

Sachidanand And Anr. vs State Through G.R.P. Banaras ... on 7 October, 1955

Equivalent citations: AIR1956ALL212, 1956CRILJ368, AIR 1956 ALLAHABAD 212, 1956 ALL. L. J. 281

ORDER

Asthana, J.

1. This is a reference by the learned Additional Sessions Judge of Banaras recommending that the conviction of Sachidanand and Suraj Bali under Section 379, I. P. C. and the sentence of Rs. 50/- on each of them may be set aside and that they may be tried afresh if necessary.

2. Sachidanand and Suraj Bali were employed as watchmen in the goods shed of the O. T. Railway (now North-Eastern Railway) at Banaras. On 14-4-1952 at about midnight Sri N.G. Mitra, Assistant Inspector of the Watch and Ward Department made a surprise checking of the goods shed and he found the two accused tampering with and taking out contents from a package lying in the goods shed. He caught them & found two 'jholas' in their possession containing phials of 'Anand Mohini Zarda' and iron implements for breaking the packages.

He took these two accused to the Government Railway Police at Banaras Station and lodged a report. The accused denied that they had committed the theft. Their case was that some thieves had broken open the package and taken out the contents and were running away with the 'jholas' when they, being on duty, suspected them to be thieves and chased them to a distance of about 200 paces; and that in the meantime the Assistant Inspector Sri Mitra who was coming from the opposite direction arrested them on the suspicion that they were thieves. Their case was that they had been falsely implicated by Sri Mitra as they had made a representation against him for taking illegal gratification.

3. The case was tried summarily, by the learned Magistrate. The prosecution examined two witnesses, namely, Sri N.G. Mitra and Kishan Lal Chowkidar who is said to have been called there by Sri Mitra. The learned Magistrate believed the evidence of Sri Mitra and convicted and sentenced the two accused as has been mentioned above.

4. The applicants filed a revision before the learned Sessions Judge of Banaras. It appears from the judgment of the learned Sessions Judge that he was not satisfied with the prosecution evidence. It was also observed by the learned Sessions Judge that in view of the serious consequences which were likely to follow on the conviction of the accused for the offence of theft the case should not have been tried summarily by the learned Magistrate, and in support of the above observation he relied

upon several decisions, one of which, namely, -- 'Ramdeo Singh v. State', Cri. Revn. No. 1167 of 1953, D/- 31-3-1954 (All) (A) is of this very Court. In view of the above he has made the recommendation for the quashing of the conviction.

5. The question for consideration is whether the case should have been tried summarily in view of the fact that the accused were employees in the O. T. Railway (now North-Eastern Railway) and their conviction was likely to result in their dismissal from the service.

In Cri. Revn. No. 1167 Of 1953 D/- 31-3-1954 (All) (A) it was held that even though an offence might be legally triable summarily it was not desirable to try such offences summarily where the conviction of the accused person, was likely to entail the dismissal of the person convicted. In this case the accused was a watch man in the railway and was charged under Section 379, I. P. C., for committing theft on the Railway premises. The case was tried summarily and the accused was convicted' and sentenced to a fine of Rs. 50/-.

In deciding the revision against the conviction the learned Judge referred to several cases of the different High Courts where the same view had been taken. In -- 'Robert John v. Emperor', AIR 1932 Lahore p. 188 (B) it was held that summary procedure, though legal, is most inappropriate in cases in which Government servants were concerned as accused persons, because their conviction was likely to result in their dismissal from service, which was serious loss to them. In -- 'Emperor v. Rustamji Mancherjee', AIR 1921 Bom 370 (C) a similar view was taken by the Bombay High Court. The accused in that case was a flour mill worker and was tried summarily on a charge under Section 290, I. P. C., and was convicted.

In -- 'Subramanya Aiyar v. Queen' 6 Mad 396 (D), a head constable of police was prosecuted on a charge of criminal intimidation and was tried summarily and was convicted. It was held by the Madras High Court that though he could be legally tried summarily for the offence yet a summary trial was not desirable in view of the serious consequences which arose out of it.

In -- 'Emperor v. Bashir', AIR, 1929 All 267 (2) (E), it was held that though it might be legal to use summary procedure in trying a particular case it did not always follow that it was desirable in every case, for an offence which might seem very grave when regarded only from the point of view of the section applicable may be in the light of its particular circumstances of a trivial nature, whereas, on the other hand, the consequences following on conviction of what is in itself a trivial offence may be so grave as to render a summary trial unsuitable.

6. In view of the above decisions the summary trial of the accused in this case though it was legal was not desirable in view of the consequences arising out of it. I would, therefore, accept the reference and set aside the conviction and sentence of the applicants under Section 379, I. P. C. In view of the unsatisfactory nature of the evidence in this case I do not think it necessary to remand the case to the lower Court for retrial.