

Aziz Khan vs State on 10 February, 1954

Equivalent citations: AIR1954ALL642

ORDER

Brij Mohan Lal, J.

1. This is a reference under Section 438, Criminal P. C., by the learned Sessions Judge of Shahjahanpur. He recommends that Aziz Khan's conviction under Section 7 of the Essential Supplies (Temporary Powers) Act (24 of 1946) read with Clause 3, Cotton Textile (Control of Movement) Order, 1948 recorded by a learned Magistrate of that district in a summary trial be quashed and that the sentence of a fine of rupees twentyfive and of the forfeiture of certain quantity of cloth, be set aside.

2. Aziz Khan had filed a revision before the learned Sessions Judge and thereupon the learned Sessions Judge made this reference. Obviously it was taken for granted by Aziz Khan in the court below that the sentence awarded to him was not appealable. The learned Sessions Judge made a brief reference to this question in the note appended to his judgment. He was of the opinion that since it was not proved that the cloth of which forfeiture had been ordered was worth more than rupees one hundred and seventyfive, no appeal lay. In a summary trial an appeal is not provided in cases where the sentence is of fine only, and the fine does not exceed rupees two hundred. Obviously the learned Judge thought that no appeal lay if the value of the cloth and the amount of the fine taken together did not exceed the sum of rupees two hundred.

3. I have given due thought to this question and I have come to the conclusion that the sentence passed by the learned Magistrate was appealable and that the learned Sessions Judge could himself give appropriate relief to Aziz Khan if an appeal had been preferred by him. In the circumstances Section 439 (5), Criminal P. C. came into play; no revision could be entertained at the instance of Aziz Khan and consequently no reference could be made to this Court.

4. Section 408, Criminal P. C. confers on a person convicted by a Magistrate, First Class, a right of appeal to the Court of Session. Section 414 contains an exception to the general rule and provides that:

"Notwithstanding anything hereinbefore contained there shall be no appeal by a convicted person in any case tried summarily in which a Magistrate empowered to act under Section 260 passes a sentence of fine not exceeding two hundred rupees only."

In order to make this section applicable two conditions must exist, viz., (1) the sentence must be of fine only and (2) the amount of fine imposed on the convicted person must not exceed rupees two

hundred. If the sentence is not of fine only in the sense that besides fine some other kind of punishment also is inflicted the section does not apply.

In the present case the Magistrate awarded, in addition to the sentence of fine, a sentence of forfeiture of cloth. Forfeiture of property is one of the recognised forms of punishments. Section 53, I. P.C. enumerates the different kinds of punishments which can be awarded to an accused person and forfeiture of property and fine are mentioned as two distinct kinds of punishments under clauses fifthly and sixthly. The result, therefore, is that in the present case punishments of two different kinds were awarded to Aziz Khan and, therefore, the sentence was not of fine only within the meaning of Section 414. If the exception contained in Section 414 did not apply the case fell within the ordinary rule contained in Section 408, Cr. P. C., and the appeal lay.

5. Reference may also be made in this connection to Section 415, Criminal P. C. which lays down that :

"An appeal may be brought against any sentence referred to in..... Section 414 by which any punishment therein mentioned is combined with any other punishment....."

By the application of this section also an appeal could be brought. In the present case a sentence of fine has been combined with the sentence of forfeiture of property which is a punishment of a different kind. An appeal, therefore, lay to the learned Sessions Judge. The value of the cloth ordered to be forfeited was totally immaterial.

6. I am, therefore, of the opinion that an appeal did lie to the learned Sessions Judge and no revision lay to him. It may be that the appeal may have by this time become time-barred. The learned Sessions Judge may either treat the revision as a petition of appeal or may, in the event of a separate appeal being preferred, give the accused the benefit of Section 5 of the Indian Limitation Act.

7. Subject to the above remarks the reference is rejected. Let the papers be returned to the learned Sessions Judge.