
(1955) CriLJ 1066

Andhra Pradesh High Court

Case No: None

Ahmed S. and Others

APPELLANT

Vs

The State

RESPONDENT

Date of Decision: April 2, 1954

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 234, 242, 342

Citation: (1955) CriLJ 1066

Hon'ble Judges: Manohar Pershad, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

Manohar Pershad, J.

This is a reference by the District Magistrate, Hyderabad, recommending that the petitions in revision filed on behalf of the accused be allowed and the conviction and sentence passed by the trial Court be set aside and the case be remanded to the trial Court.

Nobody is present on behalf of the accused, revision-petitioners, I perused the record with the help of the Government Advocate. From a perusal of the same, I find that the accused were charge-sheeted u/s 13, Hyderabad Gambling Act for gambling in a public place. On behalf of the prosecution three witnesses were examined and the accused produced one defence witness. On a consideration of the evidence, the trial Court having found the accused guilty sentenced each of them to pay a fine of Rs. 21/-. Aggrieved by this, the accused filed separate revision petitions before the District Magistrate. Hence this reference.

On the evidence, the District Magistrate also has upheld the conviction of the accused, but has recommended that the cases be sent back to the trial court as the trial court has not complied with the provisions of Section 242, Criminal P. C. The question which arises

is whether the omission to state to the accused the particulars of the offence with which he is charged amounts to an illegality vitiating the trial, or is a mere irregularity curable by Section 537, Criminal P. C.

The learned District Magistrate relying on the case of *½ Gopal Krishna Saha and Others Vs. Mati Lal Singh*, has come to the conclusion that non-compliance with the provisions of Section 242 Criminal P, C. vitiates the trial and is not a mere irregularity curable by Section 537, Criminal P. C. There is great divergence of opinion in the Indian High Courts with regard to this point.

On the one hand it has been held, as pointed out earlier, by the Calcutta High Court that such an omission is an illegality and not a mere irregularity. On the other hand it has been held by the High Court of Madras in the case of *½ "Public Prosecutor v. Sankara Lingam Moopan"* AIR 1919 Mad 52 and in the Judicial Commissioner's Court of Nagpur in *½ "Mt. Lahani v. Khusal"* AIR 1932 Nag 127 and in *½ "Mahomed Yunas v. Mt. Jahan Sultan"* AIR 1942 Pepsu 9 that such an omission is only an irregularity which does not vitiate the trial unless it occasions a failure of justice.

A similar question had arisen in the Patna High court in the case of *½ Rajeshwar Prasad Singh Vs. The Province of Bihar*, wherein Das and Narayan JJ. held:

That omission to explain the particulars of an offence to the accused is not an illegality vitiating the trial provided no prejudice can be shown to have been caused to the accused and the accused has been examined u/s 342. It is a mere irregularity curable u/s 537.

2. In *½ Gopal Krishna Saha and Others Vs. Mati Lal Singh*, Cunnning J. who delivered the leading judgment, relied on the observation of the Privy Council in the well-known case of *½ "Subrahmanya Ayyar v. King Emperor"*, 25 Mad 61 (PC) (F) to the effect that disobedience to an express provision as to the mode of trial be regarded as a mere irregularity.

In the case of 25 Mad 61 (F), the appellant had been tried on an indictment in which he had been charged with no less than 41 acts, the acts extending over a period of two years. There was thus a clear contravention of Section 234, Criminal P. C. which provides that a person can only be tried for three offences of the same kind if committed within a period of twelve months.

The following observation of their Lordships of the Judicial Committee is important for understanding the position which had been created in that case.

Upon the assumption that the trial was illegally conducted it is idle to suggest that there is enough left upon the indictment upon which a conviction might have been supported if the accused had been properly tried. The mischief sought to be avoided by the statute has been done. The effect of the multitude of charges before the jury has not been averted by dissecting the verdict afterwards and appropriating the finding of guilty only to such parts of

the written accusation as ought to have been submitted to the jury.

3. This observation by their Lordships would show how different the position is in a case in which only the particulars of the offence have not been explained to the accused though the accused has been examined u/s 342, Criminal P. C, and though no prejudice whatsoever has been caused to him because of the non-compliance with the provisions of Section 242.

This case of Subrahmanya Ayyer (F) has been referred to in the case of *ġ½ AIR 1927 44* (Privy Council) . Commenting upon the case their Lordships of the Judicial Committee have refused to follow that decision and observed as follows:

There have been a number of decisions in India upon these enabling or curing sections, but the only important one which came before this board is the case of *25 Mad 61 (F)*. There the trial of a man on charges of extortion in which 41 criminal acts extending over a period of two years were brought against him in contravention of a section of the code which provides that a man can only be tried for three offences and those committed within a period of twelve months, was held bad and the conviction was quashed because the provisions of Section 537, Criminal P, C. did not cure it.

4. A Madras case came up for consideration again before the Judicial Committee, which is the case of *ġ½ Tulukuri Kotayya v. Emperor" AIR 1947 PC 67*. It has been laid down by their Lordships that:

When a trial is conducted in a manner different from that prescribed by the Code as in *25 Mad 61 (F)* the trial is bad, and no question of curing an irregularity arises; but 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 u/s 537 and nonetheless 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. The distinction drawn in many of the cases in India between an illegality and an irregularity is one of degree rather than of kind.

5. After giving due consideration to the above authorities, I am of the opinion that omission to explain the particulars of an offence to the accused is not an illegality vitiating the trial provided no prejudice can be shown to have been caused to the accused and the accused has been examined u/s 342, Criminal P. C. In the case before me, the accused was examined u/s 342, Criminal P. C. It was not contended that any prejudice was caused to the accused because of the non-compliance with the provisions of Section 242. I cannot therefore agree with the recommendation of the learned District Magistrate that the case should be remanded to the trial Court. On the merits the learned District Magistrate has upheld the conviction, and I agree with this view.

In the result, petitions in revision filed on behalf of the accused are dismissed, and the conviction and sentence passed by the trial Court will stand. This order will govern the

other connected petitions also.