(1919) 09 BOM CK 0020

Bombay High Court

Case No: None

Mohidin Karim and Others		APPELLANT
	Vs	
Emperor		RESPONDENT

Date of Decision: Sept. 11, 1919

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 16
- Penal Code, 1860 (IPC) - Section 325

Citation: 55 Ind. Cas. 849

Hon'ble Judges: Shah, J; Hayward, J

Bench: Division Bench

Judgement

Shah, J.

The petitioners before us in this case were tried by a Bench of 2nd class Magistrates on a charge of grievous hurt u/s 325, Indian Penal Code. The prosecution evidence was heard by three Magistrates and the defence evidence was heard by only two out of the three, with the result that the decision was given by the two Magistrates who had heard the case throughout. The Magistrates in question are appointed for the District of Satara, and the rules regulating the constitution of the Bench of Magistrates are to be found in the Notification of 30th October 1885 at page 1262 of the Bombay Government Gazette for 1885, Part I. These rules were framed u/s 16 of the Criminal Procedure Code of 1882 and are still in force.

2. The petitioners were convicted by the Bench of Magistrates on the 13th of May 1919. They appealed to the District Magistrate, and it was urged on their behalf that the whole trial was void as it was contrary to the said rules, in so far as only two Magistrates finished the trial though it was commenced by a Bench of three Magistrates. The Appellate Court held that the trial was valid. In the result the convictions of the present petitioners were confirmed.

3. They have presented an application to this Court, and it is urged that the trial is void as it contravenes the rules. It is provided by these rules that the Bench may try any cases triable by a 3rd class Magistrate, and that if for any cause it is found necessary to adjourn the hearing of a case after the evidence has been partly taken, the trial must be completed before the same Magistrates who commenced it or must be held afresh before a different set of Magistrates. In the present case the trial was not completed before the same Magistrates who commenced it. It was not held afresh before a different set of Magistrates, but it was continued and finished by two out of the three Magistrates who constituted the Bench in the first instance. It is clear that the trial in this case contravenes the provisions of Rule 4, and that it is void on that ground. It is urged, however, that under the rule it is open to hold a fresh trial before a different set of Magistrates and as Rule 2 allows that any two parsons appointed as Honorary Magistrates may constitute a Bench, in the present case the two Magistrates who continued the trial may properly be deemed to have substantially complied with the rule, as they had heard the whole case from the beginning to the end. It is further urged that the accused has not been prejudiced in any way and that it must be treated merely as an irregularity and not an illegality vitiating the trial, I am, however, unable to accept these contentions as sound. In my opinion there is no substantial compliance with the provisions of the rule which directs in the alternative that the trial should be held afresh before a different set of Magistrates. It could not be said that when the two Magistrates continued the trial, heard the defence evidence and decided the case, they held the trial afresh or that they constituted a different set of Magistrates at the time. I do not say that those two Magistrates could not have constituted a different set of Magistrates within the meaning of the rule, but in fact they could not be said to have done so with reference to the case. In fact they simply continued the part-heard case in the absence of their colleague. It is also difficult to say that there was no prejudice to the accused. But it seems to me that apart from any prejudice to the accused, where such a rule affecting the constitution of the Bench has not been complied with, the trial cannot be treated as valid. There is a further objection that the charge u/s 325, Indian Penal Code, though not triable by a 3rd class Magistrate has been tried by the Bench of 2nd class Magistrates, in spite of Rule 1 which provides that the Bench may try any case triable by a 3rd class Magistrate. This objection was not taken in the lower Courts. On the information we have on the present record, we see no answer to this objection which affects the jurisdiction of the trial Magistrates. It is enough, however, for the purposes of this case to hold that the trial held is invalid on the first ground. The convictions and sentences must be set aside and the fine, if paid, refunded.

4. Having regard to the period of imprisonment already suffered by the petitioners as also to the circumstances of the case generally, I do not think that we need direct any further proceedings against the petitioners.

Hayward, J.

5. I agree. It is provided by Rule 2 that a trial should be by a Bench of two where it is not possible to obtain three Magistrates. But it is provided by Rule 4 that a trial once commenced must be ended before the same Magistrates. The meaning of this seems to me to be not before two only but before the same three Magistrates. The only alternative provided is a fresh trial before another set of Magistrates. If the rules result in inconvenience, then the remedy seems to me to be revision of the rules. They are old Rules of 1885 and differ materially from the more recent rules prescribed for the Benches of Magistrates in Poona and Bombay. There was also another difficulty that the trial of an offence of grievous hurt was not triable by this particular Bench, which only had authority to try cases triable by 3rd class Magistrates. The conviction and sentence must be set aside as proposed by my learned brother.