(1948) 08 AHC CK 0020

Allahabad High Court

Case No: None

Ratan Lal and Others	APPELLANT
Vs	
Rex	RESPONDENT

Date of Decision: Aug. 17, 1948

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 423

Citation: AIR 1949 All 222

Hon'ble Judges: Bind Basni Prasad, J

Bench: Division Bench

Final Decision: Disposed Of

Judgement

@JUDGMENTTAG-ORDER

Bind Basni Prasad, J.
The five applicants were tried and convicted by a learned Magistrate of Naini Tal for an offence under Sub-rule (4) of Rule 81, Defence of India Rules, read with Clause 3, U.P. Food Grains Price Control Order, 1945. Four of them namely Ratan Lal, Khunni Lal, Saligram and Ramrichhpal, who are partners of the firm of Kishan Lal Ratan Lal of Haldwani, were sentenced to three months'' rigorous imprisonment and to a fine of Rs. 1000 each. Raghunath Prasad, who is a Munim of that firm, was sentenced only to a rigorous imprisonment of 3 months. There was an appeal and it appears from the judgment of the learned Sessions Judge that the case was argued at great length on merits as well as on law points. The arguments took one full day before the learned Sessions Judge. The learned Sessions Judge, however, did not enter into the merits of the case. He only dealt with one law point, namely, whether in view of the provisions of Rule 130 (4), Defence of India Rules, the Magistrate was right in trying the case summarily. That Rule requires an application on behalf of the prosecution before the summary trial of the case. The learned Sessions Judge held that as an application in writing was necessary, the trial was vitiated. He, therefore,

allowed the appeal and set aside the conviction and sentence recorded against the applicants by the learned Magistrate, but directed a retrial. It is against this order that the petitioners have come in revision. They contend that the learned Sessions Judge erred in directing a retrial in the circumstances of the present case. It is argued that a retrial should be directed by an appellate Court u/s 423, Criminal P.C., very sparingly and in this connection reliance is placed upon Emperor Vs. Panchu and Another, . It was held in that case that the power to order retrial should be sparingly exercised and a retrial should not be ordered unless there are grave reasons few doing so.

2. In the present case the position is that on merits the prosecution had utterly failed to substantiate its case. In appeal before the learned Sessions Judge the applicants contended firstly, that the case was not proved on facts, and secondly, that there were legal defects in the trial. I am of opinion that if in the opinion of the Court in appeal the prosecution case is not established against an appellant and there are also formal defects in the proceedings of the trial Court, no retrial should be ordered, because that would give an opportunity to the prosecution to fill in the gaps. If, however, the case appears to be proved on facts and there are formal defects only in the proceedings of the trial Court, then it is open to the appellate Court to direct a retrial. One can see the great harassment to which a party is put by double trial. It is the duty of the prosecution to adduce all necessary evidence in the first instance. A party should not be permitted to adduce evidence piecemeal.

3. The charge against the applicants was that they were charging price from one Mahendra Singh contractor in excess of the controlled rates and in proof of this three Bijaks, Exs. P.-6, P-8 and P-10 and slips which are alleged to have accompanied them, namely, Exs. P-7, P-9 and P-11, were produced. The defence was that the slips-Exs. p-7. p-9 and p-11-were not written either by the applicants or by their servants and were not in fact despatched by them along with the Bijaks. They denied that the slips accompanied the Bijaks. The Bijaks contain the bill at the controlled rates and the slips with the extra price alleged to have been demanded by the accused.

4. There was no direct evidence that the slips, Exs. P-7, P-9 and P-11, were written by the applicants or by their servants or that they were sent by them along with the Bijaks Exs. P-6, P-8 and P-10. The case rested entirely on circumstantial evidence. In this connection, I may refer to Queen Empress v. Hos Nak (1941) A.L.J.R. 416, in which it was held that for proof by circumstantial evidence the following four things are essential: (1) that the circumstances from which the conclusion is drawn are fully established; (2) that all the facts should be consistent with the hypothesis; (3) that the circumstances should be of a conclusive nature and tendency; (4) that the circumstances should, to a moral certainty, actually exclude every hypothesis but the one proposed to be proved. These principles afford a valuable guide for dealing with cases based on circumstantial evidence. Judging in the light of these principles,

I am of opinion that the prosecution has failed to establish its case. The conviction recorded by the learned trying Magistrate is based upon his finding that the slips Exs. P-7, P-9 and P-11 were received by Mahendra Singh from the accused along with the aforesaid three Bijaks. This is a finding which is not sustainable on any admissible evidence. [His Lordship then considered the evidence and concluded:] The position thus is that the prosecution evidence falls short of the necessary proof of the fact that the slips Exs. P-7, P-9 and p-11 which are the foundation of the charge against the applicants, were written by the applicants or by their servants or by any one at their instance. There is no proof of the payment of the money according to the Bijaks and the slips which are said to have accompanied them. The books of accounts of the applicants were seized and entries in them do not show that they charged the price at black-market rates. Mahendra Singh himself did not produce his account books to show that he used to pay the money to the applicants at black-market rates. Indeed he admits in his cross-examination that never before did the applicants charge black-market price from him although the dealings between them are since long. Mahendra Sngh''s evidence in the case is hearsay. According to him his Munshi used to receive the Bijaks, and as already stated above, he has not been examined. It is improbable that a black-marketeer would create such written evidence against him. I have no hesitation to say that the case against the petitioners was not established by the evidence which was adduced before the trial Court. The Munshi might have attempted to swindle his masters through these slips. That being the position, the learned Sessions Judge did not properly exercise his discretion in ordering retrial and in subjecting the applicants to the harassment of a second trial and giving an opportunity to the prosecution to fill in the gaps in the evidence which they had originally produced. The order of retrial is unsustainable.

5. The revision is allowed. The orders of the learned Sessions Judge and that of the Magistrate are set aside, and the applicants are acquitted of their charge. The fine if paid, shall be refunded.