ALLAHABAD HIGH COURT

State

Vs.

Mangal Singh

Criminal Govt. Revn. No. 189 of 1960. against order

(Jagdish Sahai and Mithan Lal, JJ.)

30.10.1959. 15.11.1960

JUDGMENT

Jagdish Sahai, J.

1. This revision application has been filed by the State under the provisions of section 439 Criminal Procedure Code against the opposite parties Mangal Singh and Rati Lal. The opposite parties were prosecuted for offences punishable under sections 42/123 and 38 read with Section 42/123 of the Motor Vehicles Act (hereinafter referred to as the Act). The opposite parties were convicted under section 42/123 of the Act and sentenced to pay a fine of Rs. 200/- or in default of payment of fine to undergo three months simple imprisonment. They were also convicted under section 38 read with section 42/123 of the Act and sentenced to pay a fine of Rs. 200/- or in default of payment of fine to undergo three months simple imprisonment each. The opposite parties filed an appeal before the learned Sessions Judge, Meerut against the order convicting and sentencing them This appeal was heard by Sri H. N. Kapoor, Civil and Sessions Judge, Meerut. who by his judgment dated 30th "October, 1959 allowed it in part and maintaining the conviction of the opposite parties under sections 42 and 38 of the Act reduced the fine to Rs. 25/- under each count. The ground on which the learned Sessions Judge reduced the sentences was that the same in his opinion were illegal. In effect he held that under the provisions of section 130 of the Act the Magistrate was required to issue a summons calling upon the opposite parties to appear by pleader and not in person, or that they may by a specified date mentioned in the summons prior to the date of hearing of the charge plead guilty to the charge by registered letter and remit to the court such sum not exceeding twenty five rupees as the court may specify and that inasmuch as the summons were not in conformity with the provisions of section 130 of the Act the proceedings were not legal. He further held that the effect of the omission of the necessary particulars from the summons was that the opposite parties be given the benefit of section 130 of the Act and a fine of Rs. 25/- under each count should be imposed upon each of them.

2. We have heard Mr. Bhatt, Deputy Government Advocate, for the petitioner and Mr. H. N. Chatterjee for the opposite parties. Mr. Bhatt has submitted firstly that the appeal before the learned Sessions Judge was not competent and secondly that the learned Magistrate has taken a wrong view of section 130 of the Act. We shall consider these submissions separately.

3. So far as the first submission is concerned, we have already mentioned above that the opposite parties were sentenced to pay a fine of Rs. 200/-each under each count with the result that a total fine of Rs. 400/- was imposed on each one of them. It was contended that the appeal did not lie because of the provisions of section 414 Criminal Procedure Code. That section reads as follows :

> "Notwithstanding anything herein before contained, there shall be no appeal by a convicted person in any case tried summarily in which a Magistrate empowered to act under section 260 passes a sentence of fine not exceeding two hundred rupees only."

We have already stated above that the total fine imposed was Rs. 400/- and as such the case does not fall within the mischief of section 414 Criminal Procedure Code. We are clearly of the opinion that the appeal preferred by the opposite parties before the learned Sessions Judge, Meerut was competent and in that view of the matter overrule the first submission of the learned Deputy Government Advocate.

4. Section 130(1)(b) of the Motor Vehicles Act reads as follows :-

> "A Court taking cognizance of an offence under this Act may, unless the offence is an offence specified in Part A of the Fifth Schedule, state upon the summons to be served on the accused person that he may by a specified date prior to the hearing of the charge plead guilty to the charge by registered letter and remit to the Court such sum not exceeding twenty-five rupees as the Court may specify."

Admittedly in the present case the summons did not mention that the opposite parties were free to appear by pleader and that in case they paid a sum not exceeding Rs. 25/-, which was to be mentioned in the summons, they may remit that amount. It is, therefore, clear that the summonses issued in the present case were defective. The question that requires consideration, however, is as to what is the extent of the defect and what was its effect. Having carefully considered the language of Section 130 of the Act we are fully satisfied that its provisions are mandatory and not merely directory. After clause (a) and before clause (b) of Section 130 occurs the word "or". It has been contended that the effect of the word "or" is that the notice may comply with either clause (a) or clause (b) of Section 130(1) of the Act. In other words the argument on behalf of the State is that it would be a full compliance of the provisions of the law if the summons only mentioned that the opposite parties may appear by pleader and not in person or it may only state that they may by a specified date remit to the court a sum mentioned in the

summons which should not exceed Rs. 25/-. Having carefully considered the provisions of Section 130 of the Act we have come to the conclusion that that is not the effect of the word "or". In our opinion the word "or" indicates that the notice must state both the things mentioned in clauses (a) and (b) and leave it to the option of the opposite parties either to choose the course contemplated by clause (a) or to follow the one contemplated by clause (b). We have no doubt that the notice has to specify the requirements of both the clauses and the word "or" does not give a discretion to the court to either specify in the summons what is contained in clause (a) or what is contained in clause (b), but it gives the accused persons a choice to choose between the two alternatives provided for by clauses (a) and (b) of Section 130(1) of the Act and mentioned in the notice. In other words the word "or" is intended to give a choice to an accused person and not to the court. It may be stated that the offences punishable under Sections 38 and 42 of the Act are not specified in part A of the Fifth Schedule of the Act. Consequently in the present case the Magistrate failed to discharge a mandatory duty cast upon him and we must hold that the proceedings initiated by the learned Magistrate were not in accordance with the law. We may, however, remark that if the opposite parties wished to take advantage of the provisions of clause (b) of Section 130(1) of the Act, nothing prevented them from pleading guilty to the charge at the trial even though the summons was not in conformity with the provisions of clauses (a) and (b) of Section 130(1) of the Act. If that was done, the Magistrate might have ordered a sentence not exceeding Rs. 25/- each under each count and in that case the defect to the notice would only have been an irregularity. The opposite parties, however, did not plead guilty and it was only in the court of Session that they took advantage of the provisions of clauses (a) and (b) of Section 130(1) of the Act. Inasmuch as the summon, issued were defective and the proceedings that were started against the opposite parties were not in conformity with the law, the Sessions Judge had either to order a retrial or to reduce the sentence himself. If he adopted the latter course, it cannot be concluded that he did any thing illegal or without jurisdiction. Even the learned Deputy Government Advocate has prayed only for a retrial before us. We are not prepared to follow this course firstly because there is nothing illegal in the order of the learned Sessions Judge and secondly because the case is of a petty nature and the opposite parties have already suffered much having had to undergo a trial and then to have been through an appeal and revision.

5. We, therefore, dismiss the revision application.
Revision dismissed.