State of Uttar Pradesh

Vs

Sabir Ali And Anr

Criminal Appeal No. 193 of 1962

(M. Hidayatullah JJ)

24.03.1964

JUDGMENT

HIDAYATULLAH, J. –

This is an appeal by certificate granted by the High Court of Allahabad (Lucknow Bench) against its order dated March 12, 1962 quashing the trial of the respondents for an offence under s. 15(1) of the Uttar Pradesh Private Forests Act (VI of 1949). This trial commenced on February 11, 1959 on a complaint by the District Magistrate Bahraich. The charge against the first respondent was that he sold one tamarind tree to respondent No. 2 for the purpose of felling and removing it without obtaining permission from the competent authority and that against respondent No. 2 was that he felled the tree and removed it. The complaint was transferred from one Magistrate to another till it came on the file of Mr. T. B. Upadhaya who was a Magistrate of the Second Class. After Mr. Upadhaya had recorded all the evidence and examined the two respondents the powers of Magistrate, First Class were conferred on him. Thereafter be pronounced judgment in the case and finding respondents guilty be sentenced them to pay a fine of Rs. 50/- each or to undergo simple imprisonment for one month. The respondents filed an appeal before the Additional Sessions Judge, Bahraich which was later converted into a revision. The learned Additional Sessions Judge made a reference to the High Court recommending that the trial before the Magistrate, First Class be quashed as he had no jurisdiction to try the offence. This reference was heard by Mulla, J. who did not agree with the opinion of Beg, J. in Jaddu and others v. State, [A.I.R. 1952 All. 873] on which the Additional Sessions Judge had relied. Beg, J. had taken the same view in a subsequent case also - Harbans Singh and others v. State. [A.I.R. 1953 All. 179] Mulla, J. was of the opinion that the trial was proper, but as these rulings stood in his way, he made a reference of the case to a large Bench. The case was heard by a Division Bench consisting of B. N. Nigam and S. D. Singh, JJ. The learned Judges differed amongst themselves : Mr. Justice Nigam was of the view that the trial was valid but Mr. Justice Singh did not agree with him. The case was then placed before Mr. Justice Verma who agreed with Mr. Justice Singh. As a result, the conviction and sentence passed on the respondents were set aside. The case was, however, certified by the High Court as fit for appeal and the present appeal has been filed.

Which of the two views is the right one is the short question in this appeal. Section 15(2) of the Uttar Pradesh Private Forests Act confers jurisdiction to try offences under the first sub-section on Magistrates of the Second and the Third Class. The trial in the present case was by a Magistrate of the First Class, and if there was no jurisdiction in him to try the offence then the proceedings were rightly declared void under s. 530(p) of the Code of Criminal Procedure. According to the opinion of Mr. Justice Nigam which finds support from the order of reference made by Mulla, J., there is nothing to prevent the First Class Magistrate from trying an offence under s. 15(1) of the Act,

because under Schedule III of the Code of Criminal Procedure the ordinary powers of a Magistrate, First Class include the ordinary powers of a Magistrate of the Second Class. According to the other view, the Forests Act confers jurisdiction on Magistrates of the Second and the Third Class and this excludes jurisdiction of any superior Magistrate.

Section 15 of the Forests Act reads as follows :-

> "15. Offences under this Chapter and trial of such offences and penalties thereof :-
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> (1) Any person who contravenes any of the provisions of this Chapter or deviates from the prescriptions of a sanctioned working plan without the previous sanction of the Forest Officer shall be punishable with fine not exceeding one hundred rupees for the first offence and with fine not exceeding one thousand rupees or simple imprisonment not exceeding three months or both for the second or any subsequent offence.
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> (2) Offences under this section shall be triable by a Magistrate of the Second or Third Class, and proceedings under this section may be instituted on a complaint made by the landlord of the notified area or forest in respect of which the offence is alleged to have been committed or by any right-holder of such a notified area or forest or by the Forest Officer or by any officer specially empowered by the Provincial Government in this behalf.
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> #(3) * * * *(4) * * * *"##

The question is one of interpretation of the first part of sub-s. (2) which says that offences under s. 15 shall be triable by a Magistrate of the Second or Third Class. It does not use the phrase "any Magistrate" nor does it specify "a Magistrate of the First Class". The question is whether the words of the sub-section exclude a First Class Magistrate. The answer to this, in our opinion, is furnished by ss. 28 and 29 of the Code of Criminal Procedure. They provide as follows :-

> "28. Offences under Penal Code - Subject to the other provisions of this Code any offence under the Indian Penal Code may be tried -
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> (a) by the High Court, or
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> (b) by the Court of Session, or
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> (c) by any other Court by which such offence is shown in the eighth column of the second schedule to be triable".
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> "29. Offences under other laws - (1) Subject to the other provisions of this Code, any offence under any other law shall, when any Court is mentioned in this behalf in such law, be tried by such court.
>
> (2) When no Court is mentioned, it may be tried by the High Court or subject as aforesaid by any Court constituted under this Code by which such offence is shown in the eighth column of Second Schedule to be triable".

The scheme of the Criminal Procedure Code is that it provides separately for trial of offences under

the Penal Code and for offences under any other law. The court which is to try them is indicates in the Code in the eighth column of the Second Schedule. The first part deals with offences under the Penal Code and the second part with offences under any other law. The last entry in the Second Schedule provides for the trial for offences under any other law which are punishable with imprisonment for less than one year or with fine only and they are made triable by "any Magistrate". If the matter were governed by the Second Schedule, the last entry would undoubtedly have comprehended a Magistrate, First Class. But s. 29 says that offences under any other law shall be tried by the court which that law mentions and it is only when no court is mentioned that the eighth column of the Second Schedule is applicable. Here sub-s. (2) of s. 15 mentions the court by which offences under s. 15(1) are triable and s. 29(1) excludes the application of the second part of the Second Schedule. The words of sub-s. (1) of s. 29 are peremptory. There is no escape from them. They say that 'subject to the other provisions of the Code' any offence under any other law shall be tried by the court when such court is mentioned in that law. A case under s. 15(1) therefore, is triable only by the two courts named therein, namely, Magistrates of the Second and the Third classes and not by any other Magistrate. The appellant relies upon the words 'subject to the other provisions of the Code' and refers to the Third Schedule. But that Schedule deals with the ordinary powers of the Magistrates under the Criminal Procedure Code. The words of the second sub-section of s. 15 are not rendered ineffective by the prescription of the ordinary powers of the Magistrates. To call in aid Schedule III would render the provisions of s. 29 redundant and useless at least in those cases where the second part of the Second Schedule applies. What s. 15(2) does is to prescribe a particular court and in view of the words of s. 29(1) no other court can try offences under s. 15(1) even though the powers of those courts may be superior to those of Magistrates of the Second and the Third Class. If the Second Schedule itself, which prescribes the courts for the trial of offences under laws other than the Penal Code, is excluded, the Third Schedule cannot bring about the same result indirectly. The provisions of the Third Schedule must therefore be taken to define general powers and not to create jurisdictions to try offences which the Second Schedule does.

It was argued before us that there is no point in prescribing that the Magistrates of the Second and the Third Class can try subsequent offences because their powers under s. 32 do not extend as far as the punishment prescribed by s. 15(1). This question does not arise directly but it may be said that two views are possible : one is that by implication the powers of these Magistrates are extended beyond what is prescribed under s. 32. The other is that in a case where the Magistrate feels that a heavier punishment should be imposed he can take recourse to the provisions of s. 349 of the Code and make a recommendation to a Magistrate who can impose adequate punishment in the case. The words "subject to the other provisions of the code" would enable this to be done.

In our opinion, therefore, the scheme of of the Code read with the provisions of s. 15 of the Forests Act clearly show that offences under s. 15 are not triable by any Magistrate as it would be if the Second Schedule were applicable. They are therefore triable by such Magistrates as have been named in the second sub-section. There is good reason for holding this, because a conviction by a Magistrate of the Second or the Third Class, as the case may be, is open to an appeal whereas a conviction by a Magistrate of the First Class and a sentence of fine of Rs. 50/- or under or a fine of Rs. 200/- after a summary trial is not appealable. It is possible that it was intended that a right of appeal should be conferred and therefore the trial of these offences was restricted to Magistrates of the Second and the Third Class. This was pointed out by Mr. Justice Beg in Harbans Singh and others v. State [A.I.R. 1953 All. 179] and was also referred to by Mr. Justice Verma in the opinion in the present case. In our opinion, it is a circumstance which may be taken into account. It is forcefully illustrated in this case. An appeal would have lain against the same decision if the Magistrate had not been given the powers of a First Class magistrate during the trial. The

respondents were robbed of a right of appeal. In any event, in view of the clear words of s. 29(1), the trial of these cases ought to have been before a court designated in s. 15(2) and as the trial was before a Magistrate who was not empowered to try the offence the proceedings were rightly declared void under s. 530(p) of the Code of Criminal Procedure. We accordingly hold that the decision under appeal was correct. The appeal fails and is dismissed.

Appeal dismissed.

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