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Court : Himachal Pradesh

Decided On : Apr-10-1965

Reported in : AIR1965HP60,1965CriLJ763

Judge : Om Parkash, J.C.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 173, 173(4) and 537

Appeal No. : Criminal Reference Nos. 16 and 17 of 1964

Appellant : Satya Pal

Respondent : State

Advocate for Def. : K.C. Pandit, Govt. Adv.

Advocate for Pet/Ap. : Ramji Das, Adv.

Disposition : References rejected

Judgement :
ORDER

Om Parkash, J.C.

1. This order will dispose of Criminal References Nos. 16 and 17 of 1964, made by the learned Sessions Judge, Mahasu, Sirmur, Bilaspur and Kinnaur Sessions Division. The same point of law is involved in both the References.

2. The : petitioner was charge-sheeted, under, Section 409, I. P.C., in two cases, by the Special Magistrate, Kasumpti, on the basis of two challans, filed by the Special Police Establishment, Ambala. It appears that neither the documents, referred to in Section 173, Cr P. C. nor their copies, were submitted, along with the challans, and that the copies were produced at the time of framing of charges and were taken back, by the prosecution, after the charges had been framed.

3. The petitioner went up in revision to the learned Sessions Judge against the framing of charges. The main ground, taken up, in revision, was that the material, on which the charges were framed, by the Special Magistrate, did not justify the framing of charges and that the petitioner should have been discharged. The learned Sessions Judge did not hear the revision-petitions on merits. He, suo moto, raised the point that as the documents, on the basis of which charges were framed, were not filed with the challans, and when produced were taken back by the prosecution, instead of being kept with the Judicial file of the Special Magistrate, the proceedings before the Special Magistrate had been vitiated aad were liable to be quashed. The prosecution offered to produce the documents, referred to in Section 173, Cr. P. C., for the perusal of the learned Sessions Judge but he refused to take the documents on the ground that they were not produced before the Special Magistrate and did not form part of the Judicial file. The learned Sessions Judge has recommended that the proceedings, held by the Special Magistrate, be quashed and that both the cases be remanded to him for disposal in accordance with law, after the prosecution has been given an oppor-tunity to produce the documents, referred to in Section 173, Cr P. C.

4. It is not, in dispute, that the documents, referred to in Section 173, Cr. P. C. or their copies, were not submitted, alongwith the challans, and that the copies were produced at the time of framing of charges but were taken back after the charges had been framed. The question which arises for decision is whether the non-submission of the documents, referred to in Section 173, Cr. P. C., alongwith the challans, and their return, when produced at the time of framing of charges, constituted an illegality which vitiated the proceedings of the Special Magistrate or was an irregularity which is curable. It is to be observed that the Cr. P. C. does not use the term 'illegality'. It uses the word 'irregularities' ' only; some irregularities

vitiating the proceedings, (section 530, Cr. P. C.) and others not vitiating them, (section 529, Cr. P. C.). But, as was pointed, in Willie (William) Slaney v. State of Madhya Pradesh, (S) AIR 1956 S C 116, Judicial decisions have used the words 'illegality' and 'irregularity' and these words have acquired a technical significance.

5. The contention of the learned Government Advocate was that it was not incumbent on the prosecution to submit the documents, referred to in Section 173 Cr. P. C., along with the challans, and that it was sufficient, if they were produced at the time of framing of charges. The non-submission of the documents, along with the challans, was, therefore, according to the learned Government Advocate, neither an illegality nor an irregularity. This contention of the learned Government Advocate does not appear to be sound. The cases, against the petitioner, had been instituted on police reports. The cases were to be tried according to the procednre laid down in Section 251A. Sub-sections (2) and (3) of that Section read as follows :

'(2) If, upon consideration of all the documents referred to in Sec. 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge him.

(3) If, upon such documents being considered, such examination, if any, being made and the prosecution and the accused being given an opportunity of being heard, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try, and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.'

6. According to the provisions of the above subsections, the Magistrate is to consider i. e. weigh the merits of the documents, 'referred to in Section 173 Cr. P. C., and to hear arguments, before framing a charge or discharging an accused. The Magistrate can ponder over the documents and hear arguments if the documents are filed with the challan and not at the time of framing the charge only. In some case, the documents may be voluminous. It will not be possible for the

Magistrate to consider the documents and to form an opinion whether an accused should be discharged or charge-sheeted, if the documents are produced at the nick of time and not earlier with the challan. The necessary implication from the provisions of sub Sections (2) and (3), aforesaid, is that the documents, referred to in Section 173, Cr. P. C., should accompany the challan. Rule 25.55 of the Punjab Police Rules, which are applicable to Himachal Pradesh makes the position clear. This rule lays down that when a case is sent for trial, the fileof the case diaries shall be forwarded with the challan to the Magistrate. In view of the provisions of Sub-sections (2) and (3) of Section 251A, Cr. P. C. and Rule 25.55 of the Punjab Police Rules, it was incumbent on the prosecution to submit the documents, referred to in Section 173, Cr. P. C., along with the challans.

7. But the failure of the prosecution to do so did not constitute an illegality, vitiating the proceedings but was a mere irregularity. Their Lordships of the Privy Council observed, in Pulukuri Kottaya v. Emperor, AIR 1947 P C 87 that :

'If the trial is conducted substantially in the manner prescribed by the Code, but some irregularity occurs in the course of such conduct the irregularity can be cured under Section 537, and none the less so because the irregularity involves, as must nearly always be the case, a breach of one or more of the very comprehensive provisions of the Code.'

8. In the above case, there was breach of the provisions of Section 162, Cr. P. C. It was held, by their Lordships, that the breach was a mere irregularity which did not vitiate the trial. In the present case, the Special Magistrate followed the procedure prescribed in Sub-section (3) of Section 251A for framing charges. The documents referred to, in Section 173 Cr. P. C., were before him and were discussed. The non-production of the documents along with the challans was a mere irregularity. Another authority, which has a bearing, on the point, involved in the present cass, is Narayan Rao v. State of Andhra Pradesh (S) AIR 1957 S C 737. In that case, the failure of the prosecution to supply copies of the documents, referred to in Sub-section (4) of Section 173 Cr. P. C., to the accused, was held to be a mere irregularity and not an illegality. The omission to supply copies to an accused, as required by Sub-section (4) ot Section 173 CR. P. C., is, obviously,

much more serious than the omission to submit the documents along with the challan. The omission to file documents with the challans is to be regarded as an irregularity, curable under Section 537 Cr. P. C., unless the irregularity had occasioned a failure of justice.

In the instant case, the irregularity had not caused any prejudice to the petitioner. He had been supplied copies of all the relevant documents, as required by Sub-section (4) of Section 173 Cr. P. C. The documents or their copies were produced by the prosecution, and those were discussed at the time of framing of charges. It is significant to note that the petitioner did not complain, in his revision-petitions, that the proceedings, held by the Special Magistrate were void as the prosecution had not filed the documents with the challans. The point was raised suo motu by the learned Sessions Judge. In view of the above facts, it is to be held that the irregularity, committed by the prosecution, in not filing the documents with the challans, and by the Special Magistrate in not keeping the documents, on the record, when they were filed did not occasion any failure of justice and was curable under Section 537, Cr. P. C. The irregularity did not render the proceedings, held by the Special Magistrate, void. The learned Sessions Judge's view that the proceedings were rendered void and were liable to be quashed is incorrect. The learned Sessions Judge was in error in rejecting the offer of the prosecution to produce the documents before him and in refusing to hear the revision-petitions on merits. Both the References are to be rejected.

9. Before parting with the cases, it appears necessary to sound a note of caution. The prosecution should not consider, itself, at liberty to commit the irregularity of not filing the documents, referred toin Section 173 Cr. P. C,, with the challan, in the hope that the irregularity will be condoned under Section 537, Cr. P. C. The Cr. P. C., or any other law does not authorize the prosecution or any Court to commit irregularities. Section 537, Cr. P. C., only empowers a Court, on appeal or revision, to condone defects, which had crept into the trial, through inadvertence, and had not in any way prejudiced the accused. As stated earlier, it is incumbent on the prosecution to produce the documents or their copies with the challan, and it should invariably do so. The Magistrates should always insist that the documents, referred to in Section 173 Cr. P. C., or their copies, are filed with the

challan.

10. With the above observations, both the References are rejected. The revision-petitions are remanded to the learned Sessions Judge for disposal in accordance with law. The prosecution will produce the documents, referred to in Section 173 Cr. P. C., or their copies, relating to the two challans, before the learned Sessions Judge.

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