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## MAHANT KAUSHALYA DAS

v.

## STATE OF MADRAS

May 7, 1965

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[A. K. SARKAR, M. HIDAYATULLAH AND V. RAMASWAMI, JJ.]

*Code of Criminal Procedure (Act 5 of 1898), ss. 243, 362(2)(A)—S. 243—Whether mandatory—Violation, if vitiates trial—If overrides s. 362(2)(A).*

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The appellant was arrested by the police and immediately produced before the Presidency Magistrate, Madras on a charge under s. 4(1) (A) of the Madras Prohibition Act on the allegation that he was in possession of a certain amount of Ganja concealed in a wooden box in his premises without any permit. The appellant pleaded guilty and upon that plea, he was convicted by the Magistrate. The appellant preferred an appeal to the High Court alleging, *inter alia*, that he was an illiterate person, not acquainted with English or Tamil or with any other South Indian language and he only knew Hindi as it was spoken in Uttar Pradesh, that the proceedings were rushed through with undue haste, that he did not really plead guilty to the charge and he had never understood the implications of the offence or proceedings before the Magistrate. The High Court called for a report from the Presidency Magistrate who submitted that the particulars of the offence and the plea of guilty by the appellant were explained to the appellant by an interpreter—the Bench Clerk who had passed examinations in Hindi, and the appellant's allegations were false. Thereafter the High Court dismissed the appeal. In appeal by certificate, the appellant, *inter alia*, contended that the Magistrate did not comply with the mandatory provisions of s. 243 of the Code of Criminal Procedure, that the appellant had been deprived of the substance of a fair trial, that the conviction of the appellant was legally invalid.

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**HELD :** The requirements of s. 243 of the Criminal Procedure Code are mandatory in character and a violation of these provisions vitiates the trial and renders the conviction legally invalid. The requirement of the section is not a mere empty formality but is a matter of substance intended to secure proper administration of justice. It is important that the terms of the section are strictly complied with because the right of appeal of the accused depends upon the circumstance whether he pleaded guilty or not and it is for this reason that the legislature requires that the exact words used by the accused in his plea of guilty should, as nearly as possible, be recorded in his own language in order to prevent any mistake or misapprehension. [233 D-F]

Section 243 of the Code is a provision of a special character and according to well established rule of interpretation that special provision will take precedence and override the general provision of s. 362(2)(A) of the Code. [234 A-B]

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The violation of the procedure in s. 243 of the Code was sufficiently serious to invalidate the conviction of the accused. It was manifest from the record that the admission of the appellant had not been recorded "as nearly as possible in the words used by him", as required by s. 243 of the Code. [233 F. B-C]

*Queen-Empress v. Eruagudi*, I.L.R. 15 Mad. 85, *Shailabala Dasee v. Emperor*, I.L.R. 62 Cal. 1127 and *Mukundi Lal v. State*, A.I.R. 1952 All. 212, approved. A

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 131 of 1963.

Appeal from the judgment and order dated April 29, 1963 of the Madras High Court in Criminal Appeal No. 251 of 1963. B

*E. C. Agarwala* and *P. C. Agarwala*, for the appellant.

*A. Ranganadham Chetty* and *A. V. Rangam*, for the respondent. C

The Judgment of the Court was delivered by

**Ramaswami, J.** This appeal is brought by certificate granted under Art. 134(1)(c) of the Constitution from a judgment of the Madras High Court dated April 29, 1963 in Criminal Appeal No. 251 of 1963 affirming the conviction of the appellant—Sri Mahant Kaushalya Das under s. 4(1)(a) of the Madras Prohibition Act and the sentence of one year Rigorous Imprisonment and a fine of Rs. 50 or in default rigorous imprisonment for one month. D

The appellant is the hereditary Mahant of Sri Bairaghi Matam—a Hindu Religious and Charitable Institution of a monastic nature. The appellant has been residing in the Matam premises, Elephant Gate, Madras which is a public place of worship. On March 22, 1963 at about 10 a.m. the appellant was arrested by the police and immediately produced before the VIII Presidency Magistrate on the same day on a charge under s. 4(1)(a) of the Madras Prohibition Act on the allegation that he was in possession of 3,960 grams of Ganja concealed in a wooden box in the Matam premises without any permit. The appellant pleaded guilty to the charge and upon that plea he was convicted by the Magistrate to rigorous imprisonment for one year and a fine Rs. 50, in default to rigorous imprisonment for one month. E  
The appellant preferred Criminal Appeal No. 251 of 1963 to the High Court alleging that his eye-sight was very bad and defective, that he was an illiterate person, not acquainted with English or Tamil or with any other South Indian language and that he only knew Hindi as it was spoken in Uttar Pradesh. He also complained that he had no time to consult either his lawyer or his disciples, that the proceedings were rushed through with undue haste, that he did not really plead guilty to the charge and F  
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- A that he never understood the implications of the offence or the proceedings before the Magistrate. The appellant filed an affidavit in support of the appeal before the High Court in regard to these allegations. Kailasam, J. called for a report from the VIII Presidency Magistrate with regard to the allegations made in the affidavit of the appellant. On April 23, 1963 the
- B Magistrate submitted a report as follows :

- C “The particulars of the offence were explained to the accused by the Interpreter. It was translated to accused in Hindi by Sri M. Sukumara Rao, Bench Clerk of this Court who has passed examination in Hindi. The plea of guilty by the accused was also interpreted to the Court by Sri M. Sukumara Rao. The allegations contained in the affidavit are false.”

Thereafter Kailasam, J. confirmed the conviction and sentence and dismissed the appeal.

- D Learned Counsel on behalf of the appellant put forward the argument that the Magistrate did not comply with the mandatory provisions of s. 243. Criminal Procedure Code, that the appellant has been deprived of the substance of a fair trial, and that the conviction of the appellant is legally invalid. It was also submitted on behalf of the appellant that the necessary ingredients of
- E the offence of possession of the contraband article under s. 4(1)(a) of the Madras Prohibition Act have not been established as a matter of law.

- F It is necessary to reproduce, at this stage, the charge framed by the VIII Presidency Magistrate against the appellant as well as the judgment pronounced in the case. The charge reads as follows :

- G “On 22nd March 1963 at about 8 a.m. at No. 1 General Muthiah Mudali street in C-2 limits, the accused was found in possession of 3,960 grams of Ganja concealed in wooden box in his Matam premises without any permit. Hence the charge.”

The judgment by the Magistrate reads as follows :

- H “*Judgment, dated 22nd March 1964* :—Accused produced. Pleads guilty. Found guilty. The quantity is very huge viz., 3,960 grams concealed in a wooden box. I convict and sentence him to rigorous imprisonment for one year and to pay a fine of Rs. 50 in default

to rigorous imprisonment for one month. Confiscate property."

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Section 4 of the Madras Prohibition Act, 1937 (Madras Act 10 of 1937) as amended by Madras Act 8 of 1958 states :

"4. (1) Whoever—

(a) imports, exports, transports or possesses liquor or any intoxicating drug:\*\*\*\*\* shall be punished—\*\*\*\*\*

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(ii) in any other case with imprisonment for a term which may extend to one year and with fine which may extend to two thousand rupees, but in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the Court, such imprisonment shall not be less than three months and such fine shall not be less than five hundred rupees, in the case of the offence of import, export or transport of liquor or any intoxicating drug falling under clause (a) :\*\*\*\*\*

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(2) It shall be presumed until the contrary is shown—

(a) that a person accused of any offence under clauses (a) to (j) of sub-section (1) has committed such offence in respect of any liquor or any intoxicating drug or any still, utensil, implement or apparatus whatsoever for the tapping of toddy or the manufacture of liquor or any intoxicating drug or any such materials as are ordinarily used in the tapping of toddy or the manufacture of liquor or any intoxicating drug or any materials which have undergone any process towards the manufacture of liquor or any intoxicating drug or from which any liquor or intoxicating drug has been manufactured, for the possession of which he is unable to account satisfactorily, and \*\*\*\*\*

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It cannot be disputed in the present case that there has been a violation by the Magistrate of the requirements of s. 243 of the Criminal Procedure Code which states :

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"243. If the accused admits that he has committed the offence of which he is accused, his admission shall

A        be recorded as nearly as possible in the words used by him; and, if he shows no sufficient cause why he should not be convicted, the Magistrate may convict him accordingly."

It is stated by the Magistrate in his report that the particulars of the offence were explained to the appellant by the Bench Clerk Sri M. Sukumara Rao and that the plea of guilty by the appellant was interpreted to the Court by the same Bench Clerk. It is manifest from the record that the admission of the appellant has not been recorded "as nearly as possible in the words used by him", as required by s. 243 of the Criminal Procedure Code. It is true that in the judgment dated March 22, 1963 the Magistrate has said that the appellant "pleads guilty", but the record contains no indication whatsoever as to what exactly the appellant admitted before the Magistrate. In our opinion, the requirements of s. 243 of the Criminal Procedure Code are mandatory in character and a violation of these provisions vitiates the trial and renders the conviction legally invalid. The requirement of the section is not a mere empty formality but is a matter of substance intended to secure proper administration of justice. It is important that the terms of the section are strictly complied with because the right of appeal of the accused depends upon the circumstance whether he pleaded guilty or not and it is for this reason that the legislature requires that the exact words used by the accused in his plea of guilty should, as nearly as possible, be recorded in his own language in order to prevent any mistake or misapprehension. It has been held by the Madras High Court in *Queen-Empress v. Erugadu*<sup>(1)</sup> that the violation of the procedure in s. 243 of the Criminal Procedure Code was sufficiently serious to invalidate the conviction of the accused. The same view has been taken by the Calcutta High Court in *Shailabala Dasee v. Emperor*<sup>(2)</sup> and by the Allahabad High Court in *Mukandi Lal v. State*<sup>(3)</sup>. In our opinion, these cases correctly lay down the law on the point.

G        It is submitted on behalf of the respondent that under s. 362(2)(A), Criminal Procedure Code it was sufficient if the Magistrate made a memorandum of the substance of the examination of the accused and that it was not necessary to record the actual words used by the accused. In our opinion, s. 362(2)(A) of the Criminal Procedure Code has no application in a case

(1) I.L.R. 15 Mad. 83.

(3) A.I.R. 1952 Allahabad 212

(2) I.L.R. 62 Cal. 1127.

where the accused pleads guilty and the special provision of s. 243 of the Criminal Procedure Code would be attracted in such a case. Section 243 of the Criminal Procedure Code is a provision of a special character and according to well-established rule of interpretation that special provision will take precedence and override the general provision of s. 362 (2)(A) of the Criminal Procedure Code. We, therefore, reject the argument of Counsel for the respondent on this point. A B

For these reasons we allow this appeal, set aside the conviction and sentence imposed upon the appellant and order that the case should go back to the VIII Presidency Magistrate, Madras for being retried and brought to a conclusion in accordance with law. C

*Appeal allowed.*