
REVISIONAL CRIMINAL

Before Bhandari, C.J.

THE STATE,—Petitioner

versus

LEKH RAJ,—Respondent

Criminal Revision No. 11-D/53

Code of Criminal Procedure (Act V of 1898)—Chapter XXII—Summary trial—Procedure to be followed—Warrant case—Whether framing of formal charge necessary—Section 256—Whether accused person entitled to recall and re-cross-examine the prosecution witnesses.

1953

Oct. 6th.

Held, that as the express mention of one thing implies the exclusion of another, the express mention in section 264 of the fact that the only record thereunder is a judgment containing the substance of the evidence and the particulars set out in section 263, impliedly excludes the necessity for recording the evidence of witnesses or the framing of a formal charge even when a warrant case is tried under the provisions of Chapter XXII of the Code.

Held, that although the law does not require a formal charge to be framed, section 263 of the Code clearly requires the Court to record the plea of the accused and this plea can obviously be recorded only if the accused is informed of the allegations which have been made against him and the offence which he is alleged to have committed. If he puts forward the plea of not guilty, he must be asked to state whether he would like the prosecution witnesses who have already been examined to be recalled under section 256 and to be recross-examined. The right to recall and to recross-examine witnesses is a most valuable right and must be fully preserved, for the law declares that the procedure prescribed for warrant cases must be followed in warrant cases tried under the provisions of Chapter XXII.

Madhab Chandra Saha v. Emperor (1), *King Emperor v. Maung Po Saw* (2), *Crown v. Salig Ram* (3), and *Siri Lal (Ram) v. The Crown* (4), relied on; *Umaji Krishnaji Sonavni v. Emperor* (5), distinguished.

Petition under Section 439, Criminal Procedure Code for revision of the order of Shri Sultan Singh Jain, Additional Sessions Judge, Delhi, dated the 27th February 1953, reversing that of Shri J. D. Sharma, Magistrate, 1st Class with Section 30 Powers, Delhi, dated the 24th November, 1952, and remanding the case to the trial Court for re-trial.

Baizada KANWAL KISHORE, for Petitioner.

Nemo, for Respondent.

JUDGMENT

Bhandari, C.J. BHANDARI, C. J. Two questions arise for decision in these cases, viz. (1) whether it is necessary to frame a formal charge in a warrant case tried summarily under the provisions of Chapter XXII of the Code of Criminal Procedure, and (2) whether an accused person is entitled to recall and

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- (1) I.L.R. 53 Cal. 738
 - (2) I.L.R. 13 Rang. 225
 - (3) I.L.R. 7 Lah. 303
 - (4) 52 P.L.R. 149
 - (5) A.I.R. 1926 Bom. 226

recross-examine the prosecution witnesses as required by the provisions of section 256 of the Code of Criminal Procedure.

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On the 7th August 1952, a vehicle containing about twelve maunds of wheat was intercepted by the Police while it was on its way to Delhi and three persons were prosecuted under section 7 of the Essential Supplies (Temporary Powers) Act, 1946. They were tried summarily under the provisions of Chapter XXII of the Code of Criminal Procedure and two of them were convicted and were awarded sentences of imprisonment. On appeal to the Sessions Court the learned Additional Sessions Judge remanded their case for retrial on two grounds, viz. (1) that a formal charge in writing had not been framed against the convicts; and (2) that the accused were not afforded an opportunity of recalling the witnesses under the provisions of section 256 of the Code of Criminal Procedure. The Delhi State Government is dissatisfied with the order of remand and has come to this Court in revision.

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The relevant provisions are embodied in Chapter XXII of the Code of Criminal Procedure. Section 262 provides that, subject to certain exceptions, the procedure prescribed for summons cases shall be followed in summons cases, and the procedure prescribed for warrant cases shall be followed in warrant cases. Section 263 declares that in cases where no appeal lies, the Magistrate need not record the evidence of the witnesses or frame a formal charge; but that he shall enter certain particulars in a register maintained for the purpose. Section 264 provides that in cases where an appeal lies, the Magistrate shall record judgment embodying the substance of the evidence and the particulars mentioned in section 263 and declares that such judgment shall be the only record in cases coming within this section. As the express mention of one thing implies the exclusion of another, the express mention in section 264 of the fact that the only record thereunder is a judgment containing the substance of the evidence and the particulars set out in section 263, impliedly excludes the

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necessity for recording the evidence of witnesses or the framing of a formal charge even when a warrant case is tried under the provisions of this Chapter. I am supported in this view by the decisions reported as *Madhab Chandra Saha v. Emperor* (1), *King Emperor v. Maung Po Saw* (2), *Crown v. Salig Ram* (3), and *Siri Lal (Ram) v. The Crown* (4). The answer to the first question propounded at the commencement of this judgment is thus clearly in the negative.

The second question is whether an accused person is entitled as of right to recall and recross-examine the prosecution witnesses under the provisions of section 256 of the Code of Criminal Procedure. The learned counsel for the State contends that if it is not necessary to frame a formal charge in a case tried under the provisions of Chapter XXII, the provisions of section 256 which presuppose the existence of a formal charge, do not apply. My attention has been invited to the observations of Madgavkar, J., in *Umaji Krishnaji Sonavni v. Emperor* (5), in which the learned Judge observed as follows:—

“The charge gives clear notice of the mind of the Court *prima facie* on the materials as they exist; and in case the charge suggests to the defence any other witnesses or any further questions, that right is given. Where there is no such charge the defence has no other materials than it already possessed and the need to recall witnesses does not exist.”

The contention put forward by the learned counsel is, in my opinion, wholly untenable. It may be that the law does not require a formal charge to be framed, but section 263 clearly requires the Court to record the plea of the accused and this

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plea can obviously be recorded only if the accused is informed of the allegations which have been made against him and the offence which he is alleged to have committed. If he puts forward the plea of not guilty, he must be asked to state whether he would like the prosecution witnesses who have already been examined to be recalled under section 256 and to be recross-examined. The right to recall and to recross-examine witnesses is a most valuable right and must be fully preserved, for the law declares that the procedure prescribed for warrant cases must be followed in warrant cases tried under the provisions of Chapter XXII. The observations of Madgavkar, J., in the case referred to above are scarcely relevant for these observations were made in a case in which no appeal was competent. The question must, therefore, be answered in the affirmative.

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For these reasons, I would uphold the order of the Court below and dismiss the petition.