CALCUTTA HIGH COURT

Ramanlal Rathi

Vs.

The State (Calcutta)

Criminal Revn. No. 300 of 1950

(Harries, C.J. and Lahiri, J.)

13.06.1950

JUDGMENT

Harries, C.J.

1. This is a petition for revision of an order of a learned Additional Sessions Judge setting aside a conviction and ordering a retrial.

2. The petitioner was changed under Section 7, Essential Supplies Act, for contravention of para. 4 (1), West-Bengal Cloth and Yarn Movement Control Order, 1947. He was found guilty by a learned Magistrate and was sentenced to two years' rigorous imprisonment and to pay a fine of Rs. 1000. In default of payment of the fine he was ordered to undergo a further period of six months' rigorous imprisonment. Certain cloth which was the subject matter of the prosecution was ordered to be confiscated.

3. The case for the prosecution was that the petitioner came to Bongaon which is near the frontier between India and Pakistan on 28.11.1947 bringing with him ten bales of new textiles goods which were loaded in a truck. On 29.11.1947 the petitioner went to the Bongaon Police Station and sought for permission to move the goods from India into Pakistan. The Police referred the matter to the Sub-Divisional Officer who ordered the petitioner to be prosecuted as he had failed to produce any permit or authority for the movement of the goods from India into Pakistan. The petitioner was then arrested and produced before a Magistrate on 30-11-1847. Before the Magistrate he produced a permit, Ex. 3 purporting to have been issued by the Directorate of Textiles and bearing the signature of one W. Bennet, Assistant Director (Movement). According to the prosecution this permit had never been issued by the Directorate of Textiles. The defense case was that it was a genuine permit authorizing the petitioner to move the property with a view to taking it to Pakistan. There can be no doubt that if this permit was a genuine permit no offence had been committed and further if there was any doubt about the genuineness of the permit the

prosecution would have failed to prove their case beyond all reasonable doubt.

4. The prosecution called evidence with a view to showing that this permit was not signed by W. Bennet. Whether Mr. Bennet was available to disprove his own signature is not stated. Of course he may have left the country. The evidence called to prove that the signature was not genuine was that of Ananta Kumar Purkait, P. W. 5 who was a clerk in Mr. Bennet's office and claimed to know Mr. Bennet's signature. In his examination-in-chief he stated that the signature on Ex. 3 appeared to be like that of Mr. Bennet though he was not sure whether it was Mr. Bennet's signature. In cross-examination he stated that he was very familiar with Mr. Bennet's handwriting and that the signature on Ex. 3 appeared to be similar to that of Mr. Bennet. Later he said that he had no doubt in his mind that the signature on Ex. 3 was the signature of Mr. Bennet. If the evidence be true then the prosecution was bound to fail. The prosecution, however, tried to suggest that their own evidence should be disbelieved and they called a handwriting expert. According to that witness the signature purporting to be that of Mr. Bennet on Ex. 3 was not his genuine signature. A handwriting expert's evidence is of very little value and as the learned Sessions Judge points out, the genuine signature with which the handwriting expert compared the disputed signature was merely regarded as genuine because Ananta Kumar Purkait said it was genuine. This witness had stated that the signature on Ex. 3 was also genuine. It seems to me that the evidence of Ananta Kumar Purkait is much more valuable than that of the handwriting expert. But in any event the evidence failed to establish that the permit was not genuine and as I have said, if there was any doubt in the matter the accused was entitled to the benefit of the doubt and to be acquitted.

5. An attempt was made to show that the writing in the body of the document was not the writing of any clerk in Mr. Bennet's office. But the evidence of the witness who deposed to this is not accepted by the learned Sessions Judge and rightly. How could a man swear that the handwriting on a document was not the handwriting of anyone of a large number of clerks in an office?

6. The prosecution also produced the Road Permit Register with a view to showing that there was no entry in the register that a permit had been issued to the petitioner. However, the witness who produced this document had to admit that there were cases in which permits were issued under the signature of Mr. Bennet and which were never entered in the register. Therefore the absence of any entry in the register did not carry the case much further. There was an entry in the register of the issue of a permit on 3.11.1947. But the learned Judge points out that that does not mean that a permit could not have been issued to the petitioner on a later date.

7. The learned Sessions Judge then sums up the matter in these words :

> "For the reasons stated above I hold that the evidence adduced by the prosecution is not sufficient to establish that the permit, Ex. 3, was not issued by the Directorate of Textiles. The defence of the accused is that he applied for a movement permit and received Ex. 3

> from the Directorate of Textiles. If upon his application he received Ex. 3 from the office of the Director of Textile's he cannot be held criminally liable even if it be found that the permit issued to him had not really been signed by Mr. Bennet unless it is found that he colluded with somebody in the Directorate to have issued to him a permit containing a forged signature of Mr. Bennet."

8. The learned Sessions Judge then went on to mention that the finding which I have referred to, raised the question whether the petitioner had really applied for a movement permit and the learned Sessions Judge pointed out that the prosecution had adduced no evidence to show that he had made no such application. The learned Judge was of opinion that if such evidence was available and could be produced it would go a long way to establishing either the truth of the case for the prosecution or that of the defense. The learned Judge then makes this observation:

> "The evidence on the record is quite insufficient and unsatisfactory to establish that Ex. 3 was not received *bona fide* by the appellant from the Directorate of Textiles and the order passed by the learned Magistrate must, therefore, be set aside."

9. I should have thought that upon that finding there was only one possible result, namely, the acquittal of the petitioner. The learned Judge, however, ordered a retrial, apparently because of the seriousness of the case. He regretted that a retrial was necessary as the prosecution had been started more than two years before the matter came before the learned Additional Sessions Judge. The fact that the case is serious is no ground for ordering a retrial and it appears to me that in this case the learned Judge has not only ordered a retrial but has given the prosecution an advice on the evidence and has told them what evidence they should produce if they hope to prove their case.

10. If at the end of a criminal prosecution the evidence leaves the Court in doubt as to the guilt of the accused the latter is entitled to a verdict of not guilty. A retrial may be ordered when the original trial has not been satisfactory for particular reasons, for example, if evidence had been wrongly rejected which should have been admitted, or admitted when it should have been rejected, or the Court had refused to hear certain witnesses who should have been heard. But I have never known of a case where a retrial can be ordered on the ground that the prosecution did not produce the proper evidence and did not know how to prove their case. With great respect to the learned Judge I would point out that it is not for the Court to advise the prosecution or the defence as to how they should establish their respective cases. The learned Judge has very rightly pointed out in this case that the prosecution failed to prove that the petitioner had moved this yarn without a permit. It was for the prosecution to show that there was no permit and so far from showing it the prosecution produced, one witness to say that the permit was a perfectly genuine one though the handwriting expert threw doubt on that. On the state of the evidence the petitioner was entitled to be acquitted and the learned Judge should not have ordered a retrial. It is true that this case is a serious one, but the seriousness of a case does not warrant an order for a retrial.

Where the prosecution have conducted a prosecution and failed on the merits then I can see no ground whatsoever for ordering a new trial. Had there been technical defects or anything of that sort in the original trial which vitiated the trial then a new trial might have been ordered. But in this case the whole of the evidence for the prosecution was heard and it did not establish the prosecution case. What the learned Additional Sessions Judge has done in ordering a new trial is to give the prosecution a second opportunity to establish their case and further he has advised them on how best to do it.

11. It appears to me that the order of the learned Additional Sessions Judge cannot possibly be sustained and must be set aside. On the findings the petitioner was clearly entitled to an acquittal. I would, therefore, set aside the order of retrial and the conviction and sentence passed by the Magistrate and acquit the petitioner upon this charge. The petitioner need not surrender to his bail and his bail bond is cancelled. The Rule is made absolute accordingly.

12. The order for confiscation of the Textiles is set aside and the goods must be returned or their value paid to the petitioner without delay.

Lahiri, J.

13. I agree.

Accused acquitted.