ACTING DIRECTOR OF PUBILC PROSECUTIONS v MANDA (1974) ZR 206 (SC)

SUPREME COURT
DOYLE CJ, BARON DCJ AND GARDNER JS
22nd OCTOBER 1974
SCZ Judgment No. 39 of 1974.

Flynote

Appeal - Judge making order that a case be reheard without hearing an appeal - Effect of such order - Whether such order valid.
Criminal procedure - Case record - Duty of magistrate to record in longhand - Magistrate using shorthand - Requirement that evidence must be recorded in such a form that someone else can read it.

Headnote

The respondent had been convicted by a subordinate court and appealed to the High Court. The High Court Judge had discovered that he was related by marriage to the respondent and recused himself from hearing the appeal. Having stated this he had found that he did not "like the record" and without hearing anything about the appeal he had made an order that the case should be reheard by another magistrate.

Held:

(i) Where a judge makes an order in appeal that a case should be reheard before another magistrate without a hearing merely because he did not "like the record", it amounts to the appeal being allowed to the extent of quashing the conviction and ordering a rehearing. Such an order could not be made without a hearing and would be a complete nullity.

(ii) Magistrates are required by law to record in longhand the evidence in criminal cases unless some dispensation is given by the Chief Justice. It is not a compliance with that provision of the law for a magistrate to introduce his own form of shorthand which is unintelligible to anybody else. The magistrate must record the evidence in such a form that somebody else can read it.

W M Tsotse, State Advocate, for the appellant.
S M Malama, Jaques & Partners, for the respondent.

Judgment

Doyle CJ: delivered the judgment of the court.

In this case the respondent was convicted and appealed to the High Court. The learned High Court Judge discovered he was related by marriage to the respondent and recused himself from hearing the appeal, a very proper thing to do. However, having stated this, some mention was made about the record. At this the judge suddenly took it into his head that he did not like the record and, without hearing anything about the appeal, made an order that the case should be reheard before another magistrate. In other words he allowed the appeal to the extent of quashing the conviction and ordering a rehearing. In order to do this he would have had to hear the appeal; clearly he never heard the appeal at any time.

DOYLE CJ

His order for rehearing of the trial was a complete nullity because he could not make it without hearing the appeal. We must therefore allow the appeal, quash that order and direct that the appeal in the High Court be heard by a different judge.

We would, however, like to mention something about the record, not because it is before us but for the purpose of perhaps assisting. The record has a number of misprints; it also has a good deal of what appears to be some kind of shorthand, personal to the magistrate. Quite plainly, as far as the misprints are concerned, the record can be sent back to the magistrate merely to correct and put down what he actually did put down at the trial. The magistrate will not be entitled to alter the record and put down things which he did not record at the trial. If, when that record is properly corrected in that sense it comes before the court still in such a condition that it is not possible to hear the appeal properly, certain consequences will ensue; but until that happens nothing can be said against the record.

We would draw all magistrates' attention to this, that they are required by the law to record in longhand the evidence in criminal cases unless some dispensation is given by the Chief Justice. Now it is not a compliance with that provision of the law for a magistrate to introduce his own form of shorthand which is unintelligible to anybody else; the magistrate must record the evidence in such a form that somebody else can read it. We do not say that certain well - known abbreviations would make a record a bad one; for instance, to put "accd" would certainly be recognised by anybody as "accused". Quite apart from private contractions of words, it is not a compliance with the statutory provisions to record the proceedings in staccato "catchword" form; this is proper in headnotes to law reports, but in a record the evidence must be recorded in full, save of course that it need not be recorded as questions and answers but may be written in narrative form. It is not permissible to record the evidence in such a shortened note form that, even if the words themselves are legible, the record is intelligible only to the magistrate.

Appeal allowed