

## Harbans Singh And Ors. vs The State on 9 October, 1952

**Equivalent citations: AIR1953ALL179, AIR 1953 ALLAHABAD 179**

ORDER

Beg, J.

1. This is a reference made by the learned Sessions Judge, Mirzapur, recommending that the order of conviction of Harbans Singh and three others passed by Sri A. P. Dikshit, Magistrate 1st Class, Mirzapur, be set aside. The accused were tried by Sri A. P. Dikshit Magistrate 1st Class, Mirzapur, under Section 15 (1) of the U.P. Private Forests Act (Act No. 6 of 1949). They were convicted of an offence under the said section and sentenced to pay a fine of Rs. 50/- or in default to undergo three months' simple imprisonment. They preferred a revision before the learned Sessions Judge, Mirzapur, who has made a reference to this Court recommending that the aforesaid conviction be set aside.

2. Having heard the learned counsel for the parties I am of opinion that the recommendation of the learned Sessions Judge must be accepted. Under Section 15 (1) of the U.P. Private Forests Act any person who contravenes the provisions of Chapter II of the said Act is liable to be punished with fine not exceeding one hundred rupees for the first offence and with fine not exceeding one thousand rupees or simple imprisonment not exceeding three months or both for the second or any subsequent offence. Section 15 (2) of the Act runs as follows:

"Offence under this section shall be triable by a Magistrate of the second or third class".

It is, therefore, clear that the offence under Section 15 (1) is a creation of a special Act which has made the particular offences committed under that Act triable by particular courts specified therein. The Legislature, for reasons best known to it, has deliberately excluded the Magistrates of the 1st Class from the category of courts which are competent to try offences of this nature.

3. On behalf of the State reliance has been placed on Schedule III, Criminal P.C. which defines the ordinary powers of Magistrates of various classes. My attention has been invited to the third part of Schedule III, item I which shows that the ordinary powers of a Magistrate of the 1st Class include the ordinary powers of a Magistrate of the 2nd Class. Similarly item I of part II of Schedule III shows that the ordinary powers of a Magistrate of the 2nd Class include the ordinary powers of a Magistrate of the 3rd Class. It is thus argued that a Magistrate of the 1st Class possesses powers of a Magistrate of the 2nd Class as well as of a Magistrate of the 3rd Class, & the trial of the said offence

by a Magistrate of the 1st Class was not bad in law. I am, however, unable to accept this contention. It is to be remembered that, as mentioned above the offence in question is the creation of a special Act. The Schedule in question merely refers to the "ordinary powers of various classes of Magistrates". Section 5, Criminal P.C. lays down as follows:

"5. (1) All offences under the Indian Penal Code, shall be investigated, inquired into, tried and otherwise dealt with according to the provisions hereinafter contained. (2) All offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences".

4. It is, therefore, clear that the powers conferred under the general provisions of the Code of Criminal Procedure are subject to any special provisions that might be made with regard to the exercise or regulation of those powers by any special Act. The special Act having made such provisions with regard to the offences under the said Act must be deemed to supersede the provisions of the general Act.

5. Further there may be a good reason why the Legislature wanted that the trial of offences under the said Act be held by the Magistrates possessing only 2nd or 3rd Class powers. It would appear that under the amended provisions of the Criminal Procedure Code any person convicted on trial held by a Magistrate of the 2nd or 3rd Class would have a right of appeal to the court of session. This is not so in cases triable by a 1st Class Magistrate. If a Magistrate of the 1st Class imposes a sentence of fine not exceeding Rs. 50/- or if he tries the case summarily and imposes a fine not exceeding Rs. 200/- there would be no appeal, and a very valuable right of the accused would be lost. I am, therefore, of opinion that Section 15 (2) should not be so read as to empower a Magistrate of the 1st Class to try cases of this description, and the trial of the aforesaid case by a Magistrate of the 1st Class, was ultra vires and bad in law.

6. I accordingly accept the recommendation, allow the reference and quash the conviction of the applicants. The lower court has further recommended that the file of the case be sent to the District Magistrate for transferring it to any 2nd or 3rd Class Magistrate. In view of the long time that has elapsed since the conviction of the accused and the petty nature of the offence I do not think that it would be proper to allow a retrial of the case. The fine, if paid by the applicants, shall be refund ed.