The State of Karnataka Vs. Durgappa

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SooperKanoon Citation : sooperkanoon.com/373000

Court : Karnataka

Decided On : May-31-1974

Reported in : 1975CriLJ749

Judge : S.R. Range Gowda, J.

Appellant : The State of Karnataka

Respondent : Durgappa

Judgement :
ORDER

S.R. Range Gowda, J.

1. This is a reference made by the Sessions Judge, Raichur, under Section 438 of the Criminal P. C, in Criminal Revision Petition No. 25/1973 on his file, for quashing the order dated 6-7-1973 passed by the First Class Magistrate, Manvi, in C.C. No. 677/ 1972 rejecting the application of even date filed by the Public Prosecutor for reviving the proproceedings in that case stopped under Section 249, Criminal P. C. on 18-6-1973.

2. Briefly stated, the facts leading to this reference are: The Sub-Inspector of Excise, Kowtal, prosecuted the respondent Durgappa for offences under Sections 32 and 34 of the Karnataka Excise Act, 1965, in C.C. No. 677/72 on the file of the learned Magistrate. In that case 3 witnesses for the prosecution were examined on

13-4-1973 and in addition some documents and material objects were also marked as Exhibits and M. Os. Then the case was adjourned to 12-6-1973 for further evidence by the prosecution. On 12-6-1973, the remaining witnesses for the prosecution were not present and on the representation made bv the Public Prosecutor that he would keep them present on the next date of hearing, the case was adjourned to 18-6-1973. Since the remaining witnesses were not present on 18-6-1973 also, the learned Magistrate acting under Section 249, Criminal P. C, stopped all further proceedings and directed the release of the respondent-accused who was in custody. The reason the learned Magistrate gave for so acting was that the respondent-accused was an old man of 70 years and he was in custody since 12-6-1973. Then on 6-7-1973, the Public Prosecutor filed an application stating that the remaining witnesses for the prosecution were present and that the proceedings which were stopped on 18-6-1973 may be revived. The learned Magistrate rejected that application on the same day' (6-7-1973) stating thus:..Liberty has not been given to the prosecution to get the case revived. There-was no representation by the P. P. that the witnesses were not available on that day as is done now. The case once dropped cannot be revived as a matter of course. It i& not at the sweet will of the prosecution that the case should proceed. There was no move by the prosecution to afford an opportunity to get the case revived at the time-of passing orders on 18-6-1973. Why the witnesses were not available on that day also is not stated. Hence I do not find any reason to entertain this application. Hence it is rejected.

Aggrieved by the said order, the State preferred Criminal Revision Petition No. 25/ 1973 before the learned Sessions Judge who deprecating the procedure followed in this case by the learned Magistrate has made this Reference stating thus:

It is not a case wherein the prosecution, has not at all been diligent and have not at all led any evidence which would have persuaded the Court to hold that no useful purpose would be served by continuing the proceedings and the proceedings should be-dropped under Section 249, Criminal P. C. If really the learned Magistrate felt that the' prosecuting agency is unnecessarily dragging on the matter and the accused who is an old' man of 70 years should not be kept in jail for any length of time, he can very well have-treated the case as closed and

followed the procedure given in Chapter XX of the trial' of summons cases. He could have very well' called upon the accused to give his statement under Section 342, Criminal P. C. and the defence if any and he should have considered the arguments of both the sides and passed an order under Section 245, Criminal-P. C. either of acquittal or of conviction taking into consideration the merits of the case.. Instead of that he has taken recourse to Section 249, Criminal P. C. of stopping the proceedings. It is to be noted that even if a proceeding is stopped under Section 249, it is open for the prosecuting agency to maker a request to the court that the case be Uikeiy up again and it may be allowed to lead further evidence. In fact, such a request was made by an application dated 6-7-1973 and1 the learned Magistrate thought that even-such an application is not maintainable taking a view that the case cannot be revived at the sweet will and pleasure of the prosecution. In my opinion, the view taken by the learned Magistrate is absolutely unwarranted on the facts and circumstances of the case and is also per se illegal. It cannot be supported and the only course that was open, to the learned Magistrate was to take into consideration the material that was available before him and dispose of the case according to law. Having failed to do so, I think the learned Magistrate has committed a patent illegality especially in the matter of rejecting the application when the prosecuting agency again requested him to revive the case and allow them to lead evidence so that the case could be disposed of on merits

3. While supporting the order of reference, the learned Government Pleader submitted that the learned Magistrate was clearly in error in invoking the provisions of Section 249, Criminal P. C. and stopping all further proceedings and also releasing the respondent-accused in this case, though power is conferred on him under that section to stop the proceedings at any stage without pronouncing the judgment of either acquittal or conviction and to release the accused. In other words, what he submitted was that it is not in every case that a Magistrate can have recourse to that section and that it is only when there are special circumstances and the Magistrate cannot conclude the proceedings one way or other as contemplated by Section 245, Criminal P. C. that he can act under that section. It was argued by him that in the present case the prosecution had already examined three witnesses and if the learned Magistrate was inclined not to grant

time to examine the remaining witnesses for the prosecution he could have closed the case and proceeded to dispose it of in the manner provided by Section 245, Criminal P. C. as the prosecution had already placed some evidence on record, and that the learned Magistrate without even indicating that that evidence was not sufficient either to acquit or convict the respondent-accused was not justified in invoking the provisions of Section 249, Criminal P. C.

It was then contended by the learned Government Pleader that even if what the learned Magistrate did was correct he could not have declined to revive the proceedings when a motion was made by the public prosecutor and that the failure to exercise the discretion to revive the proceedings was clearly erroneous.

4. In my opinion, there is force in the contention of the learned Government Pleader that the learned Magistrate was clearly in error in refusing to revive the proceedings which he had stopped under Section 249, Criminal P. C. The explanation to Section 403, Criminal P. C. makes it abundantly clear that the stopping of proceedings under Section 249, Criminal P. C. can never bs regarded as an acquittal for purposes of Section 403, Criminal P. C. The legal effect of an order passed under Section 249, Criminal P. C. is merely to stop the proceedings without proceeding to judgment either acquitting or convicting the accused. When therefore proceedings are stopped under Section 249, Criminal P. C. by a Magistrate, he has also power to revive the proceedings so stopped. However, that power is a discretionary power-which he has to exercise judicially taking into consideration all the relevant circum-f stances. To say that unless liberty is given to the prosecution for seeking the revival of the proceedings the proceedings cannot bet, revived, is something not warranted by law.i and the provisions of Section 249, Criminal P. C. do not prescribe such limitations: In! the present case, what appears to have mainly weighed with the learned Magistrate in not acceding to the request of the Public Prosecutor to revive the proceedings is the fact. that no such liberty was given to the prosecution when the proceedings were stoppecS1 and, the learned Magistrate was in error im being weighed by that consideration for which:) there is no warrant under law. In the impugned order it is also not stated that the prosecution was not diligent or that the-revival of the proceedings would result in: miscarriage of justice; no such finding is recorded by

the learned Magistrate. I may also-observe here that though Section 249, Criminal P. C. does not prescribe the limits, within which the Magistrate should act, the Magistrate before exercising the rower conferred on him by that section should see whether there are special and unusual circumstances to act thereunder; it is not a routine order which the Magistrate can pass under that section. A perusal of the impugned order of the learned Magistrate gives no indication that there were any special circumstances justifying his passing that order. Whether the evidence already produced by the prosecution was or was not sufficient to conclude the proceedings as contemplated by Section 245, Criminal P. C. the order of the learned Magistrate gives no indication. The learned Magistrate obviously appears to have acted under Section 249, Criminal P. C. without applying his mind to all relevant provisions occurring in Chapter XX of the Criminal P. C.

5. For the reasons stated above, the impugned order of the learned Magistrate dated 6-7-1973 cannot be sustained. Accordingly, this reference in accepted, the order dated 6-7-1973 passed by the learned Magistrate is quashed, and he is directed to take the case viz. C.C. No. 677/1972 to his file and dispose it of in accordance with law.