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Venkatesh Vs. the State of Mysore

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Court : Karnataka

Decided On : Jan-28-1966

Reported in : AIR1967Kant44; AIR1967Mys44; 1967CriLJ503; ILR1966KAR936; (1966)1MysLJ324

Judge : M. Santhosh, J.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 177, 178, 179, 180, 181, 182, 183, 184, 185, 188, , 197(2), 233, 234, 235, 236, 237, 238, 239, 439 and 531; Indian Penal Code (IPC), 1860 - Sections 420 and 468

Appeal No. : Criminal Revn. Petn. No. 352 of 1965

Appellant : Venkatesh

Respondent : The State of Mysore

Advocate for Def. : B.K. Ramachandra Rao, High Court Govt. Pleader

Advocate for Pet/Ap. : A. Shamanna, Adv.

Judgement :
ORDER

1. The petitioner before this Court was the 2nd accused in the trial court. He has been convicted by the learned Sub-Divisional Magistrate, Bellary. of an offence under Section 420 of the Indian Penal Code and sentenced to Rule I. for three

months and also to pay a fine of Rs. 100/- in default to suffer further Rule I. for one month. The appeal filed by the petitioner against the said conviction and sentence was dismissed.

2. The prosecution case was that the petitioner represented to P. W. 9 Chandra-sekharappa of Shimoga that he would get him a genuine driving licence from Bellary and induced him to deliver Rs. 100/-. The petitioner asked P. W. 9 to give him Rs. 25/- in the first instance and also to give three of hispnotographs. P. W. 9, believing him, gave Rs. 25/- and also the said three photographs. The petitioner promised to send the licence through Value Payable Post which P. W. 9 should take after payment of Rs. 75/-. Accordingly, when the V. P. article was received, P. W. 9 paid the sum of Rs. 75/-. He found that the licence sent to him was a forged licence. The very day, a complaint, Exhibit P-10, was given to the police. Further, the prosecution case was that accused-1 who was the manager of the office of the District Superintendent of Police, Bellary, forged the said licence intending that it should be used for the purpose of cheating P. W. 9 and had committed an offence under Section 468 I. P. C. Accused-1 was also charged with having abetted the offence of cheating of P. W. 9 committed by the petitioner and the offence of cheating was committed in consequence of such abetment. The trial Court acquitted accused-1 of the offences with which he was charged on the ground that the pro-section had failed to establish the case against him.

3. Sri Shamanna, learned counsel for the petitioner has contended before me that P. W. 7 and P. W. 9 were accomplices whose evidence should not be accepted without any corroboration. He argues that except the oral evidence of P. W. 7 and P. W. 9 who were accomplices and are interested witnesses, there is no other circumstance connecting the petitioner with the crime to warrant his conviction under Section 420 I. P. C. Sri Shamanna also contends that the offence of cheating has been committed in Shimoga and therefore Bellary Court had no jurisdiction to try the petitioner and the trial of the petitioner is bad in law.

4. Taking first the contention that the Bellary Court had no jurisdiction to try the petitioner, the petitioner was tried jointly with accused-1, before the Sub Divisional Magistrate, Bellary. The Prosecution case was that the forging of the licence was

with the object of cheating P. W. 9 and these offences of forgery and cheating were committed in the course of the same transaction. The question for consideration therefore is whether the Bellary Court had jurisdiction to try the petitioner and accused-1 jointly.

5. It is well settled that in deciding the question whether or not the Court has jurisdiction, the accusation or chargesheet has to be looked into and not the evidence or the result of the trial. In Kadiri Kunnahammad v. The State Of Madras reported in : 1960 CriLJ1013 , the Supreme Court, relying on has held, the question whether the offences alleged to have been committed in the course of the same transaction or not has to be decided at the time when the accusation is made and not when the trial is concluded and the result is known. So, in the instant case, the fact that accused-1 has been acquitted of the offence of forgery and abetment of cheating committed by the petitioner is not relevant when deciding the question whether the trial Court had jurisdiction or not to try the case. What should be taken into account is the accusation made against the accused before the trial started. As already stated, the prosecution case was that forging of the licence was for the purpose of cheating P. W. 9 and these offences were committed in the course of the same transaction and because of this, the petitioner and accused-1 were tried together.

6. The contention of the learned High Court Govt. Pleader is that when different offences have been committed by the accused in the course of the same transaction, they can be tried together and the Court has jurisdiction to try them even if some of the offences are committed outside the territorial jurisdiction of the Court. The learned High Court Government Pleader has strongly relied on Purushottamdas Dalmia v. State of West Bengal reported in : 1961 CriLJ728 in support of his contention. In paragraphs 15, 16 and 17 of the judgment, their Lordships have observed as follows:-

'(15) It is further significant to notice the difference in the language of Section 177 and Section 233.

Section 177 simply says that ordinarily every offence would be tried by a Court within the local limits of whose jurisdiction it was committed. It does not say that it

would be tried by such Court except in the cases mentioned in Sections. 179 to 185 and 188 or in cases speciallyprovided by any other provision of law. leaves the place of trial open. Its provision! are not peremptory. There is no reason why the provisions of Sections. 233 to 239 may not also provide exceptions to Section 177, if they do permit the trial of a particular offence along with others is one Court. x xx x x x

(16) It is true that it is not stated in express terms either in Section 235 or Section 239, that their provisions would justify the joint trial of offences or of persons mentioned therein in a Court Irrespective of the fact whether the offences to be tried were committed within the Jurisdiction of that particular Court or not. But such, in our opinion, should be the interpretation of the provisions of these two sections, xx xx xx

(17) As Sections. 235 and 239 of the Code are enabling sections, the Legislature, rightly did not use the expression which would have made It incumbent on the Court to try a person of the various offences at one trial or to try various persons for the different offences committed in the course of the same transaction together. The omission to make such peremptory provision does not necessarily indicate the intention of the Legislature that the Court having Jurisdiction to try certain offences cannot try an offence committed in the course of the same transaction, but beyond its jurisdiction'.

7. In the said case, the Supreme Court at paragraph 13 has observed as follows:

'It is true that the Legislature treats with importance the jurisdiction of Courts for the trial of offences. Jurisdiction of Courts is of two kinds. One type of jurisdiction deals with respect to the power of the Courts to try particular kinds of offences. That is a jurisdiction which goes to the root of the matter and if a Court not empowered to try a particular offence does try it, the entire trial is void. The other jurisdiction is what may be called territorial jurisdiction. Similar importance is not attached to it This is clear from the provisions of Sections 178, 188, 197(2) and 531 Cr. P. C. Section 531 provides that: 'No finding, sentence or order of any Criminal Court shall be set aside merely on the ground that the inquiry, trial or other proceedings in the course of which it was arrived at or passed, took place in

a wrong sessions division, district, sub-division or other local area, unless it appears that such error has in fact occasionedfailure of Justice. The reason for such a difference in the result of a case being tried by a court not competent to try the offence and bycourt competent to try the offence but having no territorial jurisdiction over the area where the offence was committed is understandable. The power to try offence is conferred on aD Courts according to the view the Legislature holds with respect to the capability and responsibility of those courts. The higher the capability and the sense of responsibility, thelarger is the jurisdiction of those court over thevarious offence. Territorial Jurisdiction it provided just as a matter of convenience, keeping In mind the administrative point of view with respect to the work of a particular court, the convenience of the accused who will have to meet the charge levelled against him and the convenience of the witnesses who have to appear before the court. It therefore that it is provided in Section 177 that an offence would ordinarily be tried by a court within the local limits of whose jurisdiction it is committed'.

8. So, from the observations of the Supreme Court, it is clear that where in the course of the same transaction different offences are committed by different accused and where they are tried jointly, the court will have Jurisdiction to fry all the offences together whether they have been committed within the territorial jurisdiction of that court or not. If this was not the legal position, it is obvious, great deal of inconvenience would be caused both to the prosecution and the accused. In Joint trials, if the courts did not have jurisdiction to try offences committed outside its territorial jurisdiction then it would mean that either the prosecution would have to give up the offences committed outside the jurisdiction of the Court or both the prosecution and accused will have to be put to unnecessary trouble Inasmuch as the prosecution will have to produce the same evidence a second time and the accused will have to undergo a second trial which would mean unnecessary waste of public time and money. The time of another court also will have to be spent again for the second time in determining the same question. Further, there would also be the risk of the second court coming to a different conclusion from that of the first court. It is also quite possible to urge in the second court that it is not competent to come to a different conclusion in view of the earlier finding of the first court. I am therefore of opinion that there is no merit in the

contention of Sri. Shamanna that the trial court had no jurisdiction to try the petitioner.

9. Sri. Shamanna has relied on M. A. Kaleek v. Emperor, reported in AIR 1927 Mad 544. He argues that the facts of that case are similar to the facts of the instant case. There, goods had been ordered by the complainant from Hyderabad and spurious goods had been sent by the accused from Madras. The court upheld the contention of the accused that as the cheating was at Hyderabad, the Madras Court bad no jurisdiction to try the accused. The facts of the Madras case have no application to the facts of the instant case as there was only one accused in the Madras case and no question of offences committed in the course of the same transaction and joint trial arose in that case. The decision of the Supreme Court in Dalmia's case AIR 1861 SC 1589 referred to above will apply to the facts of the instant case. It may also be mentioned with respect, that the Madras case has not considered the provisions of Section 182 or Section 531 Cr. P. C.

10. I am also of opinion that the prosecution can rely, in the instant case, on Section 182 Cr. P. C. It states that where an offence consists of several acts done in different local areas, it may be inquired into or tried by a Court having jurisdiction over any of such local areas. It is possible to contend in the instant case that part of the offence has been committed in Bellary inasmuch as the sending of the forged licence by V. P. P. was at Bellary. The offence of cheating may be split up into four parts: (i) representation by the petitioner that if Rs. 100/-is paid, he would send a genuine driving licence (ii) his sending of the forged licence from Bellary with the object of deceiving P. W. 9; (iii) receipt of forced licence by P. W. 9 and his deception and parting with money; and (iv) receipt of the money by the petitioner at Bellary. In view of the fact that parts (ii) and (iv) of the offence have been committed at Bellary, Section 181 Cr. P. C. would apply to the facts of this case.

11. Further, the mere fact that the court had no territorial Jurisdiction to try the case is no ground to set aside any finding or sentence passed by a criminal Court. Section 531 Cr. P. C, specifically lays down that no finding, sentence or order of any criminal Court shall DC set aside merely on the ground that the trial took place

in a wrong Sessions Division or district unless it appears that such error has occasioned failure of Justice. As has been pointed out by the Supreme Court In Dalmla's case, : 1961 CriLJ728 want of Jurisdiction with respect to the power of the court to try a particular offence is one which goes to the root of the matter, and the trial would be void. But similar importance is not attached by law when the court lacks territorial Jurisdiction. Territorial Jurisdiction is provided as a matter of administrative convenience. Unless want at jurisdiction has in fact occasioned failure of justice, there will be no Justification for interfering with the order of the lower court. According to the prosecution the petitioner was a resident at Bellary and It cannot be said that his trial at Bellary has in any way prejudiced him or has occasioned failure of Justice. It may also be mentioned that this question of want of jurisdiction has been argued for the first time in this court and has not been urged in both the courts below. Sri Shamanna contends that the petitioner has been prejudiced by his being tried along with accused-1 in the Bellary Court. When the law permits a Joint trial, the question of prejudice does not arise, and the petitioner has not raised any objection that he should not be tried along with accused-1 in the lower court. I am therefore of opinion that there is no merit in the contention of Sri Shamanna that the court of the sub-divisional Magistrate, Bellary had no Jurisdiction to try the petitioner.

12. I am also of opinion that there is no substance in the other contention of Sri Shamanna that P. W. 7 and P. W. 9 were accomplices and except the oral evidence of P. W. 7 and P. W. 9, there are DO other circumstances appearing against the petitioner to warrant his conviction for the offence of cheating. P. W. 9 can in no sense be said to be an accomplice. He is the victim and the person deceived and cheated. The prosecution case is that the petitioner very cleverly did not send the V. P. P. himself but gave the cover containing the forged licence to the hands of P. W. 7 Jogi, his nephew, who is a young lad of 17 years and made him give his address and asked him to send the V. P. P. It is clear from the evidence that he had no knowledge that the cover contained the forged licence. As he was not at all aware of the offence, he can, on no account be said to be an accomplice. The learned High Court Government Pleader has also pointed out that the evidence of P. W. 10 corroborates the evidence of P. W. 9 and the receipt of the V. P. P. and the forged licence are circumstances corroborating the version

of P. W. 9. The rest of the contentions of Sri Shamanna about the credibility of the evidence of P. W. 7. and P. W. 9 are all matters of appreciation of evidence. Sitting in revision, it is not for me to reappreciate the evidence. Both the courts below nave believed the evidence of P. W. 7 and P. W. 9. I am therefore of opinion that no case had been made out for Interference in revision by this court with the concurrent findings of courts below.

18. In the result, this revision petition fails and the same is dismissed. The petitioner will surrender to his bail and undergo the rest of the sentence.

19. Revision dismissed.

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