

ALLAHABAD HIGH COURT

Mukandi Lal

Vs.

State through Municipal Board

Criminal Ref. No. 127 of 1950

(Seth, J.)

07.06.1950

JUDGMENT

Seth, J.

1. The applicant has been convicted of an offence under : Section 4, U. P. Prevention of Adulteration Act, and sentenced to a fine of Rs. 200. He was tried summarily. His conviction is based on his own plea and not upon any evidence produced in the case. There is no note on the record of the case about what was stated by the applicant beyond "pleads guilty."

2. The applicant applied in revision to the Sessions Judge of Agra which was heard by the learned Additional Sessions Judge of that place. It was contended before him that the applicant did not admit before the learned Magistrate that he had committed the offence of which he was accused and that the learned Magistrate had wrongly construed his statement as a plea of guilty. According to the applicant, the learned Magistrate only asked whether the Inspector had taken sample from the oil and the applicant replied in the affirmative, adding that it was meant for burning purposes. The learned Additional Sessions Judge is of the opinion that the learned Magistrate has not followed the procedure laid down by Sections 242 and 243, Criminal Procedure Code, and has, therefore referred the case to this Court, with the recommendation that the conviction of the applicant and the sentence awarded to him, be set aside.

3. Section 262, Criminal Procedure Code requires that in summary trials, with certain exceptions, the procedure prescribed for the trial of summons cases and the warrant cases shall be followed accordingly as a case may be a summons case or a warrant case. It reads as follows:

"In trials under this Chapter, the procedure prescribed for summons cases shall be followed in summons cases and the procedure prescribed for warrant cases shall be followed in warrant cases, except as hereinafter mentioned."

The present case being a summons case, the learned Magistrate was bound to follow the procedure prescribed for the trials of summons cases, except in so far as that procedure was made in-applicable by any specific provision of the Code.

4. According to Section 242, Criminal Procedure Code :

"When the accused appears or is brought before the Magistrate the particulars of the offence of which he is accused shall be stated to him and he shall be asked if he has any cause to show why he should not be convicted but it shall not be necessary to frame a formal charge." and according to Section 243 Criminal Procedure Code

"If the accused admits that he has committed the offence of which he is accused, his admission shall be recorded as nearly as possible in the words used by him, and, if he shows no sufficient cause why he should not be convicted, the Magistrate may convict him accordingly."

I have not been able to discover anything in the Code which makes Sections 242 and 243 inapplicable to summons cases tried summarily. It seems to me, therefore, that it was the duty of the learned Magistrate to have recorded the admission of the applicant as nearly as possible in his own words, if the learned Magistrate thought that the statement of the applicant amounted to an admission of his guilt,

5. It is true that Section 263, Criminal Procedure Code, provides that in cases tried summarily where no appeal lies, a Magistrate or Bench of Magistrates need not record the evidence of the witnesses or frame a formal charge, but that he or they shall enter in such form as the Provincial Government may direct, certain particulars. One such particular, which is lettered as (g) is, "the plea of the accused and his examination (if any)." In my opinion, Section 263 (g) is neither in conflict with the provisions of Section 243 nor does it override it. Having regard to the provisions contained in Section 243, Criminal Procedure Code, the proper construction to place upon Section 263 (g) would be that the plea of the accused, if it amounts to an admission of the offence of which he is accused, should be recorded as nearly as possible in his own words. In thus construing Sections 243 and 263 (g), Criminal Procedure Code. I am not unmindful of the provisions of Section 364, Criminal Procedure Code, which require that when an accused is examined by any Magistrate the whole of such examination, including every question put to him and every answer given by him, shall be recorded in full in the language in which he is examined, but which makes this requirement inapplicable to summary trials by providing :

"Nothing in this section shall be deemed to apply to the examination of an accused person under Section 263 or in the course of a trial held by a Presidency Magistrate." It is to be borne in mind that whereas Section 243 is confined to the admission of the commission of the offence only Section 364 covers a much wider field. For example, if an accused does not plead guilty and is examined under Section 342 of the Code, his examination need not be recorded in full in the language in which he is examined and every question put to him

and every answer given by him need not be recorded in full. Section 364, Criminal Procedure Code is a general provision dealing with the examinations of the accused in general, whereas Section 243, Criminal Procedure Code, which would be applicable to summary trials by reason of Section 263, Criminal Procedure Code contains a special provision. According to well settled rules of construction, this special provision should override the general provision contained in Section 364 (4), Criminal Procedure Code. I am, therefore, of the opinion that whenever an accused in a summary trial admits to have committed the offence of which he is accused his admission should be recorded as nearly as possible in his own words.,

6. The rule embodied in Section 243, Criminal Procedure Code is a very salutary rule, being necessary for the protection of the accused and the proper administration of justice. The order of a Magistrate convicting an accused person on his own admission is not a final order inasmuch as it is open to revision by a superior Court. The superior Court is entitled to be satisfied that what was treated by the Magistrate to be an admission of the offence is really such an admission. It is not difficult to conceive of cases in which the superior Court and the Magistrate may differ on the construction to be placed upon the statement of the accused person. By not recording the admission of the accused as nearly as may be in his own words and by merely recording his own conclusion from that statement - "pleads guilty" is not a record of any statement but is only a record of a conclusion from a statement - a Magistrate deprives the superior Court from examining the validity of his conclusion. Interests of justice require that he should not be permitted to do so. It is therefore a matter of satisfaction that the law does not allow him to do so.

7. In this case, as already stated, it is alleged on behalf of the applicant that he did not admit the commission of the offence of which he was accused and that the only admission made by him was that the sample of oil was taken by the Inspector. He did not stop short at this admission but added that the oil was meant for burning purposes. This allegation made on behalf of the applicant is mentioned in the referring order. The learned Magistrate has not repudiated this allegation in his explanation. In view of the fact that the learned Magistrate has not followed the procedure prescribed by Section 243, Criminal Procedure Code, it is not possible for me to presume that it was admitted by the applicant that the oil taken from him was adulterated or that it was being sold or being exposed for sale by him as an article of food. Consequently, I am unable to hold that it was admitted by the applicant that he had committed the offence of which he was accused. The conviction of the applicant is, therefore, not sustainable.

8. Accordingly, I accept the recommendation made by the learned Additional Sessions Judge and set aside the conviction of the applicant and the sentence awarded to him. Any fine realized from the applicant shall be refunded to him.

9. Before parting with this case I would like to say a few words about the explanation submitted by the learned Magistrate.

10. Referring to the opinion of the learned Additional Sessions Judge that Sections 242 and 243, Criminal Procedure Code requires that the statement of the accused should have been recorded, the learned Magistrate observes in his explanation :

"His suggestion that I should have recorded the statement of the accused under Sections 242 and 243, Criminal Procedure Code is incorrect. With due respect I differ with him on this. I consider these observations to be highly objectionable. The learned Magistrate was in no way competent, to criticize the observations of the learned Additional Sessions Judge. He seems to have entirely forgotten that the Court of Session is a superior Court to which his Court is subordinate and that to criticize the opinion of a superior Court as "incorrect" does certainly show lamentable want of respect, if such conduct does not amount to an act of insubordination also.

11. At the end of his explanation the learned Magistrate has said :

"Under the circumstances I oppose the revision strongly on the ground that the procedure suggested by the learned Additional Sessions Judge is against the provisions of Sections 262 to 264, Criminal Procedure Code and if it is allowed it would be against the spirit of law prescribed for trial of summons cases summarily."

12. It is not the business of a Magistrate, who has tried the case, to support or oppose a reference. It is the function of the State to do so. In identifying himself with the State, the learned Magistrate has betrayed complete ignorance of the functions and duties of a Tribunal.

13. The learned Magistrate was called upon to submit such explanation as he liked to submit. If he thought that his view was right, he could submit respectfully such arguments as he thought supported his view. He had no business to criticise the learned Additional Sessions Judge to whom he is subordinate and he had no business to say that he strongly opposed the revision. I cannot but deprecate the objectionable observations made by the learned Magistrate and the attitude of disrespect and insubordination adopted by him.

Revision allowed.