

Ashwani Kumar vs The State on 10 October, 1955

Equivalent citations: AIR1956ALL158, AIR 1956 ALLAHABAD 158, 1956 ALL. L. J. 216

JUDGMENT

Asthana, J.

1. This is a reference by the learned Additional Sessions Judge of Allahabad recommending that the conviction of the accused Ashwani Kumar under Section 7 of the Essential Supplies (Temporary Powers) Act, 1946 (Act 24 of 1946) for contravention of Clauses 14. and 15, U. P. Foodgrains Rationing Order, 1949, and the sentence of fine of Rs. 50/- imposed on him may be set aside.

2. The charge against the accused Ashwani Kumar was that he had drawn rations from 25-6-1949 to 7-11-1950 for two ladies, inamely, Smt. Subhadra Devi and Smt. Gayan Kumari when the ration for these two ladies for the same period had also been drawn by one Piarey Lal who was living in a portion of the same house No. 358-A, Mohatashimganj, Allahabad, which was also occupied by Ashwani Kumar, his mother, Smt. Sun-,der Devi, his sister Smt. Subhadra Devi and Smt. Gayan Kumari, the wife of Jitendra Kumar. It is not clear from the record as to what is the relationship between Piarey Lal and the two ladies Smt. Subhadra Devi and Smt. Gayan Kumari for whom he also drew rations for a similar period, Piarey Lal and Ashwani Kumar were both tried together for drawing rations for the two ladies Smt. Subhadra Devi and Smt. Gayan Kumari. Piarey Lal was acquitted. by the trial Court whereas Ashwani Kumar was convicted and sentenced as stated above.

3. The learned Sessions Judge who heard the revision against the order of the trial Court was of the opinion that the accused Ashwani Kumar and Piarey Lal could not be tried together as it could not be said that their offences arose out of the same transaction. Section 239, Criminal P. C., which provides for joint trial of two or more persons says that persons accused of the same offence committed in the course of the same transaction may be tried together.

The question which, therefore, arises for consideration is whether the two accused Piarey Lal and Ashwani Kumar who were tried jointly in this case had committed the same offence in the course of the same transaction. In this case the interests of the two accused were against each other and one was throwing blame on the other in order to justify his own conduct. The offence against both the accused as of drawing rations for the two ladies when in fact they were not entitled to do so, and, in my opinion, every time the ration was drawn for the two ladies an offence was committed by the person who was not entitled to draw it.

There is nothing on the record to show that both the accused drew ration for the two ladies at one and the same time. There is also no doubt that the two accused had no common intention of

committing the offence. Their intentions were independent of each other. In the circumstances I am of opinion that the offences which are said to have been committed by the accused though they were similar in nature did not arise out of the same transaction.

As such, Section 239 (a), Criminal P. C., which provides for the joint trial of different accused when they commit the same offence in the course of the same transaction is not applicable to the facts of the present case.

There can be no doubt that the accused Ashwani Kumar has been prejudiced by being tried jointly with the other accused Piarey Lal, particularly when the interests of the two were against each other.

4. I, therefore, accept the reference, set aside the conviction and sentence of the accused Ashwani Kumar and direct that the fine if paid will be refunded to him. In view of the fact that rationing ceased long ago I do not think that this is a fit case in which a retrial of Ashwani Kumar is necessary,