
(1940) 04 BOM CK 0006

In the Bombay High Court

Case No : Criminal Reference No. 21 of 1940

Emperor

APPELLANT

Vs

Kondiba Balaji

RESPONDENT

Date of Decision : 18-04-1940

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 263, 342

Citation : AIR 1940 Bom 314 : (1940) 42 BOMLR 695

Hon'ble Judges : John Beaumont, J; Divatia, J

Bench : Division Bench

Judgement

John Beaumont, Kt., C.J.—This is a reference made by the Sessions Judge of Ahmednagar. The accused was convicted u/s 22 of the Cattle Trespass Act of 1871. It was a summons case and was tried summarily. The learned Sessions Judge has referred the matter to us, because he considers that the accused's statement was not taken u/s 342 of the Criminal Procedure Code. As far as I can judge from the roznama, the accused's statement was not taken at all. The roznama says, "Recorded the statement of the accused;" but that was before any evidence for the prosecution had been taken, and I think that it only means that the accused's plea was recorded. Therefore we have to deal with a case of the statement of the accused not having been taken at all. I would guard myself against being supposed to accept the principle, on which the learned Sessions Judge relies, that every failure to comply with Section 342 of the Criminal Procedure Code necessarily vitiates the trial. In my opinion if the Court is satisfied that failure to comply with the strict terms of the Section has caused no prejudice, the Court should not interfere. I see no reason for holding that the provisions of Section 537 do not cover such a case. However, the statement of the accused not having been taken at all, prima facie he was prejudiced, and the argument has been submitted to us that the provisions of Section 342 do not apply to a summons case tried summarily u/s 263. The argument is that amongst the matters which have to be recorded in a summary trial u/s 263 is " (g) the plea of the accused and his examination (if any)." It is argued that the

words " if any " show that an examination is not compulsory; but, in my opinion, those words are not sufficient to override the requirements of Section 342 which applies to all trials, including, I think, summary trials. If the Legislature had meant to exclude summary trials from the obligation to take the statement of the accused, I think it would have done so in clear terms. The words "if any" in Section 263 (g) merely indicate that if the accused makes no statement there is nothing to record. It has been held that Section 342 applies to summons cases: see *Emperor v. Fernandez* 1920 ILR 45 Bom. 672: s.c. 22 Bom. L.R. 1040 and it has been held by the Calcutta High Court in *Mahomed Hossain v. Emperor* 1914 ILR 41 Cal. 743 that it applies to a summary trial in a warrant case. I cannot see the slightest distinction for this purpose between a summary trial in a warrant case and a summary trial in a summons case.

2. As the provisions of Section 342 did apply in this case, and as the Section was apparently entirely disregarded, I think that the conviction must be set aside, and the matter returned to the lower Court to be dealt with according to law. It must be proceeded with from the stage at which it had reached when the accused's statement should have been taken.

3. Divatia, J.

3. I agree.