

ALLAHABAD HIGH COURT

Durga Prasad

Vs.

State, (Allahabad)

Criminal Revn. No. 1995 of 1969. against order of B.P. Agarwal, S.J., Gorakhpur,
H.C.P. Tripathi, J.

17.11.1969. 08.02.1971

JUDGMENT

H.C.P. Tripathi, J.

1. This application in revision raises an interesting question of law.
2. Applicant is employed as a Turner in the Railway Workshop at Gorakhpur. According to the prosecution, on 2-4 1968, at about 11-30 A.M., there was recess and applicant while going out of the Workshop for his lunch was found at the gate carrying a Jhola. He was checked and searched by the Rakshak on duty and one steel rod about 9 1/2" long weighing 900 grams and two pieces of moulded brass shells weighing about 1300 grams and 1 kilo respectively were recovered from his possession. A recovery memo was prepared at the spot and the applicant along with recovered articles was taken to Railway, Protection Force Post, Gorakhpur where a case was registered against him.
3. Sri Gajai Singh, Sub-Inspector, Railway Protection Force investigated the case and on the basis of his investigation, applicant was tried for an offence under Section 3(a) of the Railway Property (Unlawful Possession) Act, 1966.
4. At the trial, applicant, pleaded not guilty and had denied the recoveries. According to him, he had a row with a Rakshak and was beaten and falsely implicated in this case. He examined some evidence in his defense.
5. Prosecution case regarding the recovered Railway materials from the possession of the applicant was testified by (P.W. 1) Sri Indradeo Rakshak, who had checked the applicant and (P.W. 2) Sri Ravindra Kumar Nandi, Sub-Inspector. Railway Protection Force, who was posted at the relevant time at the Workshop. Sri Girja Shankar Tripathi (P.W. 3) and Sri Kamla Kant Yadava (P.W. 4), Foreman at the Workshop, who were examined on behalf of the prosecution, did not support it in its entirety and were declared hostile, Sri Gajai Singh stated to have investigated the offence.

6. Placing reliance on the prosecution evidence, the trial Magistrate convicted and sentenced the applicant and the learned Sessions Judge has agreed with his findings.

7. Learned counsel for the applicant has argued that as the investigation in this case had been conducted in the teeth of Section 161 of the Code of Criminal Procedure, the entire proceeding stands vitiated and the witnesses, who had signed their statements before the Investigating Officer should not have been relied upon by the courts below for recording a conviction in the case. Reliance was placed on a Single Judge decision of Srivastava J. in the case of *Bhuneshwari Pershad v. Emperor*¹, and also on the decision of Privy Council in the case of *Zahiruddin v. Emperor*²,

8. The relevant part of Section 8 of the Railway Property (Unlawful Possession) Act, 1966 reads :-

"(1) When any person is arrested by an officer of the Force for an offence punishable under this Act or is forwarded to him under Section 7, he shall proceed to inquire into the charge against such person.

(2) For this purpose the officer of the Force may exercise the same powers and shall be subject to the same provisions as the officer in charge of a police station may exercise and is subject to under the Code of Criminal Procedure, 1898, when investigating a cognizable case."

9. Sub-clause (2) of the aforesaid section makes it evident that an officer of the Force may exercise the same powers and shall be subject to the same provisions as the officer in charge of a police station may exercise, when investigating a cognizable offence. It is, therefore, obvious that although the word 'inquiry' has been used in the aforesaid section, it amounts to an investigation within the meaning of the Code of Criminal Procedure and the powers and duties of an officer of the Railway Protection Force are analogous to that of an investigating officer conducting investigation of a cognizable offence under the Code of Criminal Procedure. In other words, an officer of the Railway Protection Force while holding an inquiry against the arrested person is subject to the limitation placed upon a police officer under the Code of Criminal Procedure. In my opinion, therefore, while conducting an inquiry under Section 8 of the Railway Property (Unlawful Possession) Act, 1966 an officer of the Force has to be guided by the provisions of the Code of Criminal Procedure in respect of that inquiry, which amounts to an investigation. That being so, Section 162 of the Code of Criminal Procedure applies with full force to inquiry proceedings held by an officer of the Railway Protection Force under the aforesaid Act.

10. Section 162(1) of the Code of Criminal Procedure reads :-

"No statement made by any person to a police officer in the course of an investigation under this Chapter shall, if reduced into writing, be signed by the person making it; nor

shall any such statement or any record thereof, whether in a police-diary or otherwise, or any part of such statement or record, be used for any purpose (save as hereinafter provided) at any inquiry or trial in respect of any offence under investigation at the time when such statement was made :Provided that when any witness is called for the prosecution in such inquiry

¹ AIR 1931 Oudh 172

² AIR 1947 PC 75

or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by Section 145 of the Indian Evidence Act, 1872, and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination."

11. Section 162(1) of the Code of Criminal Procedure in terms contains an injunction that the statement made by any person to a police officer in the course of an investigation, if reduced into writing shall not be signed by that person". In this case, however, it is admitted that all those, who were examined during the course of an inquiry under Section 8 of the Act by Sri Gajai Singh had signed their statements. If Section 162 of the Code of Criminal Procedure applies to such proceedings then the injunction contained therein has been flagrantly violated. The question arises as to what is the effect of violation of that injunction. In the Oudh case, AIR 1931 Oudh 172 (supra), it was inter alia held that –

"The provisions of Section 162 have been enacted for the benefit of the accused. It is intended that statements made to the police in the course of an investigation should not be used in evidence against the accused though the accused is allowed to make use of them in his favour within the limits of the proviso to that section. The policy underlying the rule contained in the section seems to be that witnesses at the trial should be free to make any statements in favour of the accused which, they should wish to make, unhampered by any thing which they might have said or might have been made to say to the police. The result of witness's signatures having been obtained on their statements reduced into writing would be to tie them down to the statements so recorded or at any rate to give them the impression that they were not free to make a different statement...."

12. Accordingly, it was held the evidence of such witnesses must be rejected as it is not a mere irregularity which can be cured by Section 537, Criminal Procedure Code.

13. In Zahiruddin's case, AIR 1947 PC 75, it was held that

"The effect of a contravention of Section 162(1) depends on the prohibition which has been contravened. If the contravention consists in the signing of a statement made to the police and reduced into writing, the evidence of the witness who signed it does not

become inadmissible. There are no words either in the section or elsewhere in the statute which express or imply such a consequence. Still less can it be said that the statute has the effect of vitiating the whole proceedings when evidence is given by a witness who has signed such a statement. But the value of his evidence may be seriously impaired as a consequence of the contravention of this statutory safeguard against improper practices. The use by a witness while he is giving evidence of a statement made by him to the police raises different considerations. The categorical prohibition of such use would be merely disregarded if reliance were to be placed on the evidence of a witness who had made material use at the statement when he was giving evidence at the trial. Then, therefore, the Magistrate or presiding Judge discovers that a witness has made material use of such a statement it is his duty under the section to disregard the evidence of that witness as inadmissible."

14. In other words, the Privy Council has held that if the contravention consists in the signing of a statement to the police, the evidence of the witness who signed does not become inadmissible though its value may be impaired but if the witness is allowed to make use of the statement for refreshing his memory while giving evidence at the trial, his evidence becomes inadmissible.

15. In the instant case, the statements made by the witnesses during investigation had been brought on record and they were put to the witnesses in the examination-in-chief while their evidence was being recorded before the trial Magistrate. It is, therefore, obvious that the witnesses had every opportunity to refresh their memory by looking to their signed statements, which were specifically brought to their notice by the prosecution at the time of their examination. That being so in the light of the aforesaid pronouncement of Privy Council, there is no option but to reject the evidence furnished by the prosecution witnesses as inadmissible. The result is that there is no admissible evidence in support of the prosecution case.

16. Accordingly, this revision is allowed. The conviction and sentence of the applicant are set aside. Applicant is on bail. His bail bonds are cancelled. He need not surrender.

17. Before parting with this case, it must be observed that it is because of the legal flaw in the conduct of the investigation and prosecution that this revision is being allowed. The officers of the Railway Protection Force should take into account the provisions of the Code of Criminal Procedure while investigating such cases to avoid guilty persons going scot free on account of their defective investigation. Let a copy each of this judgment be sent to the General Manager, North Eastern Railway and to the Chief Security Officer, Railway Protection Force, Gorakhpur.
Petition allowed