
(1964) 03 P&H CK 0053
In the Punjab And Haryana At Chandigarh
Case No : Criminal Appeal No. 459 of 1963

Om Parkash

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 05-03-1964

Acts Referred:

Penal Code, 1860 (IPC) — Section 467, 474

Citation : AIR 1964 P&H 407

Hon'ble Judges : P.D. Sharma, J

Bench : Single Bench

Advocate : Hans Raj Agarwal, for the Appellant; M.R. Punj for Advocate General, for the Respondent

Final Decision : Allowed

Judgement

P.D. Sharma, J.—The police sent up Om Parkash to stand his trial under Sections 467 and 474 of the Indian Penal Code in the Court of Sh. A.C. Sharma Magistrate First Class, Amritsar. Both these offence were non-cognizable. The learned Magistrate however look cognizance of them and committed the accused to stand and his trial u/s 474 of the Indian Penal Code only in the Court at Session. The charge against him was that (sic) 28th June 1960, at Amritsar kept (sic) his possession railway ticket No. 099704 Exhibit P-1 and other railway tickets Exhibits P-2/1-3, P-3 P-4/1-4 and Inhibits P-5 to P-79 from Amritsar to Delhi knowing the same to be forged ones and intending that the same shall be fraudulently and dishonestly used as genuine. The learned Sessions Judge convicted him u/s 474 of the Indian Penal Code and sentenced him to one rear"s rigorous imprisonment. The convict appeals.

2. The learned counsel for the accused-appellant argued that the offences punishable under Sections 467 and 474 of the Indian Penal Code both were not cognizable and that the Magistrate could not have taken cognizance of these offences on police report as provided in Section 190 read with Section 155 of the Code of Criminal Procedure He further maintained that the Court of Sessions also

u/s 193 of the Code of Criminal Procedure except as otherwise expressly provided by the Code or any other law for the time being in force was precluded from taking cognizance of any offence as a Court of original jurisdiction unless the accused had been committed to it by a Magistrate duly empowered in that behalf. It is also not disputed that the investigating officer investigated the case against the accused without the sanction or order of the Magistrate as required by sub-section (2) of Section 155 of the Code of Criminal Procedure. In the view of the learned counsel, the trial of the accused by the learned Additional Sessions Judge was bad in law because the committing Magistrate could not have taken cognizance of the two offences on a police report and when he was not competent to do so he was not legally entitled to commit him for trial to the Court of Sessions.

The learned counsel for the State conceded that the committing Magistrate could not have taken cognizance of the offences punishable under Sections 467 and 474 of the Indian Penal Code on police report and further that the learned Additional Sessions Judge also could not have taken cognizance of any offence as a Court of original jurisdiction unless the accused had been committed to him by a duly empowered Magistrate. He however, added that the irregularity committed by the Committing Court was of the procedural nature and so should not be deemed enough to vitiate the entire trial. I am not in agreement with him in my opinion the entire trial is vitiated as without jurisdiction. In this connection reference may be made to the case, *Labhshankar Keshavji v. State* AIR 1955 Sau 42 which (sic) down:-

Section 155, Criminal Procedure Code, prohibits a police officer from investigating a non-cognizable offence, unless authorised by an order of a competent magistrate and if the police investigates such offence without a valid order, they act without jurisdiction and a report submitted on such investigation is not a report upon which the Magistrate can validly take cognizance of the offence u/s 190 Criminal Procedure Code, and the entire trial is vitiated as without jurisdiction.

If the Legislature had intended to treat (sic) authorised police investigation of such offences as a more irregularity, it would have added a proviso to Section 155. Criminal Procedure Code similar to Section 156(2), but as this is not done it is not open to the Court to apply by analogy the provisions of Section 156(2). Criminal Procedure Code, and cut down the scope of Section 155. Criminal Procedure Code. To do so would be to permit the police to investigate non-cognizable offences and take shelter under the plea that the want of authority to investigate was merely an irregularity.

The same principle was enunciated in the cases, *Abdul Halim and Another Vs. State of West Bengal*, *Lal Chand v. The State*, 1964 P&H. LR 68 : (1964 (2) Cri. LJ 115) and *Podan v. State of Kerala*, 1962 (1) Cri LJ 339 (Kerala). The conviction and sentence of the accused therefore, cannot be sustained in law and must be quashed.

3. The appeal, consequently is allowed and the conviction and sentence of the accused-appellant are set aside. He is acquitted of the charge. He is on bail. His hall bonds are discharged.