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Gangawwa Vs. State of Mysore

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Court : Karnataka

Decided On : Feb-17-1967

Reported in : AIR1969Kant114; AIR1969Mys114; 1969CriLJ496

Judge : Santhosh, J.

Acts : Indian Penal Code (IPC), 1860 - Sections 193; Code of Criminal Procedure (CrPC) , 1889 - Sections 4, 164, 225, 236, 342, 476, 479A and 512

Appeal No. : Criminal Revn. Petn. No. 311 of 1966

Appellant : Gangawwa

Respondent : State of Mysore

Judgement :
ORDER

1. The petitioner has been convicted of an offence under section 193 I.P.C. by the Judicial Magistrate, Ist Class, Bijapur, and sentenced to suffer one year's R. I. In the appeal filed by the petitioner against the said conviction and sentence to the Sessions Judge of Bijapur, the conviction was confirmed, but the sentence was reduced to three months' R. I. The petitioner has come up in revision to this Court questioning the correctness and legality of the said order of the Sessions Judge confirming her conviction.

2. In P. R. Case No. 5/1963, in a proceeding under section 512 Cr.P.C. the petitioner examined as a witness by the Judicial Magistrate, I Class, Bagewadi, and made a certain statement on oath. When the petitioner was examined in the committal proceedings in P. R. Case No. 2/65, she made another statement wholly irreconcilable and contradictory to the previous statement. After issuing show cause notice, the learned Magistrate directed that a complaint be filed against the petitioner under S. 193 IPC. After the trail, the Judicial Magistrate, I Class, Bijapur, convicted her of an offence under S. 193, IPC.

3. Sri Malimath learned counsel on behalf of the petitioner, has contended that the charge framed against the petitioner is defective. The charge simply says that either of the statements made by her in the two different proceedings is false and it does not say which particular statement made by her is false. He also argues that the charge framed is not consistent with the complaint or the committal order in the case. I see no force in the said contentions.

4. It is not necessary for the charge to state specifically which of the statements made by the petitioner is false. As pointed out by Sri Vijaya Shankar, learned counsel appearing on behalf of the State, it is open to the Court under section 236 Cr.P.C. to frame alternative charges against a person. Illustration (b) to section 236 Cr.P.C. states that a person may be charged in the alternative and convicted of intentionally giving false evidence, although it cannot be proved which of those contradictory statements is false. The charge framed by the Court must depend on the evidence in the case and does not depend on either the complaint or the order passed in the committal proceedings.

Further, there is no inconsistency between the complaint filed and the charge framed in this case. the complaint sets out the contradictory statements made by the petitioner and states that the answers given by her go to show that she has perjured. In any case, even assuming there are defects in the charge, S. 225 Cr.P.C. states, that no error in stating either the offence or the particulars required to be stated in the charge and no omission to state the offence or those particulars shall be regarded at any stage of the case as material, unless the accused was in fact misled by such error or omission, and it has occasioned a failure of justice.

5. Sri Malimath has next contended that the prosecution has failed to establish which of the statements made by the petitioner is false and therefore the petitioner cannot be convicted under S. 193 IPC. He has strongly relied on Emperor v. Ningappa Ramappa Kurbar, 43 Bom LR 864 : (AIR 1941 Bom 408) in support of his said contention. The facts of that case were entirely different from the facts of the present case. their Lordships were considering there the question whether it was expedient to prosecute a person under S. 476, Cr.P.C. and not under S. 479A, Cr.P.C. They were considering the statement made by the accused under S. 164 Cr.P.C. in the committal Court.

6. I have already referred to Illustration (b) of S. 236 Cr.P.C. which states that a person may be charged in the alternative and convicted of intentionally giving false evidence, although it cannot be proved which of the contradictory statements was false. Sri Vijaya Shankar has also relied on Umrao Lal v. State : AIR1954 All424 , which is an authority for the proposition that in a prosecution under S. 193 IPC. if the prosecution succeeds in proving that the accused in the witness box deliberately made two statements which are so contradictory and irreconcilable with each other, that both cannot possibly be true, he can be convicted of perjury even without its being proved which one of them was not true.

7. Sri Malimath also contends that the examination of the petitioner by the learned Magistrate under S. 342 Cr.P.C., is not according to law and it has gravely prejudiced the petitioner. He has relied on Ajmer Singh v. State of Punjab : 1953 CriLJ521 and Ramashankar Singh v. State of W. B. : AIR 1962 SC1239 . He argues that the questions put by the Court to the petitioner were so long, involved and confusing that it was not possible for the petitioner to understand the same and give proper answers. If the petitioner had been properly questioned, she would have come out with an explanation. There is no doubt, the question put by the Magistrate are long and complicated. But the point for consideration is whether the petitioner has been prejudiced in her defence and whether it has caused failure of justice.

8. In Moseb Kaka v. State of W. B. : 1956 CriLJ940 , their Lordships, in paragraph 8, page 540, have observed as follows:

'There can be no doubt that this is very inadequate compliance with the salutary provisions of S. 342, Cr.P.C. It is regrettable that there has occurred in this case such a serious lacuna in procedure notwithstanding repeated insistence of this Court, in various decisions commencing Tara Singh v. State : [1951]2SCR729 on a due and fair compliance with the terms of S. 342 Cr.P.C. But it is also well recognised that a judgment is not to be set aside merely by reason of inadequate compliance with Section 342 Cr.P.C. It is settled that clear prejudice must be shown. This Court has clarified the position in relation to cases where accused is represented by Counsel at the trial and in appeal. It is up to the accused or his Counsel in such cases to satisfy the Court that such inadequate examination has resulted in miscarriage of justice.'

The charge which the petitioner was upon to meet was a simple one. The case was that she made two totally contradictory statements on oath in P. R. Case No. 5/63 and P. R. Case No. 2 of 1965. The petitioner denied that she made the statement alleged in P. R. Case No 5/63. Hence, I am of opinion that it cannot be said that the petitioner has been prejudiced and it has resulted in miscarriage of justice.

9. Sri Malimath has further contended that the statement under S. 512 Cr.P.C. made by the petitioner cannot be made use of when the petitioner is alive and can give evidence. Further, he contends S. 512 Cr.P.C. is only a mode of recording evidence. It is neither an enquiry nor a trial. The petitioner was not a witness when her statement was recorded under S. 512 Cr.P.C. He also argues that a complaint could not be made under S. 479A Cr. P.C. by the Committal Court. It could be made only by the Sessions Court to whom the accused is committed. There is no final order disposing of the case when the accused is committed to the Court of Session for trial. Committal proceedings are not independent proceedings, but only a stage of the judicial proceedings before the Sessions Judge who and it is only the Sessions Judge who has jurisdiction to file a complaint under S.479-A Cr.P.C. If the Committal Court and the Sessions Court both have jurisdiction to pass an order under S. 479A, this would result in conflicting orders.

9A. It may be pointed out that the contentions mentioned above have not been urged either in the trial Court or in the appeal before the Sessions Court. This Court has not got the benefit of the views of the Courts below on these questions. Since Sri Malimath argues that they are questions of law and could be raised revision, I will deal with these points shortly.

10. With regard to the contention that the statement under S. 512 Cr.P.C. cannot be made use of when the petitioner is alive and could give evidence, it may be pointed out that this has reference only to the absconding accused in the said proceedings. There is no prohibition for making use of a statement given by the petitioner under section 512 Cr.P.C. against herself in proceedings instituted under section 193 IPC. With regard to the contention that S. 512 proceedings are neither inquiry, nor trial, it may be pointed out that S. 479A Cr.P.C. does not refer to any inquiry or trial. All that it states is 'giving false evidence in any stage of the judicial proceeding'. What is a 'judicial proceeding' is defined in S. 4(m) Cr.P.C. it reads thus:

''Judicial proceeding' includes any proceeding in the course of which evidence is or may be legally taken on oath.'

Explanation 2 to S. 193 IPC. states that even an investigation directed by law, preliminary to a proceeding before a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice. Explanation 3 to the same section also states that an investigation directed by a Court of Justice according to law, and conducted under the authority of a Court of Justice, is a stage of a judicial proceeding though that investigation may not take place before a Court of Justice. It is therefore clear that both under the Code of Criminal Procedure and the Indian Penal Code, a proceeding under section 512 Cr.P.C. comes within the definition of 'judicial proceeding.'

11. Sri Malimath has also contended that when a person is examined under S. 512 Cr.P.C. he is not deposing as a witness. He has relied on in re: Ramalingam AIR 1965 Mad 100 in support of his contention. What was decided in that case was that section 479A, Cr.P.C. applied only to person appearing before Court as witnesses and does not apply to a case where a person does not appear as a

witness before Court but only files an affidavit without entering the box. Here, it cannot disputed that the petitioner had appeared before Court in both the proceedings as a witness.

12. Sri Malimath has argued that committal proceedings are only a stage of the judicial proceedings before the Sessions Court and that only the Sessions Judge has got the power to take proceedings under S. 479A, Cr.P.C. and not the Committal Court. He has strongly relied on the observations made by their Lordships of the Supreme Court in Shabir Hussain Bholu v. State of Maharashtra : AIR 1963 SC816 in support of his contention. The question which their Lordships were considering in the said case was, in a case where proceedings under S. 479A Cr.P.C. should have been taken, whether it was open to the Court to proceed under S. 476 Cr.P.C. Their Lordships held that the provisions of S. 476 are totally excluded where the offence is of the kind specified in S. 479A. In that particular case, the accused had made conflicting statements before the Committal Court and the Sessions Court.

Their Lordships held that the committal proceedings were not independent proceedings and it was only the Sessions Court which decide whether proceedings under S. 479A could be taken against the accused. It may be pointed out in this case, the petitioner was never examined in the Sessions Court. Hence the question of Sessions Court taking proceedings S. 479A did not arise. The question of conflicting orders by the Sessions Court and the Committal Court also does not arise in the case.

13. There is equally no force in the contention of Sri Malimath that in the committal proceedings there is no final order disposing of such proceedings. So far as the Committal Court is concerned once it commits an accused to the Sessions Court, there is final disposal of the proceedings before it. In Dastagiramma v. State : AIR 1961 AP130 it has been held that committal proceedings are final so far as they result in discharge or in committal. Such an order would be final order disposing of such proceedings within the meaning of S. 478A Cr. P.C.

14. Finally, Sri Malimath has contended that the statement made by the petitioner was not intentional and that she is an illiterate woman. It is not possible to accept

this contention. The learned Magistrate, who recorded the evidence in both the proceedings has been examined as a witness. He has stated that the petitioner after being administered oath, made the above mentioned contradictory statements. The evidence given by her was read over and explained to her and she admitted the statements to be correct. There is, therefore, no force in any of the contentions urged by Sri Malimath on behalf of the petitioner.

15. In the result, there is no merit in this revision petition and the same is dismissed.

16. Petition dismissed.

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