1934

EMPEROR v. NATHU RAM

section 5, although he was charged under section 4(*b*) alone. I am, therefore, of the opinion that there is no force in the two contentions of law advanced before me.

[The judgment then discussed the facts of the case and concluded that the incriminating articles were in the possession and control of the accused; and the conviction and sentence were upheld.]

REVISIONAL CRIMINAL

Before Sir Shah Muhammad Sulaiman, Chief Justice, and Mr. Justice Rachhpal Singh

EMPEROR *v.* KEHAR SINGH*

1934 *August*, 16

Prevention of Adulteration Act (Local Act VI of 1912), *section* 15(2)—*Hearing of case within seven days of service of summons—Irregularity—Prejudice—Criminal Procedure Code, section* 537.

Although the provisions of section 15 of the U. P. Prevention of Adulteration Act are mandatory and ought to be followed by Magistrates, they are subject to the general provisions of section 537 of the Criminal Procedure Code. So, where the summons was served less than seven days before the date fixed for hearing and the case was heard on that date, in contravention of the provisions of section 15(2), but no complaint or protest on the score of shortness of notice was made on behalf of the accused at the trial or in the grounds of revision to the Sessions Judge, it was *held* that the irregularity was cured under the provisions of section 537 of the Criminal Procedure Code as it did not appear that the accused had been prejudiced thereby.

Benarsi Das v. *King-Emperor* (1) and *Bohra Raghubar Dayal* v. *King-Emperor* (2), not followed.

The applicant was not represented.

The Assistant Government Advocate (Dr. *M. Waliullah*), for the Crown.

SULAIMAN C.J., and RACHHPAL SINGH, J.:—This is a reference by the Sessions Judge of Meerut recommending that the conviction of the accused under section 4 of the United Provinces Prevention of Adulteration Act (Act VI of 1912) be set aside.

*Criminal Reference No. 345 of 1934

(1) [1930] A.L.J., 911. (2) [1931] A.L.J., 690.

It appears that the learned Magistrate on the 17th of December, 1933, fixed the 3rd of January, 1934, as the date for the hearing of the case and ordered summons to issue. The summons, however, was not served till the 31st of December, 1933. The case was heard on the 3rd of January, 1934, and the accused made no protest as to the shortness of the time which he had had to meet the prosecution case. The trial ended and the accused was convicted. On his behalf his counsel never suggested to the trying Magistrate that the accused had been prejudiced by the case having been taken up at such short notice. He went up in revision to the learned Sessions Judge and took no fewer than twelve grounds but did not suggest that the accused had been prejudiced by the date having been fixed rather early. There was no point taken that he had been prejudiced by any omission or irregularity in the summons which was served upon him.

Section 15, sub-section (1) provides that no summons shall issue for the attendance of any accused person unless the same is applied for within thirty days from the date on which the order has been made. But section 15, sub-section (2) contains a mandatory provision that every summons shall specify the particulars of the offence charged and the name of the prosecutor, and further provides that the day fixed for the hearing of the case shall not be less than seven days from the day on which the summons is served upon the accused.

The reference is based on two rulings of this Court. In *Benarsi Das* v. *King-Emperor* (1) DALAL, J., considered that the omission to mention the charge in the summons was highly prejudicial to the accused and on that ground he set aside the conviction. In *Bohra Raghubar Dayal* v. *King-Emperor* (2) PULLAN, J., followed the ruling in *Benarsi Das's* case and held that the failure to state in the summons the particulars of the offence charged was fatal to the prosecution, and set aside the

(1) [1930] A.L.J., 911. (2) [1931] A.L.J., 690.

1934

EMPEROR v. KEHAR SINGH

conviction. On the other hand, in *Emperor* v. *Ram Chand* (1), DALAL, J., declined to interfere although the complaint had not been filed within the time prescribed under section 15, sub-section (1).

Although the provisions of section 15 are mandatory and ought to be followed by Magistrates, the question is whether, if there is some non-compliance, the conviction is illegal and should be set aside. Now, omission to state the name of the prosecutor or the particulars of the offence in the summons, or a delay in the filing of the complaint, or the hearing of the case within less than seven days from the date of the service of the summons, would certainly be an irregularity, but that alone is not sufficient to make the conviction illegal. These provisions are subject to the general provisions of section 537 of the Code of Criminal Procedure, under which no error, omission or irregularity in the summons can justify the setting aside of a finding or sentence or the order passed by a court of competent jurisdiction on appeal or in revision, unless such omission, error or irregularity has in fact occasioned a failure of justice.

We would, therefore, think that the mere fact that certain particulars are not mentioned in a summons would not in every case be prejudicial to the accused when at the trial he is aware of such particulars. On the other hand, the hearing of a case within less than seven days from the date of the service may in most cases be prejudicial to him and he may not be able to defend himself at such short notice.

But in this particular case the accused never appears to have made a grievance of it. When the case was called on by the Magistrate on the 3rd of January, 1934, there was no protest on his behalf that the summons had been served only a few days earlier. When he went up in revision before the Sessions Judge, in none of the twelve grounds of revision he took was there any suggestion that he had been prejudiced. Had he been

(1) (1928) I.L.R., 50 All., 853.

1934

EMPEROR v. KEHAR SINGH

prejudiced, he would certainly have raised a ground to that effect. In these circumstances, we accept the finding of the learned Sessions Judge that the accused was not prejudiced in any way. The irregularity, therefore, is cured by section 537, Criminal Procedure Code.

The conviction and sentence passed on the accused, therefore, stand.

Before Sir Shah Muhammad Sulaiman, Chief Justice, and Mr. Justice Rachhpal Singh

EMPEROR *v.* BHAGIRATH LAL*

1934 *August*, 16

Indian Penal Code, sections 192, 193—*Accused person fabricating false evidence for defending himself at his trial—No privilege or exception in his favour.*

There is no protection or privilege in favour of an accused person who fabricates false evidence in order to defend himself at his trial. Section 192 of the Indian Penal Code is quite general in its application to every person and it is impossible to hold, on the language of sections 192 and 193, that an accused person is in any more privileged position than an ordinary person.

The mere intention to divert suspicion and conceal one's guilt need not necessarily amount to fabricating evidence which may appear in a judicial proceeding; but if the act of an accused person comes within the language of section 192 he can not take shelter behind the circumstance that he is an accused person. *Emperor* v. *Ram Khilawan* (1), distinguished.

Mr. *S. K. Mukerji*, for the applicant.

The Assistant Government Advocate (Dr. *M. Waliullah*), for the Crown.

SULAIMAN, C.J., and RACHHPAL SINGH, J.:—This is an application in revision by an accused person against whom a complaint under section 476 of the Criminal Procedure Code has been ordered to be filed by the Magistrate in whose court he was being tried under section 4 of the United Provinces Prevention of

*Criminal Revision No. 277 of 1934, from an order of Sarup Narain, Sessions Judge of Muzaffarnagar, dated the 23rd of February, 1934.

(1) (1906) I.L.R., 28 All., 705.