

State of Punjab v. Des Raj (Tewatia, J.)

In view of this decision of the Division Bench, we have no option but to hold that the Select Committee had illegally refused to consider the petitioner for the inclusion of his name in the select list. The learned counsel for the State, however, contended that in spite of the non-issuance of the integrity certificate, the case of the petitioner was considered on merits as well and rejected by the Select Committee. No doubt, in the report of the Select Committee, it is mentioned that the petitioner was found unfit on merit also but we are not satisfied that this passing observation is enough to show that the case of the Petitioner, in fact, was considered on merits because no reasons were recorded for his supersession by the Select Committee as required in sub-clause (5) of Regulation 5. A perusal of the report of the Select Committee shows that reasons were recorded for superseding certain eligible members of the service and if the case of the petitioner had also been considered on merits there was no reason why his name would not have been mentioned amongst the names of other alleged superseded members and the reasons recorded for his supersession. We, therefore, fully agree with the contention of the petitioner that his name was not at all considered by the Select Committee because of the non-issuance of the integrity certificate and in view of the decision in *Gurdayal Singh Fiji's case (supra)* it has to be held that the Select Committee has illegally refused to consider the name of the petitioner for being included in the select list.

(16) Consequently, this petition is allowed to the extent noticed above and a direction is ordered to be issued to respondents Nos. 1 and 14 to consider the petitioner for the inclusion of his name on the Select list prepared for the year 1973. In view of the partial success of the petition, the parties are left to bear their own costs.

S. S. Sandhawalia, J.—I agree.

K. T. S.

APPELLATE CRIMINAL

Before D. S. Tewatia and D. B. Lal, JJ.

STATE OF PUNJAB,—Appellant.

versus

DES RAJ,—Respondent.

Criminal Appeal No. 1223 of 1974

February 7, 1978.

Code of Criminal Procedure (II of 1974)—Sections 510-A and 540—
Punjab Excise Act (1 of 1914) Section 61(1) (a)—Criminal trial—

Affidavits regarding link evidence—Technical flaws in such affidavits—Additional evidence to rectify such flaws—Whether to be permitted.

Held, that where affidavits of formal witnesses constituting link evidence not attested in accordance with law are placed on the record, the bringing on record of additional evidence to rectify the technical defect either by placing on the record the affidavits attested in the prescribed manner or by adducing the evidence contained in them by summoning the deponents of those affidavits as witnesses, would be most appropriate exercise of court's discretion under section 540 of the Code of Criminal Procedure 1973 as it would in no manner prejudice the case of the accused but failure to do so would result into miscarriage of justice. Section 540 of the Code confers seemingly wide powers on the court to permit additional evidence envisaged therein in the interest of justice. (Para 5).

Appeal from the Order of the Court of Shri Madan Mohan Bhalla, Judicial Magistrate 1st Class, Sultanpur Lodhi, dated the 18th July 1974 acquitting the respondent.

Charge Under Section 61(1) (a) of Punjab Excise Act.

Order :—Acquittal.

G. S. Bains, A.A.G. Punjab, for the appellant.

S. S. Rathor, Advocate and S. S. Parmar, Advocate, for the respondent.

JUDGMENT

D. S. Tewatia, J. (Oral).

(1) A police party, while raiding village Talwandi Chaudharian, recovered from the possession of respondent Deo Raj a bladder containing, what later on was proved to be liquor, approximately two bottles in quantity. The sample sent to the Chemical Examiner was opined to be of liquor. Thereafter the respondent was tried under section 61(1) (a) of the Punjab Excise Act (hereinafter called the Act) for contravening the provisions of section 25 of the Act.

(2) At the trial, the prosecution, besides examining Ajit Singh (PW 1) and Swaran Singh (PW 2) also placed on the record affidavits of formal witnesses in the exercise of power under section 510-A of the Code of Criminal Procedure which constituted what may be termed as link evidence in the case. All the four affidavits were attested well before a decision of this Court was published,

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declaring that the affidavits of formal witnesses which were not attested in accordance with law would not be admissible in evidence as they were no affidavits in the eye of law. However, at the stage the respondent accused had made his statement under section 342 of the (old) Code of Criminal Procedure and closed his defence, an application dated June 1, 1974, purporting to be under sections 510-A and 540 of the said Code was moved by the prosecution, seeking to summon the formal witnesses whose affidavits had been placed on the record as by virtue of the reported judgment the same had not been attested in accordance with law. The application was dismissed and thereafter vide order dated July 18, 1974 the respondent was acquitted on the short ground that there being no link evidence on the record to the effect that the sample was kept un-tampered and in proper custody or that the sample sent to the Chemical Examiner was the same that had been taken for the said purpose.

(3) It has been pointed out on behalf of the State that prior to June, 1972, the affidavits of the kind that were placed on the record of this case, used to be accepted in evidence in criminal cases and that it was only for the first time in his judgment dated June 13, 1972 in *Som Nath versus The State* (1), that Tuli, J. pronounced that such kind of affidavit, being improperly attested, was no affidavit in the eye of law and this judgment was published in 1973 C.L.R. 156. This was later on followed in other judgments, one of them being *Ravel Singh v. State of Punjab*, (2). The question that arises for consideration is as to whether in such circumstances when the affidavit of the kind had been accepted as constituting good evidence till decision of *Som Nath's* case (supra), was it not in the interest of justice to permit the prosecution to rectify the technical defect either by placing on the record the affidavits attested in the prescribed manner or by adducing the evidence contained in the same, i.e. by summoning the deponents of those affidavits as witnesses.

(4) The learned counsel for the respondent has cited before us two Single Bench decisions of this Court, reported in *Santokh Singh v. State of Haryana*, (3) and *Amar Chand Vs. State of Haryana* (4)

(1) 1973 C.L.R. 156.

(2) 1974 P.L.R. 402.

(3) 1975 C.L.R. 119.

(4) 1976 C.L.R. 269.

wherein the learned Single Judges who delivered those judgments held that it was neither open to the Sessions Judge while hearing the appeal of the accused either to remand the case to the trial court in order to permit the prosecution to rectify the defect in its evidence by either placing fresh affidavits duly attested in the prescribed manner or by calling the deponents of those affidavits in the witness box. Nor is it open to the first appellate court itself to have the needful done by invoking the provisions of section 540 of the Code of Criminal Procedure, for according to the learned Judges, it would be improper to have done so when the defence of the accused had been closed.

(5) We are of the opinion that bringing on the record additional evidence of the kind in order to rectify the defect of the kind would in no manner prejudice the case of the accused. In fact, it would be most appropriate to exercise its discretion under section 340 and not to do so would, in our opinion, result into miscarriage of justice. Section 540 of the Code of Criminal Procedure confers seemingly wide powers on the Court to permit additional evidence envisaged therein in the interest of justice. In *Jamatraj Kewalji Govani v. State of Maharashtra*, (5), Hidayatullah, Sikri and Vaidialingam, JJ. have underscored the aforesaid observations with the following enunciation of law on the point :—

“As the section stands there is no limitation on the power of the Court arising from the stage to which the trial may have reached, provided the Court is *bona fide* of the opinion that for the just decision of the case, the step must be taken. It is clear that the requirement of just decision of the case does not limit the action to something in the interest of the accused only. The action may equally benefit the prosecution. There are, however, two aspects of the matter which must be distinctly kept apart. The first is that the prosecution cannot be allowed to rebut the defence evidence unless the prisoner brings forward something suddenly and unexpectedly.

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There is however, the other aspect namely of the power of the Court which is to be exercised to reach a just decision. This power is exercisable at any time.—”

In the present case, the prosecution did not wish to rebut the defence case. It merely wanted to rectify a technical flaw which became apparent as a result of decision of this Court in Som Nath's case (supra).

(6) For the reasons stated, we are of the considered view that the trial Court ought to have allowed the application of the prosecution for additional evidence of the kind mentioned therein, and avoided the snap decision by which it had acquitted the respondent.

(7) However, we cannot be oblivious of the other aspect, that is that the respondent has faced the prosecution since 1972 and that, too, for a petty offence involving possession of merely two bottles of liquor. In view of the above, we do not think it would serve the interest of justice to remand the case to the trial Court. For the foregoing reasons, we uphold the acquittal and dismiss this appeal.

K. T. S.

MISCELLANEOUS CIVIL

Before S. S. Sandhwalia and J. M. Tandon, JJ.

JAGRAJ SINGH and others,—Petitioners.

versus

STATE OF PUNJAB ETC.,—Respondents.

Civil Writ No. 366 of 1977

February 13, 1978.

Punjab Land Reforms Act (10 of 1973)—Sections 3(15), 4, 5(1), 7(1), 8 and 11(2)—Tenants' permissible area—Concept of—Whether envisaged under the Act—Scheme for utilization of such area—Whether can be framed by the State Government—Determination of permissible and surplus area of landowners—Executive instructions requiring all tenancies to be ignored in the matter of such determination—Such instructions—Whether invalid.