

## Kashi Ram And Ors. vs State on 26 August, 1952

**Equivalent citations: AIR1953ALL42, AIR 1953 ALLAHABAD 42**

ORDER

Agarwala, J.

1. There is no force in this revision on the merits. The Magistrate passed a composite order of sentence of 18 months rigorous imprisonment under Sections 452 and 323, Penal Code read with Section 149, Penal Code and of six months' rigorous imprisonment under Section 147, Penal Code. In appeal the learned Judge considered that a composite sentence of punishment should not have been made but took no further steps in the matter. It has been urged that the composite sentence could not be passed, and in support of this argument reliance has been placed upon the ruling of a learned Single Judge of this Court reported in *Brij Nandan v. Emperor*, A. I. R. 1948 ALL. 136. In that case five accused were tried under Sections 147 and 452 and Section 328 read with Section 149, Penal Code. The learned Magistrate who tried the case passed an order convicting the applicants without specifying the sections of the Indian Penal Code under which he was convicting them and passed combined sentences upon them of six months' rigorous imprisonment and a fine of Rs. 50 each. On those facts the learned Judge held that the imposing of a composite sentence was not legal. It was observed :

"By not specifying the different sections of the Indian Penal Code under which each applicant was convicted and by not passing a separate sentence for each offence the trial Court was unable to apply its mind to the case of each applicant separately and judging the extent of each applicant's guilt and determining what sentences should be passed upon them for each offence."

The facts of the present case are different. In the present case the learned Magistrate clearly specified the sections under which each individual was held guilty. He held them guilty under Sections 147 and 452 and Section 323 read with Section 149, Penal Code. He sentenced each of them to undergo rigorous imprisonment for a period of six months under Section 147, Penal Code and sentenced each of them to 18 months' rigorous imprisonment under Sections 452 and 323 read with Section 149, Penal Code.

2. Under Section 367 (2), Criminal P. C., every judgment shall specify the offence (if any) of which, and the section of the Indian Penal Code or other law under which, the accused is convicted, and the punishment to which he is sentenced. The section clearly requires that the Court shall apply its mind to the offence or offences which have been committed by every accused and record its finding

thereon, and further, that it will specify the punishment which it proposes to impose upon the accused. Although the section is not clearly worded, it implies that the punishment for each offence of which an accused is found guilty should be specified separately. But where the punishment imposed is a composite punishment for the various offences which have been specified and found to be committed by a particular accused, it cannot always be said that the sentence vitiates the trial, provided that the sentence imposed does not exceed the maximum sentence provided under any one of the sections under which the accused has been found guilty, and provided of course that the Magistrate was empowered to impose the sentence passed by him. The imposition of a composite sentence is merely an irregularity in such a case covered by Section 537, Criminal P. C. The case referred to above Brij Nandan v. Emperor, A. I. R. 1948 ALL. 130 is clearly distinguishable, because in that case even the sections were not specified by the learned Magistrate, and, therefore, it was held that the learned Magistrate had not applied his mind to the case. This cannot be said of the present case. I am, therefore, unable to hold that the imposition of a composite sentence of 18 months' rigorous imprisonment imposed by the learned Magistrate vitiates the trial. The sentence, however, appears to me to be too severe.

3. While rejecting this application on merits, I reduce the sentence to one year's rigorous imprisonment. With this modification the revision application is rejected.