

Mohd. Ramzan (Katu) Bhat Vs. State

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Court : Jammu and Kashmir

Decided On : Feb-25-1981

Reported in : 1981CriLJ1212

Judge : G.M. Mir, J.

Appellant : Mohd. Ramzan (Katu) Bhat

Respondent : State

Judgement :

ORDER

G.M. Mir, J.

1. In this criminal revision petition, earlier today I passed the following order;-

This order will , apply to Criminal Revisions Nos. 4/81 to 8/81 and 10/81, 13/81 to 19/81.

I have heard the learned Counsel for the petitioner as well as the learned Addl. Advocate General at length.

For reasons which will be recorded I allow the revision petition and set aside the order of the first appellate Court as well as the trial Court i.e. C.J. M's Court Srinagar and also set aside the conviction and sentence recorded against the petitioner by the learned Magistrate which has been confirmed by the Addl.

Sessions Judge, Srinagar.

I direct that the cases under revision may be sent back to the learned trial Magistrate, who is directed to proceed with the case from the stage at which the petitioner accused allegedly confessed about the plea of guilty. The learned trial Magistrate or to whom he transfers that case for further trial, will ignore the plea of guilt in the trial and frame a fresh charge as permitted under law and proceed further with the case and give the prosecution and the accused opportunity to produce evidence, in case they want to do so. And after doing all this, the trial magistrate will dispose of the case in accordance with law. In view of this the charge-sheet framed against the petitioner as well as the order of conviction and sentence are quashed.

The petitioners-accused having been sentenced on 9-2-1981 are still in prison and have not been so far let out on bail. In view of the order which I have passed above, if the petitioners-accused furnish bail in the amount of Rs. 5,000/- and personal bonds in the like amount to the satisfaction of the Dy. Registrar, High Court, he will direct the concerned Jail Authorities to release the petitioners-accused immediately.

The learned, counsel for the petitioner-accused as well as the prosecution are directed to appear before the trial Magistrate for further instructions on 9th of March, 81.

At this stage learned Addl. Advocate General prayed for permission to leave to appeal to S-C. As I have not recorded the reasons so far in this case, this request will be considered at the time of recording reasons for the order passed today.

2-8. I now proceed to give reasons for this order.

9. Briefly stated, the petition is based on the fact that the learned C.J.M.: Srinagar convicted the petitioner under Section 3/7 Essential Commodities Act, hereinafter referred to as the 'Act' and sentenced him to 3 months rigorous imprisonment and a fine of Rs. 200/- on the basis of a report lodged by the prosecution that the petitioner had not prepared and exhibited price-list of articles he was selling as

was required under Section 3 of the Act. It has been alleged in the petition that the procedure adopted by the C.J.M. Srinagar in convicting and sentencing the petitioner was illegal and not warranted under law. The learned C.J.M. Srinagar in a mechanical manner recorded the so-called confession of the accused and on the basis of that convicted him as above. The petitioner filed an appeal against the order of conviction and sentence which was dismissed by the Addl. Sessions Judge, Srinagar. It was against the order of the trial Magistrate as well as against that of the learned Addl. Sessions Judge dismissing the appeal, that this revision petition has been filed.

10. On 23-2-1981, when the revision came up for admission, Shri K.N. Bhat, Addl. Advocate General vehemently argued that no revision in law would lie under the circumstances of the case. But after giving my thoughtful consideration to the whole matter, I was of the view that as in the revision petition, important questions of law had been raised that require adjudication at this level, I admitted the petition and have now heard the arguments of both the learned Counsel for the parties.

11. The first submission made by the learned Counsel for the petitioner was that the C.J.M. had to follow the procedure laid down under Section 252 Cri P.C. and had to proceed in accordance with that provision in deciding a case of this nature. But according to him the learned C.J.M. having followed the procedure as laid down under Section 251A Cr. P.C, the entire proceedings including the conviction and sentence that followed, stood vitiated. The argument raised has a reference to Section 11 of the Act, which reads as follows:-

Section 11

No Court shall take cognisance of any offence punishable under this Act except on a report in writing of the facts constituting such offence made by a person who is a public servant as defined in Section 21 of the Indian Penal Code (45 of 1860).

12. It was argued by the learned counsel for the petitioner that there was no such report in writing before the Magistrate as envisaged under the above sections and, accordingly the Magistrate was not within his powers to take cognisance of an offence under the Act and hold trial and sentence the petitioner. This

argument, however, was successfully met by the learned Addl. Advocate General, Mr. Bhat, by referring to the case reported in 1980 Cri LJ 227 (SC). This was a criminal appeal entitled *Satiya Narayan v. State of Bihar*. In that case almost similar objection had been raised and the Court had negated the same. Section 11 of the Act precludes the Court from taking cognisance of an offence punishable under the Act except upon a report in writing by a public servant as denned in Section 21 I.P.C. Before the Supreme Court in the said case, the question arose as to whether the police officer investigating a cognisable offence under the Act by submitting a report in writing under Section 173(2) Cr.P.C. could be said to have satisfied/discharged the requirements of Section 11 of the Act so as to enable the Court- to take cognisance of the offence so disclosed. The Supreme Court answered this question as follows (at p. 229):-

Undoubtedly the police officer submitting the report would be a public servant within the meaning of Section 21 I.P.C. and his report has to be in writing as required by Section 173(2), It must disclose an offence of which cognisance can be taken by a Magistrate, and apparently Section 11 would stand fully complied with.

13. The Supreme Court also held that a police officer who was investigating under Section 156(1) Cr. P.C, a cognisable offence it was obligatory upon him to submit a report under Section 173(2) Cr. P. Code. Such a report according to the Supreme Court would be a police report for the purposes of Section 190(1)(b) and if the Magistrata takes cognisance of an offence under the Act upon such a police report, Section 11 of the Act would be complied with in its entirety.

14. It was obvious, therefore, that the learned C.J.M. while taking cognisance of an offence under the Act on a report in writing was within his jurisdiction to proceed further and that the police officer who had lodged the report was a public servant, as defined in Section 21 of the Indian Penal Code. The objection raised by the learned Counsel for the petitioner has, therefore, no force and is overruled.

15. Next, the learned Counsel for the petitioner brged that the learned C.J.M. having failed to comply in the law and practice the provisions of Section 364 Cri. P.C-fully, the so-called trial was rendered vitiated and on that basis alone the

conviction and sentence deserved to be quashed. The argument has a reference to the frame of charge by the learned C.J.M. on 9-2-1981. It was submitted that the learned C.J.M. had framed charge, against the petitioner under Section 3/7 of the Act for not having put up in a hanging position the rate-list of the articles which were being offered for sale at his shop. It was submitted that the law did not require the petitioner to put up 'in a hanging position' the price-list, of articles offered for sale. It was, therefore, urged that the charge framed by the Magistrate failed to disclose any offence committed by the petitioner.

16. From a perusal of the charge framed by the learned C.J.M. it appears that he had framed the charge on the grounds that the petitioner had neither put the price list in hanging position nor he was able to produce the same on demand, It may be stated here that the Government of J. & K. in exercise of the powers conferred on it by Section 3 of the Act, has issued a Notification on 16-9-1980, which was SRO No. 489. Section 3 of this SRO deals with the display of prices of various articles. Amongst other ways given in various Sub-clauses of Section 3 for displaying of prices of article, Sub-clause (c) says, as follows:-

3(c) by putting a placard at the place where one or more of the same articles are kept;

17. The learned Addl. Advocate General, argued that under this Sub-clause the display of prices of articles had to be put up in a placard at the place where the articles were kept. According to him, in other words, it was under this Sub-clause that a list of prices of articles had to be put up at a conspicuous place in the shop where the articles were kept, I am in agreement with the contention of the learned Addl. Advocate General that putting up of a placard containing the prices of various articles was necessarily to be displayed and that was what the learned C.J.M. had charged the accused-petitioner for not having the same displayed as required. The objection, therefore, is overruled.

18. It was next argued that the statement of the accused-petitioner recorded in reply to the charge framed against him was not in accordance with law, inasmuch as the magistrate as required under Section 364 Cr. P.C. had not certified 'under his own hand' that the examination was taken in his presence and hearing, and

that the record contained a full and true account of the statement made by the accused.

19. From a perusal of the reply of the accused to the charge-sheet, it appears that a certificate has been appended beneath the statement of the accused-petitioner. Though the same was not in the hand of the Magistrate himself but it was contained in a stamp containing all the requisite particulars and signed by the C.J.M. The contention was that the law required that the Magistrate 'in his own hand' should have written the certificate as envisaged under Clause (3) of Section 364, Cr.P.C. The learned Addl. Advocate General refuting the contention has submitted that by affixing the seal which contained the requisite requirements of Sub-section (3) of Section 364, Cr.P.C. and was also signed by the learned Chief Judicial Magistrate, was sufficient compliance with the provisions of Sub-section (3) of Section 364, Cr.P.C.

20. The expression that the certificate should be written by the Magistrate in his own hand would not necessarily under all the circumstances come to be interpreted to mean that the whole certificate should be written by the magistrate with his own pen. The requirements of law may be met in case the magistrate affixed the seal containing the contents referred to in Sub-clause (3) and also signed the same. The object was to ascertain whether the Magistrate was conscious of what he was doing. If it could be shown that the affixation of the seal of certificate was a process automatically undertaken by the Magistrate without applying their mind, that may make a difference and strict interpretation may have to be given to the expression 'in his own hand' used in the said I sub-section. This was especially so Where the Magistrate records a plea of Built, In such cases strict compliance with the requirements may not only be /desirable but necessary as it would beyond reasonable doubt manifestly show that the Magistrate has in fact applied his mind while writing the requisite certificate. In the instant case the Magistrate should have been alerted and examined the petitioner-accused himself and recorded the certificate in his own hand. The circumstances demanded strict compliance. In any case, the Magistrates would be better advised to give up to affix such type of seals that are bound to give rise to doubts with regards their proper application or mind. Under the circumstances, it is held that the -

requirements enumerated in Sub-clause (3) of Section 364 were not fully met by affixation of the seal beneath the statement of the accused- petitioner in reply to the questions put to him after the charge was framed against him.

21. There is yet another contention that has been raised at the bar with regards the statements of the accused-petitioner in reply to the charge against him.

22. As already observed the procedure applicable to the present case was that which was given in Section 251-A, Cr.P.C. To follow the contention raised I may quote with benefit the following two sub-section of section:-

Sub-section (4):- The charge shall be then read and explained to the accused and he shall be asked whether he is guilty or claims to be tried;

Sub-section (5):- If the accused pleads guilty the Magistrate shall record the plea and may in his discretion convict him thereon.

23. It has 'been argued with reference to Sub-section (4) that the question put to the accused-petitioner by the Magistrate do not include the question as whether he claimed to be tried, From a perusal of this statement, it is obvious that the main question put to the accused petitioner was 'whether he has committed the offence' and the reply was 'yes'. Sub-section (4) as quoted above requires a Magistrate to ask the accused as to whether he is guilty or claims to be tried. It is incumbent upon the Magistrate to put the question in the manner in which Sub-section (4) requires the question to be put. The Magistrate should have asked the accused petitioner 'whether he is guilty or claims to be tried'. Instead, what has been asked is whether he has committed the offence or not and there is no mention in the question as to whether he claims to be tried or not? Maybe the question as to whether he claims to be tried may be redundant in view of the plea of the question as to whether he claims to be tried had to be put to the accused unless as suggested by the learned Counsel for the petitioner, the Magistrate was sure that the accused would take up a plea of being guilty. The contention of the learned Counsel, for the petitioner has enough force behind it, especially when under Sub-section (5) the Magistrate had been vested with the discretion to act upon the plea of guilt or not. It may not be out of place to observe that the question as to whether

the accused claims to be tried had to be put to the accused-petitioner even if he had taken up a plea of guilt. Rather the question should be in a composite form and one and the same question the accused should be asked as to be tried. The effect of having failed to put this question specifically to the petitioner-accused has a bearing on the facts of the case to which I shall come later.

24. The main contention raised at the may quote with benefit the following bar was that the ment arrived at between the prosecution and other so as to persuade the petitioner to admit that he had committed an offence. It has been stated that and not denigd by the leavned counsel for the state that a large number of cases under Section 3/7 of the Act had been filed m the Court of loarned C.J.M. Srinagar on 9-2-1981. The number given to me was 86. It appears that on a day or two earlier the police had in a swoop raided a large number of shops in the city of Srinagar and elsewhere as a large number of reports with regards hoarding and profiteering and also of blackmarketing and high prices had been received by the police from various sections of the people. The police appears to have concentrated all Us efforts on that day in making an attempt to find out as to whether the shop keepers and others who were selling articles had ex- hibited the price lists as required under the Act read with SRO 489 of 1980. In the swoop a large number of people had been arrested and on 9-2-1981 were produced along with the challans in the Court of C.J.M. It is alleged that the accused petitioner as well as other accused in the lock-up were promised that in case they admitted the guilt a small fine shall be imposed upon them only and thereafter let out It has been submitted that in pursuance of this assurance sixty (60) persons were produced one by one before the trial magistrate and all of them admitted that they had committed the alleged offence. Their statements were recorded either¹ by the magistrate or by his assistants in the Court. It was contended that all these cases were disposed of together by one and the same judgment by the learned C.J.M. When he completed recording the plea of guilt of all these persons, he announced that in view of the plea of guilt taken by all the accused they were convicted under Section 3/7 of the Act and sentenced to 3 months rigorous imprisonment and a fine of 8s. 200/-. (The argument was that the prosecution had already taken into confidence the magistrate and the police thereafter misdirected and misinformed the petitioner and others that in case they take up the plea of guilt all of them

would be let out after imposition of a small fine. There was, however, nothing on record to substantiate this argument advanced at the bar, nor the same has been alleged in most of the petitions. Two factors appearing in this and some other case, however, give rise to the credibility in this regard that the allegation may ultimately be based on truth though not in all its aspects. The manner in which the petitioner as well as large number of other accused persons were examined first one by one in the Court and then convicted and sentenced together by one and the same order only putting in the name of the different accused is one of the factors that gives sustenance and support to the suspicion that after all the allegation made at the bar may be true as otherwise it was against human conduct and behaviour that if convicted and sentenced one by one, all the accused would have pleaded guilty. The other factor that goes to support the allegation as has been seen above. The magistrate while examining the accused under Section 364 CrI.P.C. had not examined the accused as required under the provisions of Section 251A (4) & (5) Cr.P.C. The petitioner accused was not asked as to whether he would like to contest the allegation, and would like to be tried. This may lead to the inference that the magistrate was in the know that the accused-petitioner would plead guilty and, therefore, there was no necessity of putting to him the question along with the question as to whether he had committed the offence. The other factor that the accused-petitioner after having been charge-sheeted and after recording his plea of guilt was not immediately proceeded against in accordance with law and convicted and sentenced, also goes a long way to sustain the allegation levelled at the bar. The whole lot of the accused persons along with the petitioner was convicted and sentenced by a single order on the conclusion of their examination separately. All these factors . put together would lead to the conclusion that there has been some sort of an arrangement arrived at between the concerned parties and accordingly the plea of guilt raised by the petitioner and other accused was obtained as a result of that arrangement. Once this conclusion is reached it will be only fair and just to say that the plea of guilt recorded by the learned magistrate was not obtained except by means other than legal,

25. In a case entitled 'Kashambhai Abdulrehmanbhai Sheikh v. State of Gujarat in Cri. A. Nos. 93-94 of 1980 and reported in 1980 Cri App. R. (SC) 91 : 1980 Cri LJ

553, a case of almost similar nature arose. That was a case under Food Adulteration Act. I may quote some of the portions of this judgment with benefit. In para 2, it has been stated as follows:-

Moreover, we find that here the learned Magistrate had got a cyclostyled form of judgment in which, merely blanks were filled in by him and this is clearest possible evidence that he was in the habit of encouraging plea bargaining and letting off the accused lightly if there was a plea of guilty, so that he may get quick disposal without any effort.

In para 4 the following also has been stated;

But one thing is clear that the finding of conviction recorded by the learned Magistrate against the appellant was not based on the evidence led on behalf of the prosecution. The conviction of the appellant was based solely on the plea of guilty entered by him and this confession of guilt was the result of plea of bargaining between the prosecution, the defence and the learned Magistrate.

26. It would be apparent from this judgment that the conviction arrived at on a plea of guilt under suspicious circumstances was nullified. In my view the facts of the case and the circumstances appearing herein have raised such a suspicion in the mind of the court and it would not hesitate to state that in view of the large number of confessions recorded on one and the same day and other factors appearing herein, the matter was not beyond suspicion and the court would be failing in its duty if it would not take these circumstances into consideration and set aside the conviction of the petitioner as illegal and unconstitutional.

27. I may add that I am not blaming the learned C.J. M, for all that has happened. A large number of cases had been produced before him in which the confessions were made and he acting upon those confessions convicted and sentenced the accused as he has, but I may say that when such a large num-brr of accused persons along with the complaints had been produced before him he should have exhibited more caution and should have been more careful in recording the statements of the accused in dealing with every accused separately as is required under law. After all the case against the petitioner was not clubbed together with

the other accused that the Magistrate found it necessary to decide the case of the petitioner along with the cases of other accused persons filed before him. Every case filed before him should have been treated as a separate case and in every case he should have pronounced his judgment separately immediately on the recording of plea of guilt. The so-called confessions recorded by the learned Magistrate, have therefore, lost their value and it was because of this and other factors that this Court had to pass the order as it has which has been reproduced at the beginning of this order.

28. There were several other points raised by the learned Counsel for the petitioner and some arguments were even advanced with regard to those matters but I need not go into those matters at present. For me it is sufficient to order as I have ordered already that the plea of guilt on which conviction and sentence of the petitioner is based does not appear to be voluntary. These, therefore, are the reasons for the order passed today and reproduced above,

29. The learned Addl. Advocate General prayed for permission to leave to appeal to Supreme Court. I have no objection. Let him try his luck in the Supreme Court and the leave to appeal to Supreme Court is, as such granted.

30. As stated earlier in the order passed today, the reasons given now shall apply to all other cases referred to above.