

Aleem Vs. State of Andhra Pradesh

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Court : Andhra Pradesh

Decided On : Sep-02-1994

Reported in : 1994(2)ALT(Cri)408

Judge : A. Gopal Rao, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 212, 302, 392 and 411; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 223 and 482

Appeal No. : Criminal Miscellaneous Petition No. 2673 of 1994

Appellant : Aleem

Respondent : State of Andhra Pradesh

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : D. Suryanarayana, Adv.

Judgement :

ORDER

1. Accused No. 5 in Sessions Case No. 20/1994 on the file of the III Addl. Metropolitan Sessions Judge, Hyderabad, is the petitioner-herein. This petition under Section 482, Cr.PC is filed by the petitioner/A. 5 to grant stay of the proceedings against him till the final adjudication against A. 1 to A. 4 for charges under Sections 302 and 392, IPC in Sessions Case No. 20/1994, on the file of the

III Metropolitan Sessions Judge, Hyderabad.

2. The substance of accusation against A. 1 to A. 5 is that A. 1 to A. 4, on 23-2-1993, at about 7.45 p.m. killed one Haji Mohammed Yakub, at Red Hilla, Hyderabad, a businessman and took away cash of Rs. 1,60,000/- from his possession. A-5, the petitioner-herein, harboured A. 1 to A. 4 in his house of Bodabanda, Hyderabad, and shared the booty along with A. 1 to A. 4. A. 1 to A. 4 are charged with offences of robbery and murder punishable under Sections 392 and 302, IPC and A. 5 is charged with the offence of harbouring the offenders and for dishonestly receiving the stolen property, punishable under Sections 212 IPC and 411, IPC.

3. The petitioner contends that in order to convict him for an offence under Section 212, IPC, first of all there must be an offender who has to be harboured; that unless and until A. 1 to A. 4 are convicted for the offences under Sections 392 and 302, IPC, 'they (A1 to A4) will not become offenders'; the petitioner who is charged with the offence of harbouring u/S. 212, IPC cannot be tried along with A. 1 to A. 4 in Sessions Case No. 20/94; therefore, the trial as against the petitioner/A-5 must be stayed. In support of his contention, the learned counsel for the petitioner relied upon the decision in *Chacko v. State*, AIR 1951 Tranvancore-Cochin 90 : 1951 (52) Cri LJ 470.

4. The learned Public Prosecutor contends that as per Section 223, Cr PC, all persons accused of different offences committed in the course of the same transaction can be charged and tried together and therefore the question of staying the trial as against A. 5 for the offence u/S. 212, IPC cannot be ordered.

5. It is necessary to note that ingredients which are to be established by the prosecution to bring home the guilt of an accused for an offence under Section 212, IPC. Section 212, IPC reads as follows :

'Whenever an offence has been committed, whoever harbours or conceals a person whom he knows or has reason to believe to be the offender, with the intention of screening him from legal punishment,

Shall, if the offence is punishable with death, be punished with imprisonment of either description for a term which may extend to five years, and shall also be liable to fine,

and if the offence is punishable with imprisonment for life, or with imprisonment which may extend to ten years, shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine,

and if the offence is punishable with imprisonment which may extend to one year, and not to ten years, shall be punished with imprisonment of the description provided for the offence for a term which may extend to one-fourth part of the longest term of imprisonment provided for the offence, or with fine, or with both

6. A reading of this Section 212, IPC will disclose that 3 things have to be proved by the prosecution, viz., (i) there must be an offender, and (ii) the offender should have already committed an offence and (iii) the person accused of under this Section should have harboured the offender knowing that he is an offender.

7. The learned Counsel for the petitioner submits that unless and until A. 1 to A. 4 are found guilty of committing the offences under Sections 392 and 302, IPC, they cannot be called as offenders. Therefore, he submits that the petitioner cannot be tried for an offence u/S. 212, IPC simultaneously along with A. 1 to A. 4 in the same sessions case, in which A. 1 to A. 4 are facing trial for offences u/Ss. 392 and 302, IPC. He submits that the trial against the petitioner/A. 5 for the offence u/S. 212, IPC has to be put off until the disposal of the case as against A. 1 to A. 4.

8. This contention, ex facie, sounds impressive, but on a thorough examination of the facts of the case and on consideration of the provisions of the Criminal Procedure Code, this contention deserves to be rejected.

9. The learned counsel for the petitioner relied upon two decisions :- Ram Raj Chaudhury v. Emperor (1946) 47 Cri LJ 573 : AIR 1946 Pat 74 and Chacko v.

State (supra). In Ram Raj's Case (2 supra), it was held thus :

'Section 212 applies to the harbouring of persons who have actually committed an offence. It does not apply to the harbouring of persons not being criminals, who merely abscond to avoid or delay a judicial investigation. Therefore, where there is no evidence showing that the accused knew or had reason to believe that the person harboured had committed any offence, he cannot be convicted under Section 212'.

10. In Chacko v. State (1 supra), trial of the case against the petitioner therein for an offence under Section 212, IPC was stayed until after the disposal of at least one of the cases against the concerned offenders on the ground that 'until the 'offender' has been convicted of the offence he is alleged to have committed, no prosecution can be launched under Section 212, Penal Code for harbouring him'.

11. In both the above decisions, the accused were charged only with the offence u/s. 212, IPC and not with any other offences.

12. In the present case, admittedly, the petitioner/A5 is charged with offence u/s. 212, IPC for harbouring A. 1 to A. 4, and also for an offence u/S. 411, IPC, for dishonestly receiving stolen property from A. 1 to A. 4, knowing it to be stolen.

13. In this context, it is necessary to note that Section 223, Cr PC, prescribes the procedure as to when persons charged with different offences should be tried together. Section 223, Cr Pc, reads as follows :

'223. What persons may be charged jointly :-

The following persons may be charged and tried together, namely :-

(a) to (c)

(d) Persons accused of different offences committed in the course of the same transaction;

(e) Persons accused of an offence which includes theft, extortion, cheating, or criminal misappropriation, and persons accused of receiving or retaining, or

assisting in the disposal or concealment of, property, possession of which is alleged to have been transferred by any such offence committed by the first-named persons, or of abetment of or attempting to commit any such last-named offence;

(f) & (g)'

14. In *K. Kunhahammad v. State of Madras*, : 1960 CriLJ1013 , interpreting the provisions of Section 239 Old Cr PC, which is same as Section 223, of the new Cr.PC., the Supreme Court held thus :

'It is true that, in framing the charge against more persons than one and directing their joint trial, Courts should carefully examine the nature of the accusation; but if they are satisfied that prima facie the accusation made shows that several persons are charged of different offences and that the said offences prima facie appear to have been committed in the course of the same transaction, their joint trial can be ordered. The point of time in the proceedings at which it is to be determined whether the condition that the offences alleged had been committed in the course of the same transaction has been fulfilled or not is at the time when the accusation is made and not when the trial is concluded and the result known'.

15. In *State of Andh. Pra v. Ganeswara Rao*, : [1964]3SCR297 , the Supreme Court held :

'The object of enacting S. 239, is to avoid multiplicity of trials and the only limitation which could properly be placed on the trial of several persons for the same kind of or different offences would be that which considerations of justice and fairness would require'.

16. The Supreme Court, in two decisions (3 and 4 supra), has made it clear that persons charged with different offences committed in the course of the same transaction should be tried together jointly, unless there are exceptional circumstances to avoid it.

17. In the present case, the petitioner, who is charged for offences u/Ss. 212 and 411, IPC, has to be necessarily tried along with A. 1 and A. 4, the other accused,

for the offence u/S. 411, IPC as it forms part of the same transaction. Sub-section (e) of Section 223, Cr.PC also mandates that, in such a situation a joint trial must be held. If the charge against the petitioner/A5 is under Section 212, IPC simpliciter, without any other charges, then undoubtedly the petitioner cannot be tried for the offences u/S. 212, IPC along with the other accused. The reason for doing so is, that A. 1 to A. 4 are not yet found to be 'offenders' as required under Section 212, IPC. That is not the position in this case. The petitioner/A5 is charged with another offence viz., u/S. 411, IPC also, in addition to the offence u/S. 212, IPC. In these circumstances, the petitioner/A5 should not be allowed to undergo trial for the offence u/S. 411, IPC, along with other, viz., A. 1 to A. 4, and thereafter face the trial u/S. 212, IPC. This is not the intendment of the provisions of the Criminal Procedure Code. Therefore, the decisions in *Chacko v. State* (1 supra) and *Ram Raj Chaudhary v. Emperor* (2 supra) are distinguishable and cannot be made applicable to the facts of the case as in those cases the accused therein were charged only with the offence u/S. 212, IPC.

18. Therefore, it follows, as laid down by the Supreme Court in *K. Kunhahmmad v. The State of Madras* (3 supra) and *state of Andhra Pradesh v. Ganeswara Rao* (4 supra), that to avoid multiplicity of trials and also as the offences alleged against all the accused including the petitioner herein (A5) are committed in the course of the same transaction, the charge for the offence u/S. 212, IPC against the petitioner must also be tried and decided in the same Sessions Case, without postponing the same for consideration by a separate case. By adopting this method, no prejudice is caused to petitioner. Further, if the petitioner/A5 is found guilty of the offence u/S. 411, IPC for receiving stolen property from A. 1 to A. 4, it automatically follows that the ingredients for the offence u/S. 212, IPC are established against the petitioner for harbouring A. 1 to A. 4, who committed the offences of robbery, punishable under Section 392, IPC.

19. For the reasons stated above, there are absolutely no justifiable grounds for staying the proceedings against the petitioner/A. 5 for the offence u/S. 212, IPC till the final adjudication against A. 1 to A. 4 for charges under Section 392 and 302, IPC in Sessions Case No. 20 of 1994 on the file of the III Additional Metropolitan Sessions Judge's Court, Hyderabad. This petition is, therefore, dismissed.

20. Petition dismissed.

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