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Court : Karnataka

Decided On : Feb-04-1972

Reported in : 1972CriLJ1478

Judge : S.R.M. Santhosh and ;S.R. Range Gowda, JJ.

Appellant : The State of Mysore

Respondent : Somala and anr.

Judgement :

Range Gowda, J.

1. This appeal by the State is directed against the order dated 25-6-1970 passed by the First Class Magistrate. Aurad. in Case No. 23/3 of 1970 acquitting under Sub-section (11) of Section 251-A. Criminal P.C. the respondents of the offence under Section 379 read with Section 34 of the Indian Penal Code,

2. The facts leading to this proceeding may briefly be stated as follows: The respondents-accused were prosecuted by the Sub Inspector of Police. Kamalapur Police Station in Aurad Taluk for an offence under Section 379 r/w Section 34. Indian P.C. on the allegation that on the night between 8-1-1970 and 9-1-1970 at Debka they in furtherance of their common intention, committed the theft of four bullocks worth Rs. 3,000/- belonging to the complainant Prabhu. The charge-sheet was filed on 24-3-1970 and a charge under Section 379. Indian P.C. was framed

against only respondent-1 on 8-4-1970 as the other respondent was absconding. On 6-5-1970 the second respondent was produced in court and on 12-6-1970 a charge under Section 379 r/w Section 34, Indian P.C. amending the previous charge, was framed against both of them. Thereafter the case was adjourned to 25-6-1970 for evidence. The order sheet in the case shows that witnesses were not present on 25-6-1970 and the Asst. Public Prosecutor request-ed the learned Magistrate to issue summonses to the witnesses. But the learned Magistrate rejected his request taking the view that the prosecution was not diligent and that steps should have been taken for the issue of summonses to the witnesses well in time. In the result he acquitted the respondents holding that no evidence adduced by the prosecution in support of the charge. It is the legality and correctness of the said order that are assailed in this appeal.

3. It was contended by the learned State Public Prosecutor that the learned Magistrate was in error in acquitting the respondents under Sub-section (11) of Section 251-A. Criminal P.C. without recording evidence and without giving his finding that they were not guilty of the offence with which they were charged on such evidence, and in support of his contention, he relied upon the following observations of this Court in State of mysore v. Narasimhegowda (1964) 2 Mys LJ 241-243 : AIR 1965 Mys 167.

Subjection (11) lays down that if in any case under this Section in which a charge has been framed the Magistrate finds the accused not guilty he shall record an order of acquittal. The word 'finds' seems to have been used in the sense of 'decides' 'concludes' or 'holds' implying that the finding to be arrived at shall be after a consideration of all the evidence adduced on his behalf if any. This Section occurs in Chapter 21 of the Code which also provides for the procedure for trial of warrant cases 'instituted otherwise than on a police report' and embodies in Section 258 (1) provisions identical with those of Sub-section (11). The Code does not provide for. or contemplate an order of acquittal being recorded merely on the ground that the prosecution or the complainant had failed to produce evidence on the date fixed by the Magistrate.

The learned State Public Prosecutor drew our attention to the following observations in State of mysore v. Kalilulla 1970-2 Mys LJ 209-213 : AIR 1971 Mys 60:

All that we are interested in pointing out here is. that so far as Police charge-sheets are concerned there is no provision in Chapter XXI dealing with trial of warrant cases, for the acquittal of the accused merely on the ground of absence of the prosecutor or non appearance of his witnesses. Section 259 is the only section in the said Chapter which states that when the proceedings have been instituted upon complaint and on the day fixed for hearing the complainant is absent and the offence may be lawfully compounded or is not a cognizable offence, the Magistrate may in his discretion at any time before the charge is framed, discharge the accused. It is needless to point out that Section 259 does not apply to cases instituted on police charge-sheets'. It was therefore, urged by the learned State Public Prosecutor that the learned Magistrate while acquitting the respondents who were charged with such a Seri cue offence without recording any evidence especially when the Assistant Public Prosecutor craved for the issue of summonses to the witnesses. was not justified.

4. The contention of the learned State Public Prosecutor, in our opinion, is well founded. The observations of this Court in the said two cases clearly support his contention. In a case of this kind, the learned Magistrate, before acquitting the respondents accused under Sub-section (11) of Section 251-A. Cri. P.C. ought to have recorded the evidence which the prosecution intended to adduce and without allowing the prosecution to adduce such evidence and without having before him that evidence he was not justified in finding that the respondents-accused were not guilty of the said offence. In our opinion, the learned Magistrate was also not justified in proceeding to pass the impugned order in such haste when the case had been set down for evidence after the charge was framed on the previous date. The impugned order therefore, is clearly erroneous and liable to be set aside.

5. In the result, for the reasons stated above, this appeal is allowed, the impugned order is set aside, and the case is sent back to the learned Magistrate with a direction to take it on file and dispose it of according to law.