

# ALLAHABAD HIGH COURT

Jaddu

Vs.

State (Allahabad)

Criminal Ref. No. 78 of 1951

(Beg, J.)

12.05.1952

## JUDGMENT

**Beg, J.**

1. Five persons, namely Jaddu, Mangal, Ram Naresh, Sadal and Sukhai, were convicted under Section 15, U. P. Private Forests Act, 1948 (U.P. Act No VI of 1949) and sentenced to pay a fine of Rs. 100 each by Sri Shah Masud Alam, Magistrate first class, Gonda. The aforementioned applicants went up in revision before the learned Sessions Judge, Gonda, and the sole point that was agitated before him was that the trial of the applicants by the first class Magistrate being in contravention of Section 15, U. P. Private Forests Act, 1948, was ultra vires and void. The learned Sessions Judge accepted this argument and has made a reference to this Court for quashing the order of conviction and sentence passed by the learned Magistrate against the applicants and for ordering a fresh trial of the case.
2. Having heard the learned counsel for the parties I am of opinion that this reference must be accepted. Section 15 (2), U. P. Private Forests Act prescribes the forum for the trial of such offences. It runs as follows :

"15 (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 State Government in this behalf."

It is, therefore, quite clear that under the aforesaid provision of law the offence under Section 15, U. P. Private Forests Act was triable only by a Magistrate of the second or third class. Sub-clause (2), does not mention Magistrate of the first class at all and the effect of this deliberate omission is necessarily to debar him from trying any offence under Section 15 of the said Act. In this

connection the provisions of Section 530 (p), Criminal Procedure Code, are relevant. They are as follows :

"If any Magistrate, not being empowered by law in this behalf, does any of the following things, namely : (p) tries an offender .... his proceedings shall be void."

It seems to be quite clear to me that the Magistrate in question was not empowered by the U. P. Private Forests Act to try offences under Section 15 of the said Act and he having actually tried the offender of the said offence, the trial held by him and the proceedings consequent thereon must be held to be void under Section 530 (p), Criminal Procedure Code.

3. On behalf of the State, however, it is argued the word 'triable' in Section 15 (2) does not mean that a Magistrate of the first class is not competent to try the said offence. My attention is also invited to Schedule II, Criminal Procedure Code, under which any offence punishable with imprisonment for less than one year or with fine only is made triable by any Magistrate. It is further submitted that under Section 15 (1) the offence in question being the first offence was not punishable with fine exceeding Rs. 100 and hence under Schedule II, Criminal Procedure Code, any Magistrate could try the same This argument seems to ignore Section 29 (2), Criminal Procedure Code, under which an offence can be tried as shown in the eighth column of the Schedule II, Criminal P. C., only when no Court is specified by the special law made in that behalf as the Court where such offence should be tried. Sub-clause (1) of the said section further clarifies it by stating that where the special law has specified a particular Court where that offence has to be tried then the said offence shall be tried by such Court. Section 29, Criminal Procedure Code, runs as follows :

"(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 so 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 the second schedule to be triable."

The effect of reading Schedule II in the light of Section 29, Criminal Procedure Code, to my mind, is that where any special law lays down that a particular offence shall be triable by a particular Court it must be tried by that Court alone and not by any other Court.

4. On behalf of the State reliance is placed on Section 529 (e), Criminal Procedure Code, which runs as follows :

"If any Magistrate not empowered by law to do any of the following things namely: (e) to take cognizance of an offence under Section 190, sub-sections (1), Cl (a) or Clause (b)..... erroneously in good faith does that thing, his proceedings shall not be set aside merely on

the ground of his not being so empowered."

It seems to me that Section 529 (e) is applicable only if the Magistrate is not empowered to take cognizance of the offence in question. A perusal of Section 15 (2), U. P. Private Forests Act shows that what is barred under it is not the cognizance of the offence by a Magistrate of the first class, but a trial of the same by him. A first Class Magistrate could take cognizance of the offence, but he could not proceed to try it.

5. Section 529, Criminal Procedure Code, would have applied if the Magistrate had not been empowered by law to take cognizance of the offence in question. As, however, he could take cognizance of the offence, Section 529 has in my opinion, no application to the present case.

6. The learned counsel for the accused-applicants relied on *Emperor v. Chota Singh*<sup>1</sup>, *Ismail Sahib v. Ethikashi Sarguru*<sup>2</sup>, and *Queen Empress v. Schade*<sup>3</sup>, These cases, however, are not of much assistance in the present case as no reference to Section 529, Criminal Procedure Code, has been made in them. In view, however, of the legal position which I have discussed above, I am of opinion that this reference should be allowed.

7. I accordingly accept the reference, set aside the sentence and conviction passed on the applicants and order that the case shall be sent back to the District Magistrate concerned, who should transfer it to the file of some Magistrate of the second or third class competent to try the same.

Reference accepted.

<sup>1</sup>32 Mad 303

<sup>3</sup>19 All 465

<sup>2</sup> AIR 1941 Madras 897