

1933

GOBIND SINGH  
v.  
MANAGING  
COMMITTEE OF  
GURDWARAS,  
AMRITSAR.

the fact that this *bunga* had been notified. They are thus not entitled to claim any indulgence.

For the reasons given I would dismiss the appeal with costs.

AGHA HAIDAR J.—I agree.

A. N. C.

*Appeal dismissed.*

**REVISIONAL CRIMINAL.**

*Before Tek Chand J.*

KARAM DIN (CONVICT), Petitioner

*versus*

THE CROWN—Respondent.

**Criminal Revision No. 488 of 1933.**

1933

Sept. 6.

*Criminal Procedure Code, Act V of 1898, section 342: whether applies to summons cases and summary trials — non-compliance with—whether an illegality vitiating the trial—section 243: Admission of guilt by accused—Statement of accused—how to be recorded.*

*Held*, that the provisions of section 342, Criminal Procedure Code, apply to summons cases and summary trials, and non-compliance with its provisions amounts to an illegality which vitiates the trial.

*Emperor v. Nabu* (1), and *Bechu Lal Kayastha v. Emperor* (2), followed.

Where, however, an accused person admits his guilt, the Magistrate may convict him under section 243 of the Code, and in such a case it is unnecessary to examine the accused under section 342.

*Case reported by R. B. Lala Jaswant Rai, Taneja, Sessions Judge, Gujranwala, with his No. 280-J., dated the 28th March, 1933, for orders of the High Court.*

*Report of the Sessions Judge.*

The facts of this case are as follows:—The Magistrate tried this case summarily and in column 6 “The plea of the accused and the examination” simply put down the words “pleads guilty.” In the next column, in which the particulars required in columns Nos. 7, 8 and 9 have been mixed up, it is recorded that the accused denies the charge but no defence was given. On the evidence of a solitary witness Foot-Constable Khan Muhammad, who stated that the accused was carrying 30 passengers, the permitted number being 19, and that some passengers were being carried on the roof of the lorry, the accused was convicted with the remark that no defence was given and the offence of overloading was proved.

*The proceedings are forwarded for revision on the following grounds:—*

The accused has filed a petition for revision, one of the grounds being that he was given no opportunity to produce his defence and that his defence witnesses were ready with him and yet the Magistrate refused to record their evidence. No affidavit is, however, filed in support of this allegation. All the same the provisions of section 342, Criminal Procedure Code, do not appear to have been observed and it had been held in *Moyzuddin Mean v. Emperor* (1) that section 342 is obligatory and applies to summary trials also. The same view was taken in the Full Bench ruling *Emperor v. Nabu* (2) and in our own province by the Hon'ble the Chief Justice in *Demello v. Mrs. Demello* (3), wherein it was laid down “that non-compliance with the provisions of section 342 amounts to illegality vitiating the trial.”

(1) 1930 I. R. (Cal.) 390. (2) 1926 A. I. R. (Sind) 1 (F. B.).

(3) 1926 A. I. R. (Lah.) 667.

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It is recommended, therefore, that the conviction of the accused be set aside and the case remanded for a fresh decision after recording the statement of the accused and his defence evidence, if any.

ORDER OF THE HIGH COURT.

TEK CHAND J.

TEK CHAND J.—I accept the recommendations of the learned Sessions Judge, that the conviction of the petitioner be set aside and the case remitted to the trial Magistrate for fresh decision after recording the statement of the accused under section 342 of the Code of Criminal Procedure, and his defence evidence, if any. It has been held by this Court and most of the other High Courts that the provisions of section 342, Criminal Procedure Code, apply to summons-cases and non-compliance with its provisions amounts to an illegality which vitiates the trial. It has also been held that this section applies to summary trials as well. [*Emperor v. Nabu* (1) and *Bechu Lal Kayastha v. Emperor* (2)].

It may be mentioned, however, as was pointed out in the Sind case referred to above, that if an accused person in a summons-case admitted that he had committed the offence of which he was accused, the Magistrate might convict him under section 243, without proceeding to hear the complainant and taking the evidence in support of the prosecution. In such a case it would obviously be unnecessary to examine the accused under section 342. In the present case, though the Magistrate has recorded that the accused "pleaded guilty," the provisions of section 243 have not been complied with, inasmuch as the admission has not been "recorded as nearly as possible in the words used by him." In another part

(1) 1926 A. I. R. (Sind.) 1 (F. B.) (2) (1927) I. L. R. 54 Cal. 286.

of the record, the learned Magistrate has noted that the accused "denied that he had carried 30 passengers instead of 19 in his lorry on the 20th of December 1932 and that some of the passengers sat on the top," as was deposed to by the solitary witness for the prosecution. If he denied this allegation it is difficult to understand what the words "pleads guilty" meant.

The case has been tried very unsatisfactorily and must be remitted to the trial Magistrate for fresh decision after recording the statement of the accused in his own words and his defence evidence, if any.

A. N. C.

*Revision accepted.*

*Case remanded.*

**REVISIONAL CRIMINAL.**

*Before Tek Chand J.*

THE CROWN—Petitioner

*versus*

CHAND MAL (ACCUSED), Respondent.

**Criminal Revision No. 802 of 1933.**

*Indian Child Marriage Restraint Act, XIX of 1929, section 10: Cognizance of an offence—without preliminary enquiry under the section—legality of.*

*Held*, that under the provisions of section 10 of the Child Marriage Restraint Act, the Court taking cognizance of an offence under the Act is bound to hold a preliminary enquiry before taking action, unless it dismisses the complaint under Section 203 of the Code of Criminal Procedure.

*Mangal Ram v. Kalu (1)*, followed.

*Case reported by Mr. R. B. Beckett, Sessions Judge, Delhi, with his No. 599 of 19th/22nd May, 1933, for orders of the High Court.*

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v.

THE CROWN.

TEK CHAND J.

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Sept. 12.