
(1953) 07 PAT CK 0019
In the Patna High Court

State		APPELLANT
	Vs	
Kartar Singh and Others		RESPONDENT

Date of Decision : 31-07-1953

Acts Referred:

Mines Act, 1952 — Section 37, 39

Citation : (1954) CriLJ 523

Hon'ble Judges : Banerji, J

Bench : Single Bench

Judgement

Banerji, J.—This is a reference made by the learned Sessions Judge of Hazaribagh for setting aside the conviction and sentence upon four accused men who were punished under Sections 37 and 39, Indian Mines Act and for sending the case back for a fresh trial so that the prosecution might get an opportunity to prove the charges.

2. A few facts may be set out in this connection. The accused were the owners, manager and clerk, respectively, of Messrs Punjab Coal Company, Datma Colliery, Ranchi. The allegations against them were that they had contravened Regulations 1 and 149 of the Mines Regulation and were, therefore, punishable under Sections 37 and 39, Indian Mines Act. It was said that these men had employed women to work underground and had not kept a correct record of the women workers employed to work as such.

3. The offences under those sections are punishable with fines of Rs. 500/- and Rs. 1000/-, respectively, and, accordingly, the learned Magistrate, to whom the case was sent for disposal, adopted the procedure meant for the trial of summons cases and, when the accused were brought before him, the particulars of the offences were stated to them and they were asked u/s 242, Criminal P. C., why they should not be convicted. The accused are said to have admitted the commission of the offences u/s 243, Criminal P. C., and, thereafter, the learned Magistrate convicted and sentenced them to a fine of Rs. 10/- each, in default, to undergo simple imprisonment for three days.

Now, the learned Magistrate would have been perfectly justified in convicting and sentencing the accused on admission of truth of the accusation, provided they had actually admitted the same. In this case, however, although the accused, in the first part of their statement, said that they had committed the offence, they added immediately that those women had gone underground not in the course of employment, but to reach meals to their male relations who were working there. The learned Sessions Judge was, therefore, right in coming to the conclusion that this was no admission of commission of the offence by the three accused u/s 242, Criminal P. C., and by one accused u/s 342, Criminal P. C., as they virtually exonerated themselves by giving an explanation for sending some women underground. In my opinion, such admissions must be treated as a whole and cannot be taken to pieces and one considered independently of the other.

In - *Rex v. Ingleson* (1915) 1 KB 512 (A), it was held that a man could not be said to have pleaded guilty when he qualified his admission "I am guilty of taking the horses" by adding, "not knowing them to be stolen". It was in effect a plea of not guilty and the case had to go back for re-hearing. This decision recently received the approval of a Divisional Court of the Queen's Bench Division presided over by three Judges - *Regina v. Durham Quarter Sessions, "Ex parte" Virgo* (1952) 2 QB 1 (B). The accused in this case, after pleading guilty added a rider and qualified his plea by stating that the motor cycle, the theft of which was the gravamen, of the charge, belonged to his "mate" and he had taken it home on that belief by mistake.

4. Therefore, the plea recorded by the learned Magistrate under Sections 242 and 243, Criminal P. C, did not amount to an admission of guilt and the order convicting and sentencing the four accused was wholly illegal and without jurisdiction. In the circumstances of the case it is difficult to accept the further recommendation of the learned Sessions Judge to send the case back for retrial for giving an opportunity to the prosecution to prove the charges. It has been held in many cases that, if there is any defect in the prosecution, it should not be allowed to remove it by adopting the procedure of a retrial. It is true no prosecution witness was examined, but the lawyer for the State should have at once pointed out the error to the learned Magistrate and asked him to continue the proceeding as the plea, in reality, was of not guilty and there was no admission of the truth of accusation set out in the summons.

5. Again, the application that was made on behalf of the State before the learned Sessions Judge was not for a retrial of the accused, but for recommending to this Court for enhancing the sentences. The learned Sessions Judge has not made any observation about the prayer made on behalf of the State, but has recommended a retrial as the whole order of the learned Magistrate was found to be illegal. There can hardly be any doubt that the sentence imposed by the learned Magistrate was ridiculously low. In offences of this nature, the punishment is meant to be deterrent, and a heavy sentence is essentially necessary to stop repetition of such unlawful practices. I am not in a position to

enhance the sentence as the conviction is illegal and as the passing of such an order will be outside the scope of the reference even if it were conceded for a moment that the plea was one of admission. The measure of punishment for both the sections is in terms of money only, and I think the accused have already been sufficiently punished by their appearance before the Magistrate for several days and by the expenditure they have been put to for contesting the application by the State before the learned Sessions Judge at Hazaribagh and for opposing the present reference in this Court.

6. The reference is, accordingly, partly accepted; the conviction and sentence are set aside and the fine, if paid, should be refunded.