Cal91 which was a case where a trial was held in jail; yet that decision laid down -that ordinary rule is that trials are to be held in open Courts, Sanctity of accustomed and fixed Court houses was expressed in another judgment of Division Bench reported in *Kumar Purnendu Nath Tagore v. Kalipada Dutt*, : AIR1956 Cal513 of that report as ,

'I do not think it can be gainsaid that the atmosphere of the Court also plays an important role in the proper administration of justice. Hallowed by the administration of justice for long years gone by and by the promise of administration of justice for years to come, public Court houses may well be said to be temples of justice where all who seek justice may enter and where none, being called on to help in justice be-ing administered, should refuse to come. That justice should be properly administered is the interest of all and not merely of the parties in a particular case. It is for this reason that the highest in the land together with the lowest have entered the portals of Courts of law without hesitation and with the prayerful humility.'

That was a case in which a lady had asked to be exempted from deposing in public Court house on the ground of her high position in society and merely because of a feeling of embarrassment.

13. Real point in my view is not the place where the Court was sitting, but how the trial was held. In a criminal trial the supervening consideration is to hold a fair trial by adhering to the procedure laid down, not only in the Code of Criminal Procedure, which is the general law to achieve a fair trial, but also the provisions in any special Act that may be applicable to the case. If the correct procedure has been adhered to and even when there has been some minor deviation therefrom, but no prejudice has been caused, then the particular place where the Court held its sitting is of no consequence. If however, at any place where the Court may be

sitting, those procedures have been violated and prejudice to the accused has been caused, the trial need have to be struck down. When such violations of law arise as natural consequence of the place at which and the manner in which Mobile Court is held, then such Mobile Court and trials held thereby must be held to have been illegal and improper.

14. One consequence of the manner in which the proceedings in the Mobile Court was conducted is that the accused persons were not served with any summons though the Court ordered issue of it. Prosecution has pleaded that was so, because the accused persons were physically present before the Court. In a summons case, scheme of the Code is that at the first instance summons shall be issued and served on the accused; if he fails to obey the summons, then only a warrant of arrest will be issued and by execution thereof the accused shall be brought before the Court under arrest. Even when the accused person is present in Court without any process having been issued against him, there is necessity of service of summons, to give notice to the accused what charge he is being called upon to answer. That the Magistrate has to explain the substance of accusation to him by compliance of Section 242 Criminal Procedure Code is not a complete substitute for that notice, because the right to be defended connotes that upon such notice the accused should come prepared in his mind if he will defend or plead guilty. In usual Court houses he has the opportunity of legal advice to plead then and there. On the road side he has none. One importance of summons has arisen in this case because the prosecution report mentioned Section 112 M. V. Act as the offence committed under. That is the offence the Magistrate took cognizance of, and explained to the accused to which they were supposed to have pleaded guilty, and the Magistrate has convicted them under. But Mr. Bagchi appearing for the State has pointed out that even on the allegations in the prosecution report proper section for the offence should have been Section 123 and not Section 112 M. V. Act. But the learned Advocate for the State tried to bring these cases under Section 112 by his argument that Section 112 is the omnibus section for punishing violation of any provision of the Act or rule and he could only point to violation of Section 42 of that Act, But that argument is self-effacing because Section 42 M. V. Act only speaks of violation of a condition of the permit by the owner of the vehicle, not the driver. Specific provision regarding driver

appears in Rule 91 (viii). Though violation of that Rule may come under Section 112, that section itself provides for its application 'if no other penalty is provided for the offence.' Specific section that makes such violation by driver punishable by bigger penalty than Section 112 is the other Section 123 M. V. Act In view thereof on the facts of the present case the accused persons had if at all, committed offence under Section 123 by violating Rule 91 (viii). None of them had committed any offence under Section 112 as none of them is even alleged to be the owner of the vehicle and Section 123 provides other penalty for drivers. By omission to issue and serve a summons that error of the Police in the prosecution report has been allowed to permit all through the proceedings right up to order of conviction. It is a consequence that naturally flows from the manner of holding a Mobile Court on the road side without any assistance from trained lawyers either for the prosecution or for the defence. Convenience and speed for securing conviction has been mentioned by Mr. Bagchi as justification for having a trial by Mobile Court on the road side. That may be good for Police and prosecution; but for the accused justice is better; and for the Court fair trial by adherence to law and correct procedure is the best that only is good enough.

15. Another special provision is in Section 130 M. V. Act whole of which is quoted below:-

'(1) A Court taking cognizance of an offence under this Act shall, unless the offence is an offence specified in Part A of the Fifth Schedule, state upon the summons to be served on the accused person that he -

(a) may appear by pleader and not in person, or

(b) may by a specified date prior to the hearing of the charge plead guilty to the charge by registered letter and remit to the Court such sum not exceeding twenty-five rupees as the Court may specify.

(2) Where the offence dealt with in accordance with Sub-section (1) is an offence specified in Part B of the Fifth Schedule, the accused person shall, if he pleads guilty to the charge, forward his licence to the Court with the letter containing his plea in order that the conviction may be endorsed on the licence.

(3) Where an accused person pleads guilty and remits the sum specified and has complied with the provisions of Sub-section (2), no further proceedings in respect of the offence shall be taken against him, nor shall he be liable to be disqualified for holding or obtaining a licence by reason of his having pleaded guilty.'

This is the language of the section after it was amended by the Parliament of India by Act 100 of 1956. Particular attention must be devoted to the word 'shall' which has been substituted for the word 'may' by Section 96 of the Amending Act. That section embodies the insistence of the Parliament that passed the Amending Act that particular offence under particular Sections of M. V. Act shall be dealt with in that particular manner. In no Court, not even in a Mobile Court, and not even in summary trials that provision can be skipped, as has been done in these two cases records of which are before me,

16. Mr. Bagchi at one stage of his argument tried to take the two cases out of Section, 130 by pleading that these two cases under Section 112, M. V. Act would come within Part B of Schedule V of the Act, being within item 14 of that Part of the Schedule. Mr. Bagchi is clearly wrong in that argument. His fallacy starts from his forgetfulness of his own pointer that the two cases are not offences under Section 112, M. V. Act, but should properly be under Section 123 of the Act. To come within item (14) of Part B of Schedule V, it has to be violation of Section 42. Mr. Bagchi himself has said that it concerns the owner and not the driver. The language employed in item (14) may have been responsible for Mr. Bagchi's fallacy, because it says 'driving a vehicle' though it mentions Section 42 within parenthesis. That language is inept to some extent; it will include only the owner who is driving the vehicle and not the driver who is not the owner.

17. I hold therefore that by omitting to comply with the requirement of Section 130, M, V. Act an illegality has occurred. Indeed the manner of conducting the proceedings before the Mobile Court by taking the accused persons under arrest and not issuing and serving any summons, what has been done is directly what Section 130 in effect countermands.

18. Next argument of Mr. Balai Roy based on Article 22 of the Constitution regarding accused's right to be defended by a lawyer of his choice, has to be

examined within the scope of that fundamental right as explained by the Supreme Court in the case of *The State of Punjab v. Ajaib Singh*, reported in : 1953 CriLJ180 . By that decision Supreme Court has laid down that:

'There can be no doubt that the right to consult a legal practitioner of his choice is to enable the arrested person to be advised about the legality or sufficiency of the grounds for his arrest. The right of the arrested person to be defended by a legal practitioner of his choice postulates that there is an accusation against him against which he has to be defended. The language of Article 22(1) and (2) indicates that the fundamental right conferred by it gives protection against such arrests as are effected otherwise than under a warrant issued by a Court on the allegation or accusation that the arrested person has, or is suspected to have, committed or is about or likely to commit an act of a criminal or quasi-criminal nature or some activity prejudicial to the public or the State interest. In other words, there is indication in the language of Article 22(1) and (2) that it was designed to give protection against the act of the executive or other non-judicial authority.'

19. There was therefore no duty, either of the Court or of the State as prosecutor to make a lawyer available to the accused persons at the trial by the Magistrate before whom they were produced. What was necessary was that if the accused person wanted to defend himself at the trial, the right to be defended by a lawyer should not be denied to him. Mr. Roy contends that in the present case there has been violation even of that right of the accused persons guaranteed by Article 22 of Constitution. For substantiating that contention of his, the learned Advocate has pointed out that although the Magistrate has recorded that the accused persons had pleaded guilty, that has been contested by the accused persons in the application preferred before the Sessions Judge; in making a return to the notice issued by the learned Sessions Judge, the learned Magistrate has not said in his explanation that the assertion of the accused persons that they did not plead guilty is not true and he has contented himself by saying that he had nothing to add to what he had said in the order. In that state of records the learned Sessions Judge has found as fact that the accused person did not plead guilty and the record is erroneous and omission to comply with Section 243 Cr. P. C. is a fatal illegality. On the basis of that finding Mr. Roy has pressed this point in two parts.

20. First Mr. Roy argues that once it is found that the accused persons did not plead guilty, then it can only mean that they wanted to be defended; but in the manner the trial was held by the Mobile Court on the road side, away from the usual Court house, there was no opportunity or facility to be defended by any lawyer and that right has been denied. Next he says that despite the fact that there was no plea of guilt, the learned Magistrate recorded an order of conviction without holding a trial on evidence. He has thereby denied the accused his right to be defended by lawyer in violation of the fundamental right guaranteed by Article 22 of the Constitution. Mr. Roy has relied on the Division Bench of this Court in the case of *Ram Dayal Tewari v. The Corporation of Calcutta*, : AIR1953 Cal76 for drawing support of his argument from certain observations made in the judgment of Chakravorty, J., (as his Lordship then was), and also for distinguishing the facts of that case from those of present case by emphasising that in that case the record itself showed that the accused in that case was given option to have the case tried in usual Court house if he wanted to defend himself; but he declined to exercise the option and pleaded guilty.

21. Mr. Roy appears to be right when he says that this defect, like others he has mentioned, also flowed from the manner of holding the trial by Mobile Court on road side. But elaboration of this point in two parts of Mr. Roy's argument, though erudite, is really academic in the present case, because, once the finding is obtained that accused did not in fact plead guilty, and yet conviction has been made without trial on evidence, then by the procedural law writ large in the Code of Criminal Procedure there has not been a trial at all, and the accused has been convicted without an opportunity of any defence at all. There is no necessity for him to reach up to the fundamental law in the Constitution that his right to be defended by lawyer has been denied.

22. Essentially therefore the question arises whether the finding of the learned Sessions Judge should be accepted. Mr. Bagchi for the State has sought to contest that finding by pointing to the fact that accused person in each of these cases had paid down the fines imposed then and there. This according to Mr. Bagchi shows that they must have pleaded guilty as noted by the learned Magistrate in the order-sheet. Indeed, there learned Advocate for the State again

seems to forget what he has himself pointed out earlier that offence could only be one under Section 123 of M. V. Act and not under Section 112 of that Act. What then did the accused persons plead guilty to -- an offence different from what the facts alleged against them will constitute? The learned Advocate for the State in advancing that argument is oblivious also of the undisputed fact that the accused persons were brought under arrest, no facility to furnish bail was available to them and on the top of all that the learned Magistrate had ordered imprisonment in default of payment of fine. Harder duress is difficult to imagine and by such duress they were compelled to deposit that money, to escape detention in jail by leaving the bus with the large number of passengers in it midway on the road to their destinations. That deposit of money cannot be taken as a reason for thinking that it was voluntarily made as a consequence of their own plea of guilt.

23. That brings us to the last of the illegalities complained of by Mr. Roy for the accused persons against the sentence of imprisonment in de-fault of payment of fine. He relies on Section 112 M. V. Act which provides for sentence of fine only and also contends that even if it were a conviction under Section 123 of that Act, by first part of that section which deals with first conviction, the accused persons in these cases could be sentenced to pay fines only and not to any term of imprisonment either substantive or alternative in default of payment of fines. To show the distinction regarding punishments made by M. V. Act itself he refers to later parts of Section 123 and also Sections 116, 117, 124, 125 and 126 of that Act as illustrations.

24. To this argument of Mr. Roy, Section 64 of Indian Penal Code seems to provide a complete answer because that section says;

'In every case of an offence punishable with imprisonment as well as fine, in which the offender is sentenced to a fine, whether with or without imprisonment, and in every case of an offence punishable with imprisonment or fine, or with fine only, it shall be competent to the Court which sentences such offender to direct by the sentence that, in default of payment of the fine, the offender shall suffer imprisonment for a certain term, which imprisonment shall be in excess of any other imprisonment to which he may have been sentenced or to which he may be

liable under a commutation of a sentence.'

But Mr. Roy has relied on the Division Bench decision of this Court reported in : AIR1953 Cal76 already referred to, for contending that Section 64 Indian Penal Code applies only to offences under that Code and not to offences under Special Acts like M. V. Act. No doubt that decision is binding on me sitting singly and Mr. Hoy made also a point why I should follow it, by referring to a reason that appears from that report itself. It is not necessary to go into that question in this case and I need only point out that correctness of that decision has been doubted by Chunder, J., sitting singly in the case of Sukdeo Singh v. Corporation of Calcutta, : AIR1953 Cal41 by referring to Section 40 Indian Penal Code that defines 'offences' and mentions Section 64 in its second paragraph. But the learned Judge Chunder, J., did not take into consideration Section 53 which is the first section in Chapter III Indian Penal Code dealing with 'punishments'. True effect of Section 64 Indian Penal Code and the question whether that section is governed by Section 40 or Section 53 Indian Penal Code may have to be reconsidered hereafter in an appropriate case. I am not expressing any opinion either way on that point because, for the reasons already discussed, the orders of conviction must be set aside, and question of sentence does not therefore arise.

25. In the result, I have come to the conclusion that in these two cases many illegalities and irregularities causing grave prejudices to the accused persons sufficient to vitiate the trials and the orders of convictions and sentences were allowed to occur by violating clear provisions of Criminal Procedure Code and also of M. V. Act which I have discussed in detail above.

26. It is also patent from the matters appearing on the record that all those illegalities and irregularities flowed from the manner of holding Mobile Court on the road side away from the facilities available and serene and calm atmosphere that prevail in usual Court house.

27. At the close of the hearing the learned Advocate in answer to my question has informed me that he cannot lay his hand on any law or notification by any appropriate authority regarding Mobile Court except that this particular Sub-Deputy Magistrate Sri M. Chanda (Mrinmoy Chanda) was vested without powers of a

Magistrate of the first class by notification No. 194 G. A./2P-3/62 dated 15th January, 1962, published in the Calcutta Gazette dated January 25, 1962 and by an order dated 13th September, 1962 of Sub-divisional Magistrate of Asansol (Sri A. K. Chatterjee) he was empowered by distribution of work with effect from 14th September, 1962 to try Motor Vehicles Act cases. Mr. Bagchi could not produce anything to show that this Magistrate has been empowered under Section 260 Criminal Procedure Code to hold summary trials; nor that he was the Sub-divisional Magistrate at the relevant time.

28. That such illegalities by the Police and the Magistrates are near possibilities when a trial is held by a Mobile Court on the road side and have in fact occurred in these two cases are illustrated by the records before me. That underlines the instruction by Rule 63 in Chapter 4 of Part IB of Criminal Rules and Orders framed and issued by this Court. That Rule 63 says

'Judicial work shall ordinarily be done in public Court houses and not in the private Chamber of residence of the judicial officers.'

29. A Division Bench of this Court (Das Gupta and P. N. Mookerjee, JJ.) said in the judgment reported in : AIR1953 Cal41 :

'The ordinary rule is that the trials are to be held in open Court. While there is nothing in law to prevent a Magistrate from holding open Court inside a jail wide discretion being given to the Magistrate by Section 352 of the Criminal Procedure Code, the very nature of a jail building and the restrictions which are necessarily imposed on any one visiting jail, would make it ordinarily impossible for a Magistrate to hold open Court in jail. There may be circumstances in which for reasons of security for the accused or for the witnesses or for the Magistrate himself or for other valid reason the Magistrate may think it proper to hold Court inside a jail building or some other building and restrict the free access of the public. There is however nothing in the record of this case to show that there was any such reason which made the Magistrate decide in favour of holding the trial in a jail. All we can find on the record is that after the case was transferred to this Magistrate, he passed an order that the trial would be held in jail. There is nothing in the order-sheet nor anywhere else on the record from which we can find the

slightest indication as to what weighed with the Magistrate in ordering trial in the jail at Hoogly instead of the usual place for trial, viz., the Court building at Serampore. Mr. Dutt appearing for the State has informed us of the existence of a circular issued by the Secretary to the Government of West Bengal directing District Officers that all criminal cases in which detenus and political prisoners are involved should so far as possible be held inside the jails, and asking that Magistrates should be informed accordingly. Mr. Dutt could not show us any provision of law which authorised the Secretary to the Government to issue such instructions to Magistrate in the matter of holding trials. In our judgment the issue of such a circular is illegal and unwarranted interference with the administration of justice and has no validity in law. We can therefore take no notice of such a circular. We therefore set aside the order of conviction and sentence passed by the learned Magistrate and order that the case be retried in accordance with law after the accused has been given proper opportunity of cross-examining the witnesses. The trial should be resumed at the stage reached just after charge was framed. The Magistrate should hold the trial in open Court in the Court building at Serampore, unless, he in exercise of his judgment, uninfluenced by any circular of the Government, secret or otherwise, is of the opinion that the trial should be held elsewhere. His attention is drawn in this connection to the provisions of the Code of Criminal Procedure as contained in Section 352.'

30. The reasons underlying that statement of law fully apply to trials by Mobile Courts on road side and in the cases before me no notification or circular secret or otherwise was produced. Even if there be any such circular or instruction for holding Mobile Court, it would, in my view, be equally illegal and unwarranted interference with administration of justice. In the case reported in : AIR1953 Cal76 there was a notification authorised by Section 531 of Calcutta Municipal Act and it is therefore no authority for holding Mobile Court in M. V. Act cases and for the matter of that, in any other case not covered by Calcutta Municipal Act.

31. Another matter appearing from the Magistrate's record needs attention. The whole order recorded in each of these two cases has been by a rubber-stamp impression in which alterations and filling up of blank space have been carried out by pen and ink. This is not the first time that I have encountered orders of that

character in records of Magistrates and this practice appears to be rapidly growing in the Courts of Magistrates and are not limited to records of Mobile Courts only. In the Rules framed by this Court under Article 227 of the Constitution published in Part III of Criminal Rules and Orders Chapter 12 contains Rule 263 in these terms:

'Orders requiring the exercise of judicial discretion and the final order be recorded by the Magistrate in his own hand or typed by him; others may be recorded under his direction by the Bench Clerk.'

32. This Rule has the force of law and Constitutional authority. An order that requires exercise of judicial discretion and a final order by Magistrate recorded by rubber-stamp impression like the orders in these two cases is gross violation of that Rule. If any Magistrate is not aware of the Rule or even knowing it he consciously violated it, both are equally reprehensible.

33. The two References are accepted for the reason mentioned by the learned Sessions Judge and also for the reasons discussed above. The orders of conviction and sentence passed are set aside and the accused persons are acquitted. Fines that have been paid be refunded.

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