TILLEKERATNE

v.

OFFICER-IN-CHARGE, PUGODA POLICE STATION

SUPREME COURT.
G. P. S. DE SILVA, C.J.,
KULATUNGA, J. AND
RAMANATHAN, J.
S.C. APPEAL NO. 1/94
H.C. GAMPAHA NO. 4/91
M.C. PUGODA NO. 8677/P
MARCH 30, 1994.

Penal Code – Offences of giving false evidence and intentionally insulting the Magistrate – Sections 190 and 223 of the Penal Code – Deprivation of a fair trial – Validity of conviction.

Whilst the appellant who was a witness in a case was under cross examination, he was charged with offences under Sections 190 and 223 of the Penal Code, on the order of the Magistrate who proceeded to try him forthwith. The appellant was undefended; and he was convicted "on his own plea" and sentenced to three months rigorous imprisonment and a fine of Rs. 1,500/-.

Held:

In view of the fact that the charge sheet contained no particulars of the alleged offence and the appellant was not given an opportunity of defending himself, he had been deprived of a fair trial; hence proceedings taken against him were invalid.

Cases referred to:

1. *In re De Silva* 50 NLR 517.
2. *Jayawardena v. The Queen* 73 NLR 307.
3. *Subramaniam v. The Queen* 57 NLR 409 (PC).
4. *Daniel Appuhamy v. The Queen* 64 NLR 481 (PC).

APPEAL from the judgment of the High Court, Gampaha.

H. M. Jayatissa Herath with *Mrs. W. J. R. Herath*, and *Sarath Weerakoon* for appellant.

Respondent absent and unrepresented.

Cur. adv. vult.

May 30, 1994.
KULATUNGA, J.

This is an appeal against the judgment of the High Court dismissing the appellant's appeal against his conviction and sentence by the Magistrate, Pugoda for certain offences on two counts, namely (1) giving false evidence in Primary Court case No.400/L (which was being inquired into by the said Magistrate), punishable under Section 190 of the Penal Code, and (2) intentionally insulting the Magistrate in the course of the same proceedings punishable under section 223 of the Penal Code. Neither the reports to Court nor the charge sheet gives any particulars of the acts said to have constituted the alleged offences.

The appellant states that on 27.08.91 he testified as the respondent in case No. 400/L and was under cross examination. At that stage and around 5.30 p.m., the Magistrate ordered the Court Officer (Police Constable 8131) to charge the appellant with offences under the aforesaid Sections of the Penal Code, which was immediately done by the said constable who filed a report to Court under Section 136 of the Code of Criminal Procedure Act and a charge sheet specifying the alleged offences. The record shows that the Magistrate has proceeded to try the appellant forthwith whereupon, according to the appellant he pleaded 'not guilty'. But

the Magistrate found him guilty and imposed a sentence of three months rigorous imprisonment and a fine of Rs.1500/- in default three months rigorous imprisonment.

The plea of the appellant has been recorded by means of the rubber stamp which is not decipherable as to the plea. However, according to the certified copy of the proceedings produced by the appellant, the Magistrate had proceeded to convict the appellant 'on his own plea'. So it seems that the Magistrate had acted on the basis that the appellant pleaded guilty.

Before the High Court it was urged on behalf of the appellant that the conviction is invalid; firstly on the basis that the appellant had pleaded 'not guilty' and hence he could not have been convicted without a trial; and secondly the charge against the appellant contains no particulars as to the acts constituting the alleged offences. It was also submitted that the proceedings which culminated in the conviction are unlawful in that the appellant was not given a fair opportunity to meet the allegations against him; nor has the Magistrate come to any finding as to the evidence on the basis of which the appellant could be convicted of the alleged offences.

Learned High Court Judge having examined clear samples of two types of rubber stamps used in the Pugoda Magistrate's Court found that there is one rubber stamp for recording the plea of 'guilty" and another for recording plea of 'not guilty'. He then compared the decipherable part of the appellant's plea with the rubber stamp used for recording a plea of 'guilty' and held that in the instant case the rubber stamp used is the one for recording a plea of 'guilty'; hence the appellant had in fact pleaded guilty to the charges against him.

On the submission that the charges are defective for want of particulars, learned High Court Judge said that these submissions need not to be considered and dismissed the appellant's contention with the observation ". . . if he had pleaded not guilty, as his Counsel says he did, he must have been reasonably informed of the nature of the charges".

In the circumstances, the Court did not consider any of the decisions cited by learned Counsel for the appellant.

There is no basis for the above inference made by the High Court. In the absence of a record of what transpired in Court, it could not be inferred from the appellant's plea that he had been informed of the particulars of the charges, where the charge sheet itself contains no particulars. The decision which the High Court failed to consider due to the wrong approach adopted by it are as follows:

In the case of *In re De Silva*[1], it was held that a District Judge or a Magistrate should not punish a witness summarily for giving false evidence under Section 11(1) of the Oaths Ordinance without giving the witness an opportunity of reconciling his contradictory statements; nor should action be taken under that section until the conclusion of the case. It was also held that it is not open to the Court to convict a witness under Section 11(1) summarily merely because he has made a contradictory statement. The Court should make up its mind which statements it holds to be false and which it does not hold to be false. This decision was followed in *Jayawardena v. The Queen*[2]

In *Subramaniam v. The Queen*[3], it was held that the summary power conferred by Section 440 (1) of the Criminal Procedure Code is one which should only be used when it is clear beyond doubt that a witness in the course of his evidence in the case being tried has committed perjury.

In *Daniel Appuhamy v. The Queen*[4], it was held that it is not necessary in proceeding under Section 440(1) of the Criminal Procedure Code (to sentence a witness summarily "as for a contempt of Court") that the accusation of giving false evidence should be stated with the particularity required in a count of an indictment. If the Court is of the opinion that the whole of the witnesses' evidence is false, it may be sufficient just to say that. But when it is not suggested that the whole of a witnesses' evidence is false, it is essential that the witness be left in no doubt as to which parts are alleged to be false. The Court should before sentencing a witness, give the witness an opportunity of explanation and possibly of correcting misapprehension as to what had been in fact said or meant. In that case the Jury brought a rider that the witness had given false evidence. On being asked by the Commissioner whether the witness

had any cause to show, witness begged his Lordship's pardon whereupon, he was sentenced to three months rigorous imprisonment. That sentence was quashed upon appeal to the Privy Council.

In the instant case the proceedings taken against the appellant are not proceedings for summarily punishing him for contempt. A report to Court has been made alleging certain offences; and the Court has proceeded to try the appellant then and there as though it was a case fit for summarily punishing the appellants for contempt. The appellant was undefended and was promptly convicted and sentenced. The above decisions applicable to the cases where proceedings for summarily punishing a witness have been taken, apply with even greater force to the instant case and the submission that the proceedings taken against the appellant are invalid must succeed in view of the following facts.

(i) the charge sheet contains no particulars of the alleged offence;

(ii) the record does not show that the appellant was given any further information or an opportunity of defending himself;

(iii) even a perusal of the appellant's evidence in case No.400/L does not enable us to gather the facts material to the charges.

For the above reasons, we are of the view that the impugned proceedings are invalid. The appellant who was charged with serious offences by the report made in terms of Section 136 of the Code of Criminal Procedure Act has been deprived of a fair trial, in terms of the relevant provisions of the Act. We accordingly allow the appeal, set aside the judgment of the High Court, the conviction and sentence entered against the appellant by the Magistrate and acquit the appellant.

G. P. S. DE SILVA, C.J. – I agree.

RAMANATHAN, J. – I agree.

Appeal allowed.