REVISIONAL CRIMINAL

Before Bishan Narain and Gurnam Singh, JJ.

DES RAJ,—*Convict-Petitioner.*

versus

THE STATE,—*Respondent.*

Criminal Revision Case No. 584 of 1956.

1957

Oct., 18th

Code of Criminal Procedure (V of 1898)—Section 233—Object of—Sections 233 to 240 and 529 to 537—Scope and applicability of—Error in joinder of charges—Whether vitiates trial—Trial held in contravention of section 235—Whether irregular—Irregularity—Whether curable under section 537.

Held, that the provisions of section 233 of the Code of Criminal Procedure are mandatory. The object of the first part of the section is to give the accused a notice of the precise accusation in writing which he has to face at the trial. Sections 237 and 238 are exceptions to this rule of law. The object of the second part of the section is not to embarrass and prejudice the accused in being called upon to meet multitude of independent and distinct charges which may embarrass him in his defence. This part relates to trials as distinct from charges. As rigid observance of the provisions of the second part of this section may lead to multiplicity of trials which, in certain circumstances, would neither be convenient nor fair to the accused, the legislature has specifically provided exceptions to it in sections 234, 235, 236 and 239.

Held, that an error in joinder of charges is an error in the proceeding or trial and there is no reason why such an errors should not be governed by section 537 of the Code of Criminal Procedure. There is nothing inherently wrong nor against the principles of natural justice, nor shocking to the judicial conscience, if a person is tried on various charges in one trial so long as the accused is not embarrassed or prejudiced in his defence on account of this multiplicity of charges. Usually such trial saves time and expense to all concerned and reduces worry and embarrassment to the accused and

it is apparently for this reason that sections 234, 235, 236 and 239 provide exceptions to section 233, Criminal Procedure Code. Again there is no reason why the entire trial should be rendered void if a Magistrate while applying these provisions makes a bona fide mistake unless the accused is prejudiced in defence. After all the object of the provisions of the Code of Criminal Procedure is to provide a machinery for a fair trial of criminal offences so as to protect the innocent and to punish the guilty. This machinery should not be so used as to defeat justice by introduction of technicalities. It is as important to convict the guilty as to acquit the innocent. Wrong acquittals are as much undesirable as wrong convictions.

Held, that a trial held in contravention of section 235, Criminal Procedure Code, is curable under section 537 of the Code. The effect of sections 529 to 537 is that all irregularities committed in the course of a criminal trial purporting to be but in fact in contravention of provisions of the Criminal Procedure Code are curable irregularities unless the Code specifically provides otherwise. The contravention of even a mandatory provision in the Code of Criminal Procedure would not necessarily exclude the applicability of section 537 of the Code to the proceedings.

Case referred by Hon'ble Mr. Justice Bishan Narain on 31st October, 1956, to a Division Bench for opinion on the legal point involved in the case and later on decided by Hon'ble Mr. Justice Bishan Narain.

Petition under section 439 of the Criminal Procedure Code, for revision of the order of Shri E. F. Barlow, Additional Sessions Judge, Karnal, dated the 7th day of May, 1956, modifying that of Shri Udham Singh, section 30 Magistrate, Karnal, dated the 30th December, 1955, convicting the petitioner.

H. L. SIBAL, for Petitioner.

K. S. CHAWLA, Assistant Advocate-General, for Respondent.

ORDER

Bishan Narain, J.

BISHAN NARAIN, J.—Des Raj petitioner took the groundflour of a house from one Har Parshad

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on rent. This house was situated within the Municipal limits of the city of Karnal. Des Raj was running a factory for the preparation of crackers, etc., in October, 1954, and for this purpose he used to store explosives there. On the 10th of October, 1954 at about 11 a.m. the accused tested a cracker in front of these premises but a spark of the cracker fell into the stored explosives with the result that there was a serious accident by which the whole building was shattered and the roof fell down causing death of six persons and simple and grievous injuries to nine persons. On these facts which are accepted by the accused as correct the trial Court framed the following charges against him:—

(1) Under section 304A, Indian Penal Code, for causing death of six persons by doing a rash and negligent act;

(2) under section 337, Indian Penal Code, for causing hurt to about nine persons by this act;

(3) under section 6(3) of the Explosives Act for keeping in possession potassium chlorate which at that time was an unauthorised explosive;

(4) under rule 109 made under the Explosives Act for storing fireworks, etc., without license; and

(5) for possession of about 20 maunds of potassium chlorate which is beyond the prescribed limit of 200 lbs.

The accused did not object to the holding of one trial for all these charges. The trial Court

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acquitted him of charge No. 3, and convicted him of the others. He sentenced him to various terms of imprisonment and fine. On appeal the Additional Sessions Judge, Karnal, acquitted him of charge No. 5 and dismissed the appeal relating to convictions and sentences under the other charges. The petitioner then filed this petition under sections 435 and 439, Criminal Procedure Code.

This case was argued before me sitting in Single Bench. A contention was raised that the entire trial was illegal and void as there was a misjoinder of charges under section 233 of the Code of Criminal Procedure and this illegality could not be cured by section 537, Criminal Procedure Code. It was then conceded by counsel for both sides that these offences did not arise out of the same transaction and that there was a misjoinder of charges. The real question then arose was: whether a trial held on joinder of charges in contravention of sections 233 and 235, Criminal Procedure Code, would be held legal on application of section 537, Criminal Procedure Code. In view of conflicting decisions on this point. I referred the matter to a larger Bench which has now come before us under the orders of the Hon'ble the Chief Justice.

Now, Chapter 19 of the Criminal Procedure Code deals with charges. Sections 233 to 240 in this Chapter deal with joinder of charges. Section 233 reads—

> "For every distinct offence of which any person is accused, there shall be a separate charge, and every such charge shall be tried separately, except in the cases mentioned in sections 234, 235, 236 and 239."

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The provisions of this section are mandatory. The object of the first part of the section is to give the accused a notice of the precise accusation in writing which he has to face at the trial. Sections 237 and 238 are exceptions to this rule of law. The object of the second part of the section is not to embarrass and prejudice the accused in being called upon to meet multitude of independent and distinct charges which may embarrass him in his defence. This part relates to trials as distinct from charges. As rigid observance of the provisions of the second part of this section may lead to multiplicity of trials, which in certain circumstances would neither be convenient nor fair to the accused, the legislature has specifically provided exceptions to it in sections 234, 235, 236 and 239. We are concerned in the present case with the second part of section 233 read with section 235. It is, as I have already said, common ground that in the present case there has been a contravention of section 235 and the only question to be determined is: if this contravention is curable. Now, sections 529 to 536 deal with irregularities. When a Magistrate is not empowered to do certain acts and nevertheless does them in good faith though erroneously, then some of these acts are specified in section 529 which will not be set aside merely on that ground, while certain other acts specified in section 530 must be set aside because they are held to be illegal and void. Under section 531 want of local jurisdiction does not *per se* vitiate the trial. Sections 532 and 533 deal with other kinds of irregularities. Section 535 lays down that no finding or sentence passed by a Magistrate will be held to be invalid on the sole ground that no charge was framed unless this omission has occasioned failure of justice, and in that case a fresh trial is to be ordered. Thus under this section an error in observing the first

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part of section 233 can be cured. Then section 537, Criminal Procedure Code, lays down in general that no finding, sentence or order passed by a competent Court should be reversed or altered in appeal or revision on account of any error, omission or irregularity in the proceedings before or during trial unless it has occasioned a failure of justice. There is no specific mention of misjoinder of charges in this section as it stood before the recent amendment. I am, however, deciding this case on the assumption that the amendment has no application to it. There can be no doubt that an error in joinder of charges is an error in the proceeding or trial, and on principle I am unable to see any reason why such an error should not be governed by section 537, Criminal Procedure Code. I see nothing inherently wrong nor against the principles of natural justice, nor shocking to the judicial conscience if a person is tried on various charges in one trial so long as the accused is not embarrassed or prejudiced in his defence on account of this multiplicity of charges. Usually such a trial saves time and expense to all concerned and reduces worry and embarrassment to the accused, and it is apparently for this reason that sections 234, 235, 236 and 239 provide exceptions to section 233, Criminal Procedure Code. I see no reason why the entire trial should be rendered void if a Magistrate while applying these provisions makes a *bona fide* mistake unless the accused is prejudiced in his defence. After all the object of the provisions of the Criminal Procedure Code is to provide a machinery for a fair trial of criminal offences so as to protect the innocent and to punish the guilty. This machinery, in my view, should not be so used as to defeat justice by introduction of technicalities. It is as important to convict the guilty as to acquit the innocent. Wrong

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acquittals are as much undesirable as wrong convictions. In my opinion, the effect of sections 529 to 537 is that all irregularities committed in the course of a criminal trial purporting to be but in fact in contravention of provisions of the Criminal Procedure Code are curable irregularities unless the Code specifically provides otherwise.

The learned counsel for the petitioner in support of his contention strongly relies on the decision of the Privy Council in *Subrahmania Ayyar* vs. *King Emperor* (1). This is a leading case on the point. In that case there was contravention of the provisions of section 234, Criminal Procedure Code, and the accused was charged with 49 acts of extortion of monies and of taking illegal gratifications extending over two years. The Privy Council set aside the conviction and in the course of its judgment their Lordships observed—

> "Their Lordships are unable to regard the disobedience to an express provision as to the mode of trial as a mere irregularity."

and refused to apply section 537 to the case. This case was referred to by the Privy Council in *V. M. Abdul Rahman* v. *King-Emperor* (2), *Babulal Chaukhani* v. *King-Emperor* (3), and *Pulukuri Kottaya and others* v. *Emperor* (4). In the last case it was observed that the distinction beween an illegality and an irregularity was merely one of degree rather than of kind. This observation has been accepted as correct by their Lordships of the Supreme Court in *Willie Slaney* v. *State of Madhya Pradesh* (5). If that be so, then it follows that

(1) I.L.R. 25 Mad. 61.
(2) A.I.R. 1927 P.C. 44.
(3) A.I.R. 1938 P.C. 130.
(4) A.I.R. 1947 P.C. 67.
(5) A.I.R. 1956 S.C. 116.

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contravention of even a mandatory provision in the Criminal Procedure Code would not necessarily exclude the applicability of section 537 of that Code to the proceedings.

This point arose before their Lordships of the Supreme Court in proceedings under Article 32 of the Constitution in *Janardhan Reddy and others* v. *The State of Hyderabad and others* (1). In that case it was argued on the basis of *Subrahmania's case* (2), that the trial was illegal by reason of misjoinder of charges. Their Lordships while repelling this contention on the ground that the trial could not be held to be without jurisdiction observed—

> "The case (*Subrahmania's*) has been discussed, explained and distinguished in a number of cases, and it must be read with the subsequent decisions of the Privy Council in *Abdul Rahman* v. *King-Emperor* (3) *and in Babu Lal* v. *Emperor* (4), which have been understood by some of the Indian Courts to have greatly modified and restricted the very broad rule which at one time there was a tendency to deduce from certain general observations made by the Privy Council. It may be that on a more appropriate occasion we may have to review the case law on the subject and lay down the true scope of the pronouncements made by the Privy Council in the case

(1) A.I.R. 1951 S.C. 217.
(2) I.L.R. 25 Mad. 61.
(3) 54 I.A. 96.-A.I.R. 1927 P.C. 44-28 Cr. L.J. 259.
(4) A.I.R. 1938 P.C. 130-39 Cr. L.J. 452.

referred to above and the effect which in law the misjoinder of charges would have upon the trial."

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As anticipated this matter again arose before the Supreme Court in *Willie Slaney* v. *State of Madhya Pradesh* (1). In that case Slaney was convicted under section 302, Indian Penal Code, although he had been charged only under section 302/34, Indian Penal Code, along with another person, who, however, had been acquitted. It was contended on Slaney's behalf that as the appellant had not been separately charged under section 302, Indian Penal Code, he could not be convicted under that section. This contention, as it is clear, related to the first part of section 233, Criminal Procedure Code, and not to the second part of that section. Their Lordships upheld the trial as legal after exhaustively discussing the relevant case law and the relevant provisions of the Code of Criminal Procedure and in the course of judgment Honourable Mr. Justice Bose observed—

"In our opinion, sections 233 to 240 deal with joinder of charges and they must be read together and not in isolation. They all deal with the same subject-matter and set out different aspects of it. When they are read as a whole, it becomes clear that sections 237 and 238 cover every type of a case in which a conviction can be sustained when there is no charge for that offence, provided there is a charge to start with. They do not deal with a case in which there is no charge at all, and anything travelling beyond that when there is a charge would be hit by sections 233,

(1) A.I.R. 1956 S.C. 116.

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> 234, 235 and 239 read as a whole, for the reasons we have just given. * * * *
> We do not think these sections should be regarded disjunctively. In our opinion they between them (including sections 535 and 537) cover every possible case that relates to the charge and they place 'all' failures to observe the rules about the charge in the category of curable irregularities. Chapter 19 deals comprehensively with charges and sections 535 and 537 cover every case in which there is a departure from the rules set out in that Chapter."

These observations apply with equal force to a case of misjoinder of charges. There is no rational reason why a mere misjoinder of charges should be held to vitiate a trial while non-framing of a charge should not have that consequence. If anything, omission to frame a charge is far more serious and grave than misjoinder of charges and is more likely to prejudice the accused than his trial on two or more charges which had been specifically framed. It is apparently for this reason that section 535 has been specifically enacted to make an omission to frame a charge curable while misjoinder is relegated to the general and residuary section 537 of the Code of Criminal Procedure. Their Lordships of the Supreme Court in *Slaney's case* (1) did not in my opinion accept the decision in *Subrahmania's case* (2), in so far as it lays down that disobedience to an express provision as to the mode of trial was an illegality which *per se* vitiated the trial. It is true that the point of misjoinder was not before the Supreme Court in *Slaney's case* (1), but all the

(1) A.I.R. 1956 S.C. 116.
(2) I.L.R. 25 Mad. 61.

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reasonings employed in that case in coming to the conclusion that contravention of first part of section 233 amounts to a curable irregularity equally apply to a case of misjoinder of charges.

This conclusion is reinforced by the decision of the Supreme Court in *Chandi Prasad Singh* v. *State of Uttar Pradesh*, (1). In that case it was contended that section 234, Criminal Procedure Code was contravened (as in *Subrahmania's case*) (2), by charging the appellant with three offences under section 409 and one under section 477A, Indian Penal Code. Their Lordships held that there was no error as section 234 applied to the case and then proceeded to observe—

> "Moreover the appellant has failed to show any prejudice as required by section 537, Criminal Procedure Code."

It is therefore clear that in the opinion of their Lordships in that case misjoinder of charges was an irregularity which was curable under section 537, Criminal Procedure Code.

For these reasons, I am of the opinion that the trial held in contravention of section 235, Criminal Procedure Code, is an irregularity which is curable under section 537, Criminal Procedure Code.

Before parting with the case I may repeat the warning given by the Hon'ble Mr. Justice Imam in *Slaney's case* (3), that the provisions of the Code of Criminal Procedure are meant to be obeyed and any laxity in this manner must result in many cases to unnecessary waste of public time and money and harassment and expense to

(1) A.I.R. 1956 S.C 149.
(2) I.L.R. 25 Mad. 61.
(3) A.I.R. 1956 S.C. 116.

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the accused. The trial Court should not ignore the provisions of the Criminal Procedure Code in the hope that their mistakes will be overlooked by higher Courts by applying sections 535 and 537 of the Code.

The case will now be placed before the Single Judge for decision of the revision petition on merits.

Gurnam Singh, J.

GURNAM SINGH, J.—I agree.

R.S.

REVISIONAL CIVIL.

Before Bishan Narain and Grover, JJ.

NATHA SINGH AND CHANAN SINGH,—*Petitioners.*

versus

TEJINDER SINGH AND OTHERS,—*Respondents.*

Civil Revision No. 250-P of 1951.

1957
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Nov., 15th

Indian Limitation Act (IX of 1908)—Section 12(2)—"Time requisite for obtaining a copy of the decree or order appealed from"—Meaning of—Period between the pronouncement of the judgment and the signing of the decree Whether time requisite for obtaining a copy of the decree and should be excluded from computation of the period of limitation—Limitation Act—Mode of construction of—Code of Civil Procedure (Act V of 1908)—Order XX, Rule 7—Date of the decree—Whether the date of the judgment or the date on which it is actually signed.

Held, that the word 'requisite' is a strong word; it may be regarded as meaning something more than the word 'required'. It means 'properly required', and it throws upon the pleader or counsel for the appellant the necessity of showing that no part of the delay beyond the prescribed period is due to his default. In determining "requisite time" the conduct of the appellant must be considered and in so determining no period should be regarded as requisite