
(1928) 03 BOM CK 0008

In the Bombay High Court

Case No : Criminal Application for Revision No. 429 of 1927

Emperor

APPELLANT

Vs

Nurudin Sheikh Adam

RESPONDENT

Date of Decision : 28-03-1928

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 264

Citation : (1928) 30 BOMLR 954

Hon'ble Judges : Mirza, J;Fawcett, J

Bench : Division Bench

Judgement

Fawcett, J.—In this case the judgment of the Bench of Magistrates is certainly open to the criticism that it does not properly comply with the provisions of Section 264 of the Criminal Procedure Code. This section says that the Bench shall record a judgment embodying the substance of the evidence, whereas the judgment contains no reference to any evidence that may have been given on behalf of the Municipality, such as that of the complainant, D.M. Daru; and although there is a reference to certain defence evidence, the substance of it is not stated, but merely the fact that the Bench consider it unreliable. No doubt, it can be inferred that evidence was given in support of the accused's statement that the connection had been made some twelve years ago. But the provisions of Section 264 require that the substance should be plainly stated and not that the Court should be driven to inferences in order to find out the substance of the evidence.

2. A further objection has been made that the Bench Magistrates did not properly comply with the provisions of Section 539-B of the Criminal Procedure Code, inasmuch as they visited the place where this connection had been made, but recorded no memorandum as required by this section. On the other hand, they have stated the results of their inspection in the judgment; and it has already been laid down by this Court, following *Forbes v. Ali Haidar Khan* I.L.R (1925) Cal. 46 that the mere omission to record a memorandum u/s 539-B of the

Criminal Procedure Code is not an illegality, vitiating the proceedings. In the present case I do not think that this omission can be said to have prejudiced the accused : cf. *Queen-Empress v. Hussein* (1894) C.C. 725. But the other omission is on a different basis, especially as the defence can raise the question whether the prosecution was brought within the six months" limit laid down in the proviso to Section 161 of the Bombay District Municipal Act. Some evidence, at any rate, should have been given by an officer of the Municipality that the connection had been made without the permission of the Municipality at a time that was not beyond that six months" limit, and the record fails to show that any such evidence was given, It is contended that the case is one falling u/s 537 of the Criminal Procedure Code and the District Magistrate, on appeal, took that view. We think, however, that the failure of the Bench to observe the condition prescribed by Section 264 is one that did, in fact, prejudice the accused, because it prevents the proper disposal of the appeal that he was entitled to make. The appellate Court should know the substance of the evidence that had been given, so as to be in a position to decide the appeal on the merits, and it is not proper to decide the appeal in the way the District Magistrate has done, viz., he merely finds that the Bench did address themselves with due diligence to the question of fact that arose, and says he was not, at that stage, prepared to question the discretion which they exercised in determining it. To decide the appeal required more than a refusal to interfere with a discretion; it required a decision on the evidence as to the facts proved. In our opinion this is a case where there is an omission to comply with the provisions of Section 264, which cannot be deemed immaterial u/s 537 of the Criminal Procedure Code. Magistrates, who exercise powers to try cases summarily, must realise that they should strictly comply with the conditions which the Code imposes on them in writing judgments, etc., because otherwise the intention of the Legislature as to the exercise of summary powers is set at naught. Accordingly, in our opinion, we should set aside the conviction and the sentence of fine.

3. As the accused is dead, we cannot order any re-trial; otherwise I should have directed a re-trial, because, apart from this legal objection, there would seem to be a case for the prosecution being continued. The fine, if paid, to be refunded to the applicant.

Mirza, J.

4. I agree.