
(1990) 08 P&H CK 0100

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 237-M of 1989

Shyam Lal

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 22-08-1990

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 216, 260, 482
Prevention of Food Adulteration Act, 1954 — Section 16(1), 16A

Citation : (1992) 1 ILR (P&H) 508 : (1991) 99 PLR 361

Hon'ble Judges : Harbans Singh Rai, J;A.P. Chowdhri, J

Bench : Division Bench

Advocate : H.N. Mehtani, for the Appellant; Arvind Singh, A.A.G., for the Respondent

Judgement

A.P. Chowdhri, J.—The present petition u/s 482 of the Code of Criminal Procedure (hereinafter referred to as "the Code") initially came up for hearing before J. S. Sekhon, J. It was contended by the learned counsel for the petitioner that once the trial Court came to the conclusion that the procedure adopted for the trial, whether as a warrant case or summary case, was found to be unwarranted, the only course open was to acquit the accused and rectification of mistake in choosing one procedure against another and further trial would be abuse of the process of Court. Reliance in support of the above proposition was placed by the learned counsel on certain observations made by a learned single Judge of this Court in Pawan Kumar v. State of Haryana 1989 2 F. A. C. 36. J. S. Sekhon, J. was of the view that it was always open to the trial Court to correct any defect of procedure and such a course upto facto did not justify an order of acquittal. The learned Judge expressed his disagreement with the dicta in Pawan Kumar's case (supra) and referred the matter to a larger Bench for an authoritative pronouncement. This is how this case has been placed before us.

2. To appreciate the question, it is necessary to give the factual background. The Food Inspector Assandh, filed a complaint against the petitioner u/s 16(1)(c) of

the Prevention of Food Adulteration Act, 1954 (hereinafter called "the Act") on 18-5-1984. It was stated that the petitioner had prevented the Food Inspector from taking sample of Haldi powder on 16-5-1984. The Chief Judicial Magistrate started the trial of the case according to procedure prescribed for a warrant case instituted on a complaint in Section 244 to 248 of the Code After recording pre-charge evidence a charge Annexure P-2 was framed u/s 16(1)(c) of the Act against the petitioner on 7-10-1985. It will be convenient at this stage to refer to a Full Bench decision of this Court in Budh Ram and Anr. v. State of Haryana 1984 2 F. A. C. 179. Question No. 4 before the Full Bench was in the following terms :-

"4. Whether the provisions of Section 16A of the Act envisaging trial of offences u/s 16(1) of the Act in the first instance in a summary case is mandatory in character ?"

It was held that "the Legislature intended that all offences u/s 16(1) of the Act be tried summarily by specially authorised Magistrates, unless such a Magistrate in writing opines that the accused deserved greater dose of sentence and so he be tried in accordance with the procedure prescribed by Criminal Procedure Code" It appears that in view of the above noted Full Bench decision, Shri Bharat Bhushan Parsoon, who had in the meantime taken over as Chief Judicial Magistrate, Karnal, proceeded to pass the Order Annexure P-3, dated 14-3-1988. He observed that the trial of the accused had proceeded as a warrant case without recording the aforesaid opinion and, therefore, purported to cure the defect by recording the requisite opinion and fixing the case for pre-charge evidence. After recording pre-charge evidence, he framed a charge (Annexure P-4) on 26-9-1988 The accused felt aggrieved and through the present petition moved this Court for quashing the entire proceedings against him and particularly the order Annexures P-3 and P-4.

3. In order to appreciate the true import of the observations in Pawan Kumar's case (supra), it is necessary to give facts of that case: The Food Inspector filed a complaint u/s 16(1)(a)(i) of the Act against P on August 13, 1987. The trial commenced according to procedure for a warrant case. During the pendency of the trial, the trial Magistrate ordered that the case would be tried according to summary procedure On August 2, 1988 P filed a petition u/s 482 of the Code contending that "the only course" open to it was to order acquittal and not retrial as per procedure prescribed for the trial of summary cases. The above contention prevailed with the learned single Judge and the material observations on which reliance has been placed are as under :-

"The proposition now canvassed in this court by Shri H. N. Mehtani, learned counsel for the petitioner, came to be considered earlier in Ram Chander v. State of Haryana 1982 FAJ 331; Chatter Bhuj v. State of Haryana. 1935 FAJ 205, Ram Kishan v. State of Haryana 1986 FAJ 150 and Nand Lal v. State of Haryana 1987 FAJ 95 wherein it was repeatedly held that appropriate order to be passed by the learned trial Court in such circumstances would be of acquittal of the accused

and not of retrial according to summary procedure as ordained by the learned trial Court in its impugned order of August 2, 1988."

4. The result was (i) the order dated August 2, 1988 was quashed (ii) P was acquitted of the charge framed against him.

5. The learned counsel for the petitioner while strongly relying on the above observations further submitted that similar view was taken in the various decisions cited in Pawan Kumar's case (supra) and thus there was weight of precedent in favour of the view. He pointed out that it was beyond the jurisdiction of the Magistrate to review the earlier order commencing trial as a warrant case. It was also contended that once charge is framed, the only course open to the trial Magistrate is either to convict or to acquit the accused and not to order a fresh trial. Even a discharge in such circumstances amounts to acquittal.

6. The contention of the learned counsel for the State, on the other hand, is that it is always open to the Magistrate to correct any error of procedure at any time before the final disposal of the case and it cannot be laid down as a proposition of law that doing so would vitiate the entire proceedings.

7. We have given our anxious consideration to the above contentions.

8. It is axiomatic that summary procedure is less favourable to the accused than procedure for the trial of a warrant case. This is the reason why only offences punishable upto two years imprisonment and certain less serious offences specified in various clauses of Section 260 of the Code have been made summarily triable. Offences under the Prevention of Food Adulteration Act, though punishable with higher punishment, have been expressly made triable according to summary procedure by enacting Section 16A in the Act. Section 16A of the Act mandates that all offences u/s 16(1) of the Act shall be tried in a summary way. The second proviso of the said section further lays down that if at the commencement of, or in the course of a summary trial, it appears to the Magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for other reason, undesirable to try the case summarily, the Magistrate shall after hearing the parties, record an order to that effect and thereafter recall any witness who may have been examined and proceed to hear or rehear the case in the manner provided by the said Code. The above provision makes it abundantly clear that it is open to the Magistrate in the course of the trial to switch over from summary procedure to a warrant procedure in terms of the said provision. It is well settled that no one has a vested right in any one procedure. It is equally well settled that power to alter the charge at any stage vesting in the Court u/s 216 of the Code is very wide. "The rule that once charge is framed the case must end either in acquittal or conviction is subject to well recognised exceptions. Rectification of a procedural mistake is in our view one such exception.

9. In any case, the proposition laid down in Pawan Kumar's case (supra), in so

far as the same lays down that such an order vitiates the whole trial resulting in acquittal is too wide to be accepted as a correct statement of law. there might be cases, depending on their own facts and circumstances, in which the High Court may in its wisdom quash the proceedings in exercise of its inherent power, it cannot be laid down that on the passing of the order changing one procedure for another would by itself result in the proceedings being vitiated. We may further point out that even if a certain order which is impugned is quashed, acquittal does not follow as a natural consequence. What normally follows is a trial from the stage at which the impugned order was passed or" a fresh trial without the defect which was impugned. It is only on a consideration of the totality of the facts and circumstances of a given case that the High Court may be persuaded to quash the entire proceedings and order acquittal. This does not follow as a corollary to the quashing of an order by which the accused may feel aggrieved.

10. With regard to various decisions noted in Pawan Kumar's case (supra), the learned Judge assiduously noticed in the referring order that they were distinguishable. We hardly need to add anything more, in other words, we do not find any precedent to support the proposition contained in the observation extracted from Pawan Kumar's case (supra).

11. We, therefore, hold that the observations in question, in Pawan Kumar's case (supra), do not contain a correct statement "of law. The said observations must be deemed to have been in the facts and circumstances of Pawan Kumar's case (supra) and the same cannot be taken to lay down a rule of general application.

12. The case will now go back to the learned Single Judge for decision on merits. A copy of this judgment may be sent to all the District & Sessions Judges in the States of Punjab & Haryana and Chandigarh to be circulated amongst all judicial officers working under them for their information.