

John Fernandes Vs. the State and Another

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Court : Mumbai Goa

Decided On : Nov-11-2013

Judge : U.V. Bakre

Appeal No. : Criminal Revision Application No. 15 of 2013

Appellant : John Fernandes

Respondent : The State and Another

Advocate for Pet/Ap. : Mr. Almeida

Judgement :

Oral Judgment:

Heard Mr. Almeida, learned Counsel for the petitioner and Ms. Pinto, learned Additional Public Prosecutor for the respondents.

2. Rule. Rule is made returnable forthwith. Heard by consent of both the parties.

3. By this Revision Application, the petitioner has taken exception to the Order dated 1st April, 2013 passed by the Additional Sessions Judge (2), FTC- II, Margao, in Sessions Case No. 28 of 2012.

4. The Quepem Police filed a charge sheet No.14/2010, dated 27/03/2010, arising out of Crime No. 86/2008, against the present petitioner and eleven others, registered for offences punishable under Sections 143, 147, 341, 353, 504, 506(II)

r/w. Section 149 of I.P.C. before Quepem Court. In this first charge sheet, the report is filed by A.S.I. Shri Prakash Gaonkar. Thereafter, the Quepem Police filed another charge sheet No. 22/2012 dated 26/07/2012 against the present petitioner only, resulting from Crime No. 87/2008, registered for offences punishable under Sections 307 and 353 of Indian Penal Code (IPC). The report in the said Crime No 87/2008 was filed by Head Constable Shri Arvind Nagekar. Both the charge sheets are in respect of the alleged incident which took place on 17/12/2008 between 8.45a.m. to 11.00a.m. at Copelabhat, Deao, Quepem.

5. The facts as revealed from both the charge sheets are as follows:

On 17/12/2008 at 8.30 hours information was received at Quepem Police Station that at Ambaulim junction the transportation of trucks was stopped due to which the entire traffic was blocked and that one person by name John (petitioner) along with his wife and other persons are creating problems to the free flow of traffic. Accordingly, the police party led by the then P.I. Shri Santosh Dessai, visited the spot which is at Copelabhat, Ambaulim junction and found that the entire tar road was blocked from both the sides and vehicles were stationed on the tar road and a group of persons including school students were sitting on the road, in front of the vehicles and had blocked the traffic. According to the prosecution, all this had happened under the leadership of the present petitioner. It was alleged that the group was giving slogans like "Police Ko Fek Do" and were abusing with filthy language. It was further alleged that inspite of repeated requests, the petitioner and others refused to move from the road and since the matter was of law and order problem, the incident was reported to the Mamlatdar and S.D.M., Quepem and he was also requested to come to the site. Accordingly, the Mamlatdar and S.D.M. Quepem came to the spot and requested the petitioner to clear the road but the petitioner and others refused to do so. In the said incident, allegedly the said S.D.M. Quepem was pushed and was threatened with dire consequences to kill him. The S.D.M. Quepem directed to arrest the agitators. According to the prosecution, thereafter, the police staff went to arrest the agitators who were some of the members of the crowd. The petitioner and his wife along with others attacked police by pelting stones, as a result of which police personnel sustained injuries. The police managed to apprehend seven agitators but the petitioner

succeeded in escaping from the spot. It was further alleged that soon after the arrest of said seven persons, police staff went in search of the petitioner for his arrest and during the process of search, the petitioner suddenly appeared before the police staff, armed with spade and charged on Head Constable Buckle No. 3100 namely Shri Arvind Nagekar and tried to hit the spade on him, who managed to catch hold of the spade and during the scuffle, the spade slipped from the hands of Shri Arvind Nagekar at which time the petitioner again tried to hit the spade on Shri Arvind Nagekar and in that process the spade hit Police Constable Buckle No. 4615 namely Shri Surendra Naik, as a result of which he sustained injuries to his left hand. The petitioner tried to escape and Shri Nilesh Kaskar, Police Constable Buckle No. 5627 followed to catch him. But the petitioner gave a tooth bite on his left hand and managed to run away.

6. It is alleged by the respondents that in respect of the first incident, A.S.I. P. K. Gaonkar lodged complaint and Crime No. 86 of 2008 under Sections 143, 147, 341, 504, 506(ii), 353 r/w. Section 149 of I.P.C. came to be registered. After completion of the investigation, the charge sheet No. 14/2010 was filed before the Quepem Court which is registered as Criminal Case No. 21/S/2010/B. In that Criminal Case, the case of the prosecution is that on 17/12/2008 between 8.45 hours to 10.55 hours at Copelabhat, Deao Quepem, the accused persons numbering 12 as named in the charge sheet (which includes the petitioner) and others, with their common object, formed unlawful assembly, wrongfully restrained the flowing of mining trucks and other transport, abused with filthy language and threatened the S.D.M. Quepem, Mr. Venancio Furtado with dire consequences and also pelted stones on the police personnel, while discharging their lawful duties and caused injuries to them. In respect of the alleged second incident, Head Constable Shri Arvind Nagekar filed a report and the Crime No. 87 of 2008 under Sections 307, 353 of I.P.C. came to be registered and upon completion of the investigation the charge sheet No.22/2012 was filed only against the petitioner which culminated into C.C. No. 50/S/12/A and after committal into Sessions Case No. 28 of 2012. Here, the case of the prosecution is that on 17.12.2008 between 08.45 hours to 11.00 hours, at Copelabhat, Deao, Quepem, the accused (petitioner) came with spade and tried to hit the same on the head of Arvind Nagekar with intention to kill him but Arvind caught hold of the spade and during

scuffle while overcoming the accused, the spade slipped from the hands of Arvind and while the accused again came to hit the spade on Arvind, the spade hit the left hand of Police Constable Surendra Naik and thereafter the accused threw the spade and while running away Police Constable Nilesh Kaskar chased him and tried to catch him but the accused gave tooth bite to his left hand and ran away.

7. In Sessions Case No. 22/2012, the petitioner filed an application for discharge. By impugned order dated 01/04/2013, the same came to be dismissed.

8. The learned Counsel appearing on behalf of the petitioner submitted that the petitioner is accused in both the charge sheets which have been filed in respect of same incident. He invited my attention to the evidence of P.W. 5 namely Arvind Nagekar recorded in C.C. No. 21/S/2010/B, wherein he has stated that besides the incident narrated by him, no other incident had taken place. According to the learned Counsel, the charge sheet which culminated into Sessions Case No. 28/2012 is hit by the doctrine of double jeopardy, envisaged in Article 20(2) of the Constitution of India. He further submitted that even otherwise Section 307 of I.P.C. is not at all applicable in the facts and circumstances of the case and at the most it may be Section 323 of the I.P.C. which can be applied.

9. On the other hand, the learned Additional Public Prosecutor, on behalf of the respondents, submitted that both the charge sheets are in respect of distinct and separate incidents and that the offences are also totally different occurred at two different places, though at Copelabhat, and therefore the learned Additional Sessions Judge has rightly dismissed the application for discharge filed by the present applicant.

10. Upon considering the case papers and the reply filed by the respondents in the present application, it can certainly be said that the incidents which occurred on 17/12/2008 between 8.45 hours to 11.00 hours at Copelabhat, Ambaulim junction at Quepem, and as narrated above, prima facie reveal commission of more offences than one committed in the course of the same transaction, some offences by several persons including the petitioner and other offences independently by the petitioner. The petitioner and 11 others named in C.C No.21/S/2010/B along with others, with their common object, allegedly, formed an unlawful assembly and

committed offences punishable under Sections 143, 147, 341, 353, 504, 506(ii) r/w 149 of I.P.C. and in the course of the same transaction, the petitioner, as member of the same unlawful assembly, with the same common object, allegedly, committed further offences punishable under Sections 307 and 353 of I.P.C. However, since the said acts which are mentioned in both the charge sheets amount to offences committed by persons accused of different offences committed in the course of the same transaction, I am of the view that two separate charge sheets could not have been filed by the Quepem Police.

11. Sub-sections (1) and (4) of Section 220 of Cr. P.C. provide as follows:

(1).-- If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for every such offence.

(4).-- If several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with, and tried at one trial for the offence constituted by such acts when combined, and for any offence constituted by any one, or more, of such acts.

12. Section 223(d) of Cr.P.C. provides that the persons accused of different offences committed in the course of the same transaction may be charged and tried together.

13. On a plain reading of Sections 220 and 223 of Cr.P.C., it is clear that where, in one series of acts so connected together as to form part of the same transaction, more offences than one are committed by the same person or group of persons, he or they may be charged with and tried at one trial for every such offence by any Court competent to try the same. The learned Counsel appearing on behalf of the petitioner has relied upon the judgment of the Hon'ble Supreme Court in the case of Amitbhai Anilchandra Shah V/s. The Central Bureau of Investigation and Another(2013 STPL (Web) 274 SC 1), wherein in respect of the alleged murder of Sohrabuddin and his wife Kausarbi, which took place on 26.11.2005 and 29/30.11.2005 respectively, one charge sheet was filed and in respect of

subsequent killing of alleged close associate of Sohrabuddin namely Tulsiram Prajapati, on 28.12.2006, another charge sheet was filed. In the charge sheet dated 23.7.2010 filed by the CBI in the first FIR, pertaining to the killing of Sohrabuddin and Kasaurbi, the CBI categorically mentioned that the killing of Tulsiram Prajapati is also a part of the very same conspiracy which is mentioned in the first FIR. The Apex Court has observed that it has consistently laid down the law on the issue interpreting the Code, that a second FIR in respect of an offence or different offences committed in the course of the same transaction is not only impermissible but it violates Article 21 of the Constitution. It was held that the killing of Tulsiram Prajapati was a part of the same series of acts in which Sohrabuddin and Kausarbi have been killed. Therefore, the second F.I.R. filed in respect of murder of Tulsiram Prajapati was quashed. However, the Apex Court further ordered that as a consequence, the charge sheet filed on 04/09/2012, in pursuance of the second F.I.R., be treated as a supplementary charge sheet in the first F.I.R.

14. In view of the above, the Crime No. 87 of 2008 registered against the present petitioner for the offences punishable under Sections 307 and 353 is liable to be quashed and set aside with liberty to the respondents to treat the charge sheet No.22/2012 as supplementary charge sheet and file the same as such before the Quepem Court in Criminal Case No. 21/S/2010/B, in respect of offences under Section 353 and 307. The impugned order dated 01.04.2013 is therefore liable to be quashed and set aside. The question whether Section 307 of I.P.C. is applicable in the facts and circumstances of the case or not, will have to be decided by the concerned Court.

15. In the result, the Revision Application is partly allowed.

(a) The order dated 1st April, 2013 passed by the Additional Sessions Judge (2), FTC- II, Margao, in Sessions Case no. 28 of 2012 is quashed and set aside.

(b) The petitioner i.e. the accused of the said Sessions Case No. 28 of 2012 stands discharged from the said Sessions Case.

(c) The respondents shall, however, be at liberty to treat and file the charge sheet No. 22/2012 as supplementary charge sheet in respect of the alleged second incident before the learned Judicial Magistrate, First Class in the said C.C. no. 21/S/2010/B.

(d) The learned Additional Sessions Judge shall return all the original case papers and documents of the said Sessions Case to the In-charge of Quepem Police Station to enable him to file the supplementary charge sheet.

(e) It is made clear that this Court has not gone into the merits of the question of application of Section 307 of I.P.C. to the facts and circumstances of the case.

All the contentions in this regard are kept open.

16. Rule is made absolute in the aforesaid terms and Revision Application stands disposed of accordingly.

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