

Emperor Vs. Kallasani

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Court : Mumbai

Decided On : Aug-10-1927

Reported in : AIR1927Bom629; (1927)29BOMLR1478

Judge : Patkar and Baker, JJ.

Appeal No. : Criminal Application for Revision No. 120 of 1927

Appellant : Emperor

Respondent : Kallasani

Judgement :

Patkar, J.

1. In this case the accused were tried on a charge under Section 160 of the Indian Penal Code and were acquitted. They have been again charged under Section 61(o) of the Bombay District Police Act, IV of 1890. The accused were acquitted in the previous case as it was found that the public peace was not disturbed. The question that arises for decision is whether the acquittal in the previous case bars the present prosecution. The evidence in the present case will be exactly the same evidence that was led in the previous case. Section 403(1) of the Criminal Procedure Code says:-

A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under Section 236, or for which he might have been convicted under Section 237.

2. Section 236 says:-

If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences.

3. We think the facts of the present case fall under Section 286 for it was doubtful from the beginning whether the act or the series of acts committed by the accused fell under Section 160 of the Indian Penal Code or under Section 61(o) of the Bombay District Police Act. If the public peace was disturbed, then the case fell under Section 160 of the Indian Penal Code, otherwise, it would fall under Section 61(o) of the Bombay District Police Act. If there was a doubt from the beginning on the point as to whether public peace was disturbed alternate charges could have been framed in the previous case under Section 160 of the Indian Penal Code and also under Section 61(o) of the Bombay District Police Act, and the accused could have been convicted under Section 61(o) of the Bombay District Police Act in the previous case under Section 237 of the Criminal Procedure Code. We think, therefore, that the acquittal in the previous case operates as a bar to the present prosecution.

4. This view is supported by the case of *Manhari Chowdhuri v. Emperor I.L.R.* (1917) 45 Cal. 727. In that case the previous prosecution was under Sections 380 and 411, Indian Penal Code, and the accused were acquitted. There was a subsequent prosecution under Section 54A of the Calcutta Police Act in respect of the same act, and it was held that the previous acquittal operated as a bar to the subsequent trial. At p. 731 it is said :-

The trial, in other words, will take place on the same facts, and it is not suggested that there are any additional facts to be placed before the Court. In that state of things we can see no reason why the accused should not have been charged at the previous trial, under the provisions of Section 236, with the offence for which he is now being prosecuted.

5. The case of *Emperor v. Deoki Koeri* I.L.R. (1926) 48 All. 496 relied upon by the learned Magistrate, has no application to the facts of the present case. There the previous prosecution was for theft under Section 379 of the Indian Penal Code, and the subsequent trial was for an offence under Section 9 of the Indian Opium Act. The evidence in both the cases would be quite different, For an offence under Section 379 the essential facts to be proved were that the gunny bags in which the opium was found belonged to another person and that they were removed by the accused dishonestly without the owner's consent. Under Section 9 of the Opium Act the facts which were to be proved by the prosecution were that the accused was in possession of the opium, that the opium was crude opium and that the accused could not lawfully be in possession of such opium. The facts to be proved in the two trials would be quite distinct.

6. Similarly, the case of *Ramsebak Lal v. Muneswar Singh* I.L.R. (1910) 37 Cal. 604 would have no application to the facts of the present case. The previous prosecution was for an offence under Section 182, and the subsequent prosecution was for defamation under Section 500 of the Indian Penal Code. The case fell under Section 235, Clause (1), and not under Section 236 of the Criminal Procedure Code. The evidence that would be led in the two trials would be quite distinct, and at page 609 it is observed :-

Although ... the finding of the Magistrate in the Section 182 case cannot be in any way allowed to prejudice the accused in the Section 500, Indian Penal Code case, it is clear that the question of malice has not at all been tried, and the accused has not been acquitted of any charge involving malice. That is a question which has to be tried on evidence which would be irrelevant in a trial under Section 182 of the Indian Penal Code.

7. The test laid down is whether the evidence in both cases is the same, and the subsequent, trial is on the same basis of facts falling within Sections 236 and 237 of the Criminal Procedure Code. See *Queen Empress v. Subedar Krishnappa*. (1899) 1 Bom. L.R. 15 It is clear that the evidence that would be led in the present case would be exactly the same evidence which was adduced in the previous case, and an alternative charge under Section 61(o) of the Bombay District Police Act could have been framed in the previous case.

8. We think, therefore, that the acquittal in the previous case operates as a bar to the present trial.

9. We would, therefore, make the rule absolute and quash the proceedings.

Baker, J.

10. I agree.

11. I have no doubt that the present proceedings are clearly covered by Section 403, Clause (1), of the Criminal Procedure Code. The facts are on all fours with those in the case of *Manhari Chowdhuri v. Emperor*. I.L.R. (1917) 45 Cal. 727 Both the cases quoted on the other side, namely, *Emperor v. Deoki Koeri* I.L.R. (1926) 48 All 496 and *Ramsebak Lal v. Muneswar Singh*, I.L.R. (1910) 37 Cal. 604 are cases where in one transaction more offences than one are committed by the same person as mentioned in Clause (1) of Section 235, and, therefore, are covered by Clause (2) of Section 403 of the Criminal Procedure Code.

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