

Munir Khan vs State on 29 March, 1950

Equivalent citations: AIR1951ALL488, AIR 1951 ALLAHABAD 488

Author: Raghubar Dayal

Bench: Raghubar Dayal

ORDER

Raghubar Dayal, J.

1. Munir Khan was convicted by Sri D. D. Agarwal, Judicial Officer, Jaunpur, of an offence under Section 12, Opium Act, read with Section 5, and was sentenced to Rs. 200 fine in a summary trial. The Additional Sessions Judge, Jaunpur, has made this reference recommending the setting aside of the conviction on the ground that the learned Magistrate was not competent to try Munir Khan summarily.

2. It appears that Sri D. D. Agarwal was appointed a Judicial Officer at Kanpur under an order of the Government dated 5-8-1947, and that by virtue of some earlier notification, Judicial Officers were conferred with first class magisterial powers. By virtue of this appointment as judicial Officer, Sri Agarwal. could exercise only first class powers within the district of Kanpur.

3. In January 1948, the Government conferred on him the powers of a Magistrate, 1st class, to be exercised by him in respect of all cases arising within the railway limits of the B. B. & C. I. Rly., Fatehgarh Railway District of that Railway. The power was conferred in the exercise of the powers conferred by Sub-section (1) of Section 14, Criminal P. C. He was also invested, under Section 37, Criminal P. C., with the powers to try summarily the offences described in Section 260 of that Code.

4. This appointment in 1948 was, therefore, independent of the appointment of Sri Agarwal as a Judicial Officer in Kanpur district. He was not transferred to the other magisterial post. He was conferred powers of a 1st class Magistrate for a limited period, viz. 6 months. Section 14 (2), Criminal P. C., provides that persons on whom magisterial powers are conferred under Section 14 (1) shall be called Special Magistrates and shall be appointed for such terms as the Provincial Government, may by general or special order direct. It is, therefore, clear that he was invested with the summary powers, i.e., the powers to try summarily certain offences as a Special Magistrate for a period of six months. After the expiry of this period, he could not exercise magisterial powers or the powers to try summarily the offences mentioned in Section 260, Criminal P. C., without any further orders.

5. Sri Agarwal was reverted from the post of Special Railway Magistrate to the post of a Judicial Magistrate in April 1948. Notification about this reversion was ordered in G. O. No. P-1648/II-A-202-48, dated 27-5-1948. On reversion as a Judicial Magistrate, Sri Agarwal could not have exercised his powers for trying offences summarily as those powers could be exercised by him as a Special Railway Magistrate only. He, however, exercised those powers in trying Munir Khan and other persons. I am not concerned at present with the trials of other persons. The summary trial of Munir Khan was therefore illegal as Sri Agarwal was not empowered to try cases summarily.

6. I, therefore, accept this reference, set aside the conviction of Munir Khan under Section 12, read with Section 5, Opium Act, and order that he be tried for these offences by a Competent Magistrate. The case be returned to the District Magistrate, Jaunpur, for further proceedings according to law by a competent Magistrate. The fine, if paid by the applicant, be refunded.