

K. Krishnamurthy and ors. Vs. the State

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Court : Andhra Pradesh

Decided On : Mar-10-1955

Reported in : 1957CriLJ1216

Judge : Chandra Reddy, J.

Appellant : K. Krishnamurthy and ors.

Respondent : The State

Judgement :

ORDER

Chandra Reddy, J.

1. These revision cases arise out of the judgment of the Additional Sessions Judge, Guntur, convicting the petitioners, six in number under Section 420, I. P. C. and sentencing accused 1 to 5 to six months' rigorous imprisonment and in addition to a fine of Rs. 200 each and the 6th accused to imprisonment till the rising of the Court. Criminal Revision Cases Nos. 804 of 1954 is filed by the 1st accused, 805 of 1954 by the 6th accused and 847 of 1954 by the accused 2 to 5.

2. The material facts of the prosecution may be briefly stated. The 3rd accused is the father of 2nd accused, accused 1, 4 and 5 being the son-in-law of the former. The 6th accused is the son of the 1st accused, i.e., maternal grandson of the 3rd accused. Between the months of April and June 1948, these accused sent

applications to the Director of Industries and Commerce for permits for iron for construction of their houses. It was stated therein that they had already started the construction but could not complete them for want of iron. Plans and estimates prepared by consulting Engineers were also enclosed. They were forwarded through the Assistant Industrial Engineer, Vijayawada. The Steel Officer P.W 2 granted permits to the accused 1, 2, 4 and 5 but not to accused 3 and 6. I am not here concerned with the reasons for the rejection of the application of the two latter.

At about the same time, accused 1 to 4 made applications for permits for cement on the same ground. Permits were granted by the Honorary Cement Controller but 3rd accused did not make use of his permit. Having obtained iron and cement on the strength of these permits, the accused 1, 2, 4 and 5 did not utilise them for the purposes for which they were sanctioned. The gravamen of the charge against these accused is that they got permits for iron and steel by making false representations to the authorities concerned. That applies only to accused who succeeded in getting the permits. As regards the accused 3 and 6, who were unsuccessful in that respect the charge against them is that they attempted to get permits by making false representations. On receipt of anonymous petitions, the authorities concerned deputed P.Ws. 34, 35 & 37 of the C.I.D. to inspect the sites on which constructions were said to have been begun. On their report that no such thing was found by them investigation was started.

A provisional charge-sheet was filed against all the accused on 10th September, 1949 and a final charge-sheet on 31st January, 1951, for offences Under Sections 120-B, 420, 465 and 471, Indian Penal Code, before the Sub-Divisional Magistrate, Masullpatam.

3. The trial Magistrate originally framed charges under Section 120-B read with Section 420, and Sections 465 and 471 Indian Penal Code. There were also separate charges against accused 1, 2, 4 and 5 under Section 420, Indian Penal Code and against accused 3 and 6 under Section 420 read with Section 511. Indian Penal Code. But subsequently the charges under Sections 465 and 471, Indian Penal Code, were dropped. The Sub-Divisional Magistrate convicted all the

accused under Section 120-B read with Section 420, Indian Penal Code and sentenced each of them to six months' rigorous imprisonment and to a fine of Rs. 200.

4. On appeal by the aggrieved accused, the Sessions Judge set aside the conviction but as he felt that there was some evidence regarding the individual cases of cheating under Section 420, Indian Penal Code or attempt at cheating under Section 420, read with Section 511, Indian Penal Code, he ordered a retrial in respect of those offences.

5. The matter was carried in revision by the accused to the High Court contesting the validity of the order of retrial. When the revision came on for hearing it was agreed on all sides that retrial was unnecessary and that the Sessions Judge himself could dispose of the appeal on the material before him. Consequently it was remitted to the Additional Sessions Judge, Guntur, for rehearing.

6. The learned Additional Sessions Judge has now convicted accused I. 2, 4 and 5 under Section 420, Indian Penal Code, and accused 3 and 6 under Section 420, read with Section 511, Indian Penal Code and awarded the same sentences as were originally imposed by the Sub-Divisional, Magistrate to all except A-6 who was sentenced to imprisonment till the rising of the Court. Hence these revision cases.

7. In support of Criminal Revision Cases Nos. 804 and 847 of 1954, Mr. Narasimha Rao advanced three contentions : (1) Since the petitioners were not convicted specifically under Section 420 or Section 420 read with Section 511, Indian Penal Code, as the case may be by the trial Magistrate they should be deemed to have been acquitted and there being no appeal against the acquittal, it was not competent for the Additional Sessions Judge to convict them of the same offences. (2) There was no evidence that it was the representations contained in the applications for permits that induced the authorities concerned to grant the permits so as to attract the provisions of Section 420 Indian Penal Code and (3) lastly the judgment of the learned Additional Sessions Judge is vitiated by his failure to consider the defence evidence.

8. On the first point, the learned Counsel for the petitioners drew my attention to the decision in *Kishan Singh v. Emperor* 55 Ind App. 390 : AIR 1928 P.O. 254 (A). There, the accused was charged under Section 302, Indian Penal Code, in the Sessions Court. However, he was convicted only under Section 304, Indian Penal Code. The Provincial Government applied to the High Court for obtaining a conviction of the accused under Section 302, Indian Penal Code and for enhancement of the sentence. The High Court, on a consideration of the evidence, came to the conclusion that the accused was guilty under Section 302, Indian Penal Code and so accepted the application by altering the conviction into one under Section 302, Indian Penal Code and sentencing him to death! When the matter went up before the Judicial Committee, their Lordships decided that the accused must be deemed to be acquitted of the charge of murder, and therefore the High Court had no-jurisdiction without an appeal against that acquittal to alter a finding of acquittal into one of conviction with the result the judgment of the High Court was reversed.

9. The learned Public Prosecutor sought to distinguish this pronouncement on the ground that in the case under citation there was only one charge and the conviction was for a lesser offence and so that stands on a different footing. I do not think this is a valid distinction. The effect of that decision is that when nothing is said about a particular charge, it amounts to an implied acquittal and so if there is no appeal against that implied acquittal, it is not open to an appellate Court to alter that order of acquittal into one of conviction.

In fact the present is an a fortiori case where there are two or more charges and no specific order has been passed in respect of some of the charges. Even assuming that the pronouncement is not a direct authority, surely the principle of that case will apply to the instant case.

10. A ruling of the Oudh Court in *Diwan v. Raja Ram* AIR 1941 Oudh 575 (B), was also cited which is ad idem with the present one. In that case, a number of charges under Sections 323, 325, 147, 426 and 325 read with Section 149, Indian Penal Code, were framed against the accused. The conviction was in respect of Sections 323, 147 and 426. Indian Penal Code. On appeal the Sessions Judge

thought that the conviction under Sections 323, 147 and 426, Indian Penal Code, was unsustainable as, in his opinion, the evidence could not support it. In that view, he set aside the conviction. But having found that there was some evidence which indicates that the accused were guilty of an offence under Section 325, read with Section 149, Indian Penal Code, he wanted that there should be a retrial of the accused for these offences.

When the matter came up before Ghulam Hasan, J. (who subsequently became a Judge of the Supreme Court) he held that the accused not having been convicted under Section 325, read with Section 149, Indian Penal Code, the accused should be regarded as having been impliedly acquitted although there was no specific order and therefore they could not be retried in respect of these offences. The doctrine of this case certainly governs the present one.

11. Further, under Section 258(1), Criminal Procedure Code when a charge has been framed against an accused person, if the Magistrate finds that he is not guilty, he shall record an order of acquittal. It is manifest from this Section that if a person is not found guilty, he must be acquitted. This is a provision which casts an obligation on the Magistrate to record an order of acquittal when there is no finding of guilt. This being a mandatory provision, the non-compliance with it must be deemed to have the same result as that specified in the section.

12. The principle that emerges is that when there is no specific finding that the accused is guilty under any of the charges framed against him, it amounts to an acquittal of the offence involved in that charge. Therefore, an appellate Court cannot convict him of the same offence unless there is an appeal against that acquittal. Applying that rule, it must be held that there was an implied acquittal of all the accused under Section 420 or Section 420 read with Section 511, Indian Penal Code, as the case may be, and that in the absence of an appeal against acquittal, it was not competent for the Sessions Judge to find him guilty under that offence.

However, as this point was not taken either in the High Court or before the Sessions Judge when it came back for re-hearing, I am not inclined to allow the revision petition on that ground. Had this been urged earlier it was open to the

State to file an appeal against the acquittal of the accused under those Sections. It is now too late for them to do it and I do not think it would be in the interests of justice to allow this revision on that ground urged for the first time before me.

13. Now coming to the second question, I do not think the contention can be accepted. It is true that P.W. 2 the Iron and Steel Officer did not specifically state that it is on the faith of the representations contained in the applications that the permits were granted. But he has deposed that he scrutinised the applications before the permits were granted and he was not guided by recommendations made by the local authorities. This only means that it is on the basis of the applications which contained the false representations that the permits were granted.

14. In support of the submission that there could be no conviction under Section 420, Indian Penal Code, without specific evidence of representation, the Judgment of Subba Rao, J. (as he then was of the Madras High Court) in Public Prosecutor v. Vedantam : AIR1952 Mad183 (C) is called in aid. I do not think that it has any application to this case. The prosecution against the accused there was that he induced the complainant to lend money to him without any intention of repaying it by making representations which were false. It was found as a fact that the complainant knew that the accused was solvent and the complainant parted with the money because of his knowledge and not on the strength of the representation made by the accused.

It was under these circumstances, it was held that the offence under Section 420, Indian Penal Code, was not made out. But the situation is different here. There can be little doubt that it is the applications with recitals now found to be false that made the authorities concerned to grant the permits. This argument should therefore fail and is rejected.

15. Coming lastly to the plea that the defence- evidence for the accused was not considered by the Sessions Judge, I do not think the petitioners have fared better. It appears from the judgment under appeal that the Sessions Judge had applied his mind to that evidence. He has indicated that this evidence is not entitled to any weight in the light of acceptable oral evidence for the prosecution. It follows that

the convictions of the petitioners in Criminal Revision Cases Nos. 804 and 847 of 1954 have to be confirmed and their revision cases dismissed.

16. But the case of the 6th accused who has preferred Criminal Revision Case No. 805 of 1954 seems to stand on a different footing. As already pointed out his conviction is under Section 420, read with Section 511, Indian Penal Code, because he was not successful in getting the permit. The charge against him. was that he attempted to get a permit by making a false representation, to the authorities concerned in his application that he was constructing a house at Bhaskarapuram. In order to substantiate this charge against him, it must be established that the statements in his application were false.

Not a single witness for the prosecution has deposed that no foundations were laid by the petitioner for the construction of a house at Bhaskarapuram because none had visited that place. Apart from this defect, there is evidence of an unimpeachable character in support of the recital in the-application of the petitioner. D.W. 1, a Lecturer in Hindu College at Masulipatam and D.W. 6 a Professor in the same institution have testified to the petitioner owning site at Bhaskarapuram and to laying the foundations for the construction of a house thereon. There has been no attempt even to discredit these witnesses nor is there any evidence contra. The learned Additional Sessions Judge overlooked this aspect of the matter. Evidently, he was under the mistaken impression that his site also was in the same village as those of other accused. It is this misapprehension that has obviously led him to convict this 6th accused. The learned Public Prosecutor fairly conceded that it is not possible to convict the 6th accused on the material on record.

17. In the result, his Criminal Revision Case No. 805 of 1954 is allowed.