
(1956) 02 AHC CK 0001
In the Allahabad High Court
Case No : Criminal Reference No. 98 of 1955

Municipal Board	Vs	APPELLANT
The State		RESPONDENT

Date of Decision : 28-02-1956

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 225, 342, 417, 438
Uttar Pradesh Municipalities Act, 1916 — Section 155

Citation : (1956) 26 AWR 318

Hon'ble Judges : D.N. Roy, J

Bench : Single Bench

Advocate : Janardan Swarup Gupta, for the Appellant; T.N. Madan, for the Respondent

Final Decision : Dismissed

Judgement

D.N. Roy, J.—This is a reference by the learned Sessions Judge of Meerut recommending that the order of acquittal passed by a Magistrate on the 5th of April, 1954, in a summary trial in relation to an offence said to be punishable u/s 155 of the U.P. Municipalities Act should be set aside and that a fresh trial should be ordered.

2. A complaint was filed by the Municipal Board of Meerut through Sri R.K. Sharma the Octroi Inspector u/s 155 of the U.P. Municipalities Act contending that on the 5th of March, 1953, Kashi Ram was detected introducing within the Meerut Octroi limits certain bails of cloth, which were liable to an Octroi duty of Rs. 98/1/9 surreptitiously without the payment of the Octroi duty. The case was tried summarily by a Magistrate who convicted Kashi Ram and sentenced him to a fine of Rs. 500/-. In appeal the learned Sessions Judge set aside the order of the Magistrate and directed that the case be retried by another Magistrate. The reason assigned in support of that order was that on the judgment of the learned Magistrate it did not appear as to how many witnesses were produced before him, what were their (sic) and what was the substance of their statement and

the lower appellate court was therefore not in a position to judge as to whether the trial court had properly applied its mind to the case. At the retrial before another Magistrate Kashi Ram was acquitted on the 5th of April, 1954, on the ground that the complaint alleged that the offence was committed on the 5th of March, 1953, but Sri Raj Kishore Sharma the Octroi Inspector stated in evidence that the offence took place on the 26th of February, 1953. As against the order of acquittal the Municipal Board has come up in revision.

3. The first question which has got to be considered is whether in the case of an acquittal when no appeal has been filed by the State Government u/s 417 of the Code of Criminal Procedure, this Court ought to interfere in revision. Ordinarily the court will not interfere in revision, but there is no legal bar if a proper case comes before it on reference u/s 438 to entertain a prayer of this nature. A similar view has been taken by this Court in *Emperor v. Ram Deo* 1942 A.W.R. (C.C.) 285. It has therefore to be seen if the present case is a proper case where interference is called for. The complaint that was filed on behalf of the Municipal Board was to the effect that the offence was committed on the 5th of March, 1953, when there was the non-payment of Octroi duty. At the second trial the record of proceedings of the summary trial shows that under the heading "offence complained of" the accused was faced to meet the following circumstances:

The accused brought three bails of cloth within Meerut Municipality on 5th of March, 1953, without paying any Octroi duty which is an offence punishable u/s 155 of the U.P. Municipalities Act.

4. The learned Sessions Judge in making this reference has relied upon two factors in observing that the offence was of the 26th of February, 1953, and that the accused had notice of it. The first factor was that on the order sheet there is a note dated the 13th of August, 1953, made by one Sri Data Ram, namely: "The offence was committed on 26-2-1953", as against the order dated 27-3-1953 contained on the order sheet. There is no reference in the order dated the 13th of August, 1953 on the order sheet to the effect that when the case was taken up on that date it was brought to the notice of the court that the offence complained of was of 26th of February, 1953. Nor is there anything on the record to show that on the 13th of August, 1953, it was brought to the notice of the accused that the charge which he has to face was in respect of something having been committed on the 26th of February, 1953.

5. The second factor which weighed upon the learned Sessions Judge in making the reference was that in his statement made on the 5th of April, 1954, Sri Raj Kishore Sharma the Octroi Inspector mentioned that the offence was committed on the 26th of Feb. 1953. That may be so; but it is not the statement of Raj Kishore Sharma which will determine the factor. Here it was specifically mentioned in the complaint that the offence was committed on the 5th of March, 1953; and that was the case which was put to the accused when the trial proceeded.

6. It has been urged in support of the reference that having regard to Section 225 and Section 537 of the Code of Criminal Procedure the error was only accidental and this should have been overlooked by the Magistrate and the Magistrate should not have acquitted the accused. Section 225 of the Code lays down that no error in stating either the offence or the particulars required to be stated in the charge and no omission to state the offence or these particulars shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission and it has occasioned a failure of justice.

7. Section 537 of the Code also provides that subject to the provisions contained in the Code no finding, sentence or error passed by a court of competent jurisdiction shall be reversed or altered under Chap. 27 or on appeal or revision on account of any error, omission, or irregularity in the charge and unless such error, omission, irregularity has in fact occasioned failure of justice. Cases may be visualised where a charge may be defective in stating the date of actual offence or in stating the name of the person against whom the offence was committed. But when evidence is heard and the accused gathers the correct particulars from that evidence and the examination made of the accused u/s 342 of the Code gives him the correct particulars, an error in the charge will not be considered fatal. Illustration D to Section 225 of the Code of Criminal Procedure will support that view. And if in such a case there is a conviction, it cannot be said that the error or omission has in fact occasioned a failure of justice. But the converse will be true, namely, that where the error is there and on account of that error the accused has been acquitted, the prosecution can come forward and say that the error or omission has not; in fact "occasioned a failure of justice" and that the Magistrate ought to have overlooked the error or omission and should have convicted the accused.

8. The importance of Section 342 of the Code of Criminal Procedure has been emphasised times out of number. In the present case it cannot be said that at the retrial the Magistrate failed in his duty in putting the correct date of the alleged offence to the accused, because here the complaint stood unamended and a note on the margin of the order sheet made by some one will not put the Magistrate on guard and would not have justified him in putting to the accused that the offence was of 26th of February, and not of the 5th of March, 1953. Section 342 of the Code lays down the obligation over the court to carry out the duty of questioning the accused properly and fairly bringing in his mind in clear and simple language the exact case he has to meet and each ground he has to meet and of affording him a chance to explain if he can and so desires. In the present case, the complaint having stood unamended, it cannot be said that any error or omission had been committed by the Magistrate at the retrial. Merely because the Octroi Inspector had stated in evidence that the offence took place on the 26th of February it will not alter the nature of the complaint or the date of offence.

9. It has been contended in support of the reference that having regard to the

circumstances of the case a retrial should be ordered. I do not think that a fresh trial should be directed after the accused has been made to submit himself to two trials which have already taken place. While it is incumbent on courts to see that the guilty do not escape, it is even more necessary to see that persons accused of crime are not indefinitely harassed. They must be given a fair and impartial trial, and while every reasonable latitude must be given to those concerned with the detection of crime and entrusted with the administration of justice, limits must be placed on the length to which they may go. The scales of justice must be kept on an even balance whether for the accused or against him, whether in favour of the State or not, and one broad rule must apply to all cases. Applying this rule I do not think that this is a fit case in which a retrial should be ordered.

10. The reference is therefore rejected.