

Rup Chand vs State on 19 September, 1955

Equivalent citations: AIR1956ALL399, 1956CRILJ851, AIR 1956 ALLAHABAD 399

ORDER

Roy, J.

1. The Magistrate trying this case-summarily under the powers vested in him under Section 260, Criminal P. C. passed a non-bailable sentence of fine of Rs. 100/-. The record maintained by him under Section 263 of the Code gives no indication as to what was the offence that was complained of and what, was the offence that was proved. The learned Magistrate passed the following order :

"I therefore find the accused guilty and I fine him Rs. 100/-. In default to undergo R. I. for one month."

2. When the matter went up in revision before the learned Sessions Judge he observed that the guilt of the applicant under Section 8, Industrial Statistics Act of 1942 was established, and he rejected the revision. Section 263, Criminal P. C. requires that in cases where no appeal lies, the Magistrate exercising summary powers under Section 260 of the Code need not record the evidence of the witnesses or frame a formal charge; but he shall enter the date of the commission of the offence, the date of the report or complaint, the name of the complainant, if any, the offence complained of, and the offence proved, if any, and certain other particulars.

Now in the present case the record maintained under Section 263 of the Code does not state the date of the commission of the offence, the date of the report or complaint, the offence complained of, or the offence proved. In fact it was not open to the Sessions Judge exercising powers of revision to supply the deficiency in the record of the Magistrate by remarking that the offence complained of was an offence under Section 8, Industrial Statistics Act of 1942, and that was the offence that was proved.

A Magistrate exercising summary powers has to observe the provisions of Section 263 of the Code in strict letter, and it is not open to him to make the summary proceedings more summary in the present case the applicant was not even told as to "what was the offence that was complained of, and he was even not told as to who was the complainant and whether the complaint required the prior sanction of any authority. In view of this the trial was illegal, and the conviction cannot be sustained.

3. I, therefore, allow the application in revision, set aside the orders of the Courts below and acquit the applicant. I do not think this is a fit case in which I should order a retrial.