

The State Vs. Shaik Dadan

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Court : Andhra Pradesh

Decided On : Mar-05-1957

Reported in : 1958CriLJ15

Judge : Subba Rao, C.J. and; Jaganmohan Reddy, J.

Appellant : The State

Respondent : Shaik Dadan

Judgement :

Jaganmohan Reddy, J.

1. These are nine appeals by the State against the judgment acquitting the accused, Shaik Dadan, of an offence under Section 409 I, P.C. Appeals Nos. 152/5 of 1956, 151 of 1956, 169/56 and 167/56 are from the judgment of acquittal of the Munsif-Magistrate Warangal. Criminal Appeals Nos. 116/56 and 168/56 are from the judgment of acquittal by the Addl. Munsif Magistrate, Warangal, while appeals Nos. 184/56, 192/56 and 147/56 are from the judgment of acquittal by the Sessions Judge, Warangal, in appeals Nos. 175/6/55, 174/0/ 55 and 169/6/55 from from a judgment of the Spl. Magistrate, Warangal who had convicted the accused of offences under Sections 409 I.P.C. and 477-A I.P.C. and sentenced him to '3 six months' R.I. and a fine of Rs. 1000/- and in default to undergo a further period of R. I. for six months.

There is also a reference No. 344/7 of 1358 to the Spl. Magistrate, Warangal under Section 432 in a such as an important point of law as to whether Section 5(1)(c) of the Prevention of Corruption Act, as it stood prior to the amendment of 1952, pro tanto repealed Section 409 I.P.C

2. Besides these there are nine revisions Nos. 844, 845, 332, 493 to 49(5), 506 and 507 of 1956 filed by the accused, Shaik Dadan, against the judgment of the Sessions Judge, Warangal, who had dismissed the appeals and confirmed the convictions and sentence by the Munsif. Magistrate and Add).. Munsif Magistrate, and Spl. Magistrate, Warangal. In the first two revisions the accused was sentenced to two years R. I. under Section 409 and two years under Section 477-A and a fine of Rs. 1,000/- on each count and in default of payment of each fine to undergo further imprisonment of six months.

Revision No. 332 is against the judgment of the Sessions Judge dismissing the appeal of the accused and revision by the State for enhancement of sentence. The accused had been convicted and sentenced to one year R. I. on each of the counts under Section 409 and 477-A I.P.C. with sentences to run concurrently. This sentence was considered sufficient. In the other revisions the accused had been acquitted, by the trial Court under Section 409 and was convicted and sentenced under S 477-A for falsification of accounts.

The Sessions Judge affirmed the conviction Of the accused under Section 477-A I.P.C. but reduced the sentence to one of six months' R. I. and Rs, 500/- fine and in default a further period of three months. Against this retention of sentences the State has filed Revisions Nos. 586, 587 and 591 to 594. It may be stated that no appeals have been preferred by the State against the acquittal of the accused under Section 409 I.P.C. by the trial Court. In revisions Nos. 844, 845 and 332 of 1956 Sri Murtuza Khan, advocate, appeared and raised a legal contention, viz., that the trial was bad due to the accused being charged at one trial with three charges under Section 409 and with three charges under Section 377-A.

3. The accused was a Khirdi Naviz and Sarbharahi clerk. of the Tehsil Office of Warangal, whose duty it was to receive revenue from the villagers, give receipts, enter the same in the accounts and send the money to the bank. It was alleged by

the prosecution in all these cases that when the revenues were paid by the various villagers he made false entries in the Khirdi of the Tehsil and other papers embezzling various sums of money at different times by either not crediting them into the bank or making entries regarding false expenditure and consequently he Was prosecuted under Sections 409 and 477-A J..F.C and cases were filed with respect to acts pertaining to each or several of the villagers.

In the cases in which the Munsif-Magistrate or Addl. Munsif-Magistrate or the Sessions Judge on appeal from the judgment of conviction from the Spl. Magistrate, Warangal had acquitted the accused, it was held that Section 5(1)(c) of the Prevention of Corruption Act, II of 1947 which came into force In the then State of Hyderabad on 1st April, 1951, had on the authority of. State v. Bhimrao, ILR 1954 Hyd. 558 (A) repealed Section 409 I.P.C. and consequently the accused was acquitted of offences under that section.

4. These appeals and revisions can be grouped into the following four categories, (1) those in which the Magistrate or Addl. Magistrate, Warangal has acquitted the accused of offence under Section 409 IPC by reason of the fact that the offences Were committed before the amendment to the Prevention of Corruption Act by which it was declared that Section 5 of Act was in addition and not in derogation of Section 409.

In these cases the lower court held that having regard to the case of ILR 1954 Hyd 558 (A) Section 5(1)(c) had pro tanto repealed Section 409 I.P.C, and consequently the accused cannot be convicted under Section 409(2) cases in which the Special Magistrate, Warangal, convicted the accused under Section 409 with respect to acts committed prior to the amendment of the Prevention of Corruption Act on 12-8-1952 and with respect to which the Sessions Judge, Warangal, set aside the convictions in appeal; (3) cases in which the accused was convicted under Section 409 for acts committed after the amendment of the Prevention of Corruption Act and in which though the conviction was confirmed by the Session.'; Judge Warangal on appeal, the sentence was reduced against which revisions have been filed by the State; (4) revisions by the accused against the dismissal of his appeals by the Sessions Judge confirming the conviction

under Section 477-A.

5. The question, therefore, in the appeals and in the reference which arises for determination is the validity of the decision by the lower courts as to whether Section 5(1)(c) of the Prevention of Corruption Act does in fact repeal Section 409 I.P.C. It may be stated that the Prevention of Corruption Act and the Indian Penal Code and the Indian Criminal Procedure Code were extended to the State of Hyderabad by Acts I and III of 1951.

6. The lower courts were confronted with the Bench decisions of the erstwhile Hyderabad High Court, one in Jayarama Iyer v. State of Hyderabad IT.R 1953 Hyd 573 : AIR 1554 Hyd 56 (B) to which One Of us was a party and the other in IL.R 1954 Hyd 558 (A), In the former case the matter was fully argued and dealt with and the view taken in State v. Gurucharan Singh (C) that Section 5(1)(c) of the Prevention of Corruption Act pro tanto repeals 8. 409 I.P.C. was dissented from. In the latter case, however, the case of was followed and the previous Bench judgment in Jayarama Iyer's case (B) was held not to apply as it appeared to the learned Judges that the observations were obiter and in this view they did not feel any necessity to refer the case to a higher bench.

Be that as it may, in Akki Veeralah v. State 1956 Andh LT 169 : A.I.R. 1957 Andhra Pra 663 (D) to which one of us was a party, it was held adopting the observations in two Full Bench decisions, one of the Allahabad High Court in Om Prakash v. The State, (S) : AIR1955 All275 and the other of the Bombay High Court in The State v, Saheb Rao Govind Rao : AIR1954 Bom549 , that Section 5(1)(c) of the Prevention of Corruption Act was only supplementary measure and that it did not repeal Section 409 IPC This matter is now concluded by an authoritative pronouncement of the Supreme Court by a bench of five Judges in Om Prakash v. State of Uttar Pradesh Cri A. No. 42/54 D/- 11-1-1957 : : 1957 CriLJ575 .

The Supreme Court after considering a large body of case-law of the different High Courts, said that except for the lone voice of the Punjab High Court in all the High Courts took the view that Section 5(1)(c) of the Prevention of Corruption Act did not repeal Section 409 I. P. .0. It went on to consider the difference between the

two Sections 5(1)(c) Prevention of Corruption Act and 405 IPC which were (held to create two distinct and separate offences and that there can be no question of Section 5(1)(c) repealing Section 405 I. P. C

In the result the judgment of the lower court acquitting the accused of offence under Section 409 I.P.C. will have to be set aside, inasmuch as the lower courts came to the conclusion that on the evidence adduced in each case the prosecution had proved the ingredients under Section 409 IPC The accused would have been convicted by the lower courts of an offence under Section 409 but for the view taken by them as to the legal infirmity.

7. In appeals Nos. 116, 168 and 169 the accused was charged for embezzlement of revenue amounts paid by the villagers of Desaipet, Kadipikonda, Katrapalli, Maskal, Maripeda and Nandanam in which the accused was acquitted under Section 409 and sentenced under Section 477-A for falsification of accounts to only one year's R. I. and a fine of Rs. 1,000/- and in default, six months R. I. In appeals Nos. 167, 151 and 152 the embezzlements were with respect to the revenues paid by the villagers of Timmapur, Yelgore, Bollikonda, Pantham, Godepalli, Chintalapalli and Ingal where the accused was similarly acquitted under Section 409 and convicted under Section 477 I.P.C. but though he was sentenced to one year's R. I. he was ordered to pay a fine of Rs. 500/- only and in default six months R. I.

In appeals Nos. 184, 192 and 147 for defalcation of amounts paid by the villagers of Keela, Krishanajiguda etc., by making false entries relating to expenditure in the account books, the trial court had acquitted the accused under Section 409 and convicted him under Section 477-A sentencing him to six months' R. I, and a fine of Rs. 1,000/- and in default a further imprisonment of Six months' R. I. But the Sessions Judge acquitted the accused of the Offence under Section 477-A because according to him the accused could not be charged under this offence having regard to the fact that Section 409 I.P.C. was repealed by Section 5(1)(c) of the Prevention of Corruption Act.

From the evidence adduced by the prosecution In all these cases it is clear that the accused who was a Khirdi Nayiz and Sarbharahi Peshkar had the duties of

receiving monies, depositing the same in the bank and maintaining accounts relating thereto. It was also the duty of the accused to put up these papers and accounts for the signature of the Tehsildar.

The Collector's letter which was produced in these cases showed clearly that the accused was invested with the aforesaid duties. There is credible evidence in the several cases from which it has been rightly held that the entries were made by the accused in his own hand, that the entries were false, that the amounts were embezzled by not depositing them in the bank or by making entries relating to false expenditure and the receipts given by him were fictitious. In some of these cases the Sessions Judge has also agreed with the findings of the trial court. In this view, the evidence in these cases justifies the conclusion that the accused has committed criminal breach of trust within the meaning of Section 409 I.P.C; I as such the appeals will be allowed.

8. In so far as the revisions filed by the accused are concerned, particularly revisions Nos. 844, 845 and 332 Sri Murtuza Khan contends that the trials in these cases are bad by reason of the accused being charged with three offences under Section 409 along with three offences under Section 477-A which is not permitted under law. All that Section 234 which is an exception to Section 233 Cr.PC permits is that where a person is accused of more offences than one of the same kind committed within the space of 12 months from the first to the last of such offences, he may be charged with and tried at one trial for any number of them not exceeding three. This point was raised before the Sessions Judge in only one case viz.. No, 332 of 1956 where the learned Sessions Judge held that one offence under Section 409 was Joined with one offence for falsification of accounts under Section 477-A and since these two offences form part of the same transaction he had one trial valid under Section 235. It was there sought to be argued that each one of the entries in the account books and each one of the defalcations should be treated as a separate offence and consequently the trial was said to be bad, as it joined several offences of one nature with several offences of a different nature.

Having regard to the fact that the sentences are made to run concurrently the learned Advocate did not seriously press these revisions. It appears to us that the sentence awarded in the cases, which are the subject of these revisions, was two years for an offence under Section 477-A, Having regard to the sentences in other cases for the same offence we allow these revisions to the extent of reducing the sentence in each case from two years to one year R. I., the sentence of fine and sentence in default of fine being untouched. The other revisions are dismissed.

9. The question of sentence is one to which we have given anxious consideration. The breach of Trust by a clerk or a public servant is of an aggravated nature calling for substantial punishment. At the same time having regard to the large number of cases against the same accused with respect to acts committed at different places and at different times, if the sentences are allowed to run consecutively the cumulative effect would be too severe. We, therefore, set aside the order of acquittal under Section 409 I.P.C. and convict the accused of that offence sentencing him in each of the cases to five years' R. I.

The sentences under this section in all these cases as well as In appeals 184, 192 and 147 as awarded below will run concurrently. Appeals NOs. 184, 192 and 147 are also allowed and the accused convicted under Sections 409 and 477-A I.P.C., and sentenced in each case to five years R. I. under Section 400 and one year's R. I., a fine of Rs. 1000/- In default, to undergo six months' R. I. The sentences awarded by the lower courts under Section 477-A IPC in all the cases Is also directed to run concurrently, but, however, the sentences under two different Sections i.e., under Sections 409 and 477-A I.P.C. will run consecutively.

The sentences in default of payment of fine Will run consecutively in four cases only where six months' imprisonment is awarded. The sentences in default of payment of fine in other cases will run concurrently with these cases. In this way the actual period the accused will serve in all these cases is five years under Section 409 I.P.C. and one year (taking the maximum of one year) under Section 477-A making a total of six years or eight years in case he defaults the payment of fine in aforementioned four cases.

10. Having regard to this order the revisions filed by the State for enhancement of sentence are also dismissed. The reference by the Special Magistrate, Warangal, is answered as expressed above, namely, that Section 409 I.P.C. is not repealed by Section 5(1)(c) of the Prevention of Corruption Act and that the accused can be validly charged for an offence under that section.

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