Tirlok and Others Vs King-Emperor

Court: Allahabad High Court

Date of Decision: May 4, 1927

Acts Referred: Criminal Procedure Code, 1898 (CrPC) â€" Section 110, 256

Citation: AIR 1927 All 660 : (1928) ILR (All) 71

Hon'ble Judges: Boys, J

Bench: Division Bench

Final Decision: Allowed

Judgement

Boys, J.
Those two cases illustrate the unfortunate results that follow when Magistrates endeavour to rush through what threaten to be

protracted proceedings regardless of the provisions of the law. Some 16 accused persons, of whom the present applicants are four, were under

arrest in view of a contemplated gang case against them. The authorities, as they were perfectly entitled to do, decided to be content with

proceedings u/s 110. An order u/s 112 was drawn up on the 15th July, giving notice to the accused persons of proceedings that it was

contemplated to take against them u/s 110, Criminal P.C., 15 prosecution witnesses were forthwith examined. One of the present applicants,

Dudhnath, was released on bail, the others remained in jail. The proceedings were held at Chaura. This was probably for the convenience of

everybody, both prosecution and accused, but the result of holding proceedings at that place was naturally that there were no legal practitioners

there, unless indeed they came for that particular case or some other case before the Magistrate. The accused, on the 15th, appear to have been

wholly unrepresented. On the 16th and 17th, 27 more prosecution witnesses were examined. An application for bail was made by a mukhtar on

behalf of Tirlok, one of the present applicants, and that was refused. There was some sort of attempt at cross-examination by one or two of the

accused here and there, but, as might be expected, it consisted of only one or two questions occasionally put by one or other of the accused, and

the great majority of the witnesses passed without a question being asked of them. This was what was to be expected. The accused were most

unlikely to be able to conduct any efficient cross-examination themselves at all.

2. So far there is nothing actually illegal. July 28 was fixed for the defence. But five days earlier, on July 23 an application was made through a

mukhtar on behalf of Tirlok and Dudhnath to recall prosecution witnesses for cross-examination. This application was refused on the ground that

one of the accused had been on bail since the 15th and had an opportunity to appoint counsel and an application for bail had in fact been made by

a mukhtar on behalf of one of the accused. The application for the recall of the prosecution witnesses was, therefore, refused. On the date fixed for

the defence, July 28, the application was repeated and was again refused. In the result the applicants before me have been called upon to furnish

security u/s 110 and have furnished that security. Other of the accused persons are, I am informed, in jail upon failure to furnish security.

3. I am at the present moment concerned only with whether these men have had a legal trial. A subsidiary question would be whether any

departure from procedure has been merely an irregularity or whether the accused have been prejudiced. The procedure that should have been

followed is in my opinion perfectly clear. Section 117 requires that in the case of proceedings u/s 110 they should be conducted

as nearly as may be practicable in the manner hereinafter prescribed for conducting trials and recording evidence in warrant cases, except that no

charge need be framed.

4. The reason for the exception is obvious. What is equivalent to a charge has already been framed in the order served upon the accused in

accordance with Section 112. According to Section 254, at any stage of the prosecution case the Magistrate may frame a charge. According to

Section 255, the charge shall then be read and explained to the accused and he shall be asked whether he is guilty or has any defence to make.

There is no reason why these two sections should not be applied to an enquiry u/s 117, except in so far as the framing of a charge and the reading

of it to the accused is concerned; in other words, at any stage of the prosecution the Magistrate, if he is prima facie satisfied that there is a case

against the accused, may interrupt the proceedings for the purpose of asking the accused whether he pleads guilty or whether he has any defence

to make. If he decides to do that and the accused elects to defend, the Magistrate shall then ask the accused whether he wishes to cross-examine

any of the prosecution witnesses, and if he says he does so wish, he must be given an opportunity of cross-examining them. If, on the other hand,

the Magistrate desires to bear all the prosecution witnesses before asking the accused whether he wishes to plead guilty or to defend himself, he is,

of course, at liberty to do so. But when the stage is reached of asking the accused whether he wishes to plead guilty or to defend, the accused

must be allowed an opportunity of cross-examining any witnesses whom he desires to cross-examine.

5. It is obvious on the face of it that this procedure may in some cases cause inconvenience and it may be much more convenient for the Magistrate

to insist upon accused cross-examining immediately whether they wish to do so or not and whether they are represented or not. But that is plainly

not the law, and the accused were entitled to an opportunity of cross-examining in accordance with the law. The learned Sessions Judge remarks:

Now coming to the trial, it would have, no doubt, been better had the learned Magistrate allowed a little time to the accused before proceeding to

record the evidence against them,

and later he says:

Of course the appellants had no right to a second cross-examination u/s 256, Criminal P. C., and the objection taken is futile.

6. The fact of the matter is that in this case apart altogether from the valid ground of objection based on Section 256, there was, in fact, no

reasonable opportunity given to the accused at any stage to cross-examine the witness. I emphasize the word ""reasonable opportunity."" Even had

the Magistrate''s proceeding been legal, which I do not think it was, I am still more confident that it was not reasonable. I cannot possibly hold

otherwise than that the accused may reasonably claim to have been prejudiced by the way the proceedings were conducted. I may say that I have

considered the cases reported in Chintamon Singh v. Emperor [1908] 35 Cal. 248, and in Ganga Singh v. Emperor [1912] 10 A. L. J. 383.

7. I set aside the order of the learned Sessions Judge upholding the order of the Magistrate, and I set aside the order of the Magistrate also calling

upon the four applicants before us, Tirlok, Dudhnath, Lallu and Surjan, to furnish security, and direct him, if the district authorities still consider it

desirable, to proceed with the case giving these four persons the opportunity to cross-examine such of the prosecution witnesses whom they desire

to cross-examine after giving them reasonable notice. It is with reluctance that this Court must feel compelled to set aside proceedings at this stage,

but no other course is possible if Magistrates will not follow the procedure provided and rush proceedings through against accused persons, and, if

in addition, upon an examination of the record, it is impossible to say that the accused cannot reasonably allege that they have been prejudiced.