In Re: B. Arjunappa and anr.

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Court : Andhra Pradesh

Decided On : Aug-16-1962

Reported in : AIR1963AP433; 1963CriLJ494

Judge : Anantanarayana Ayyar, J.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 164, 236, 476 and 479A

Appeal No. : Criminal Revn. Case No. 167 of 1962 and Cri. Revn. Petn. No. 149 of 1962

Appellant : In Re: B. Arjunappa and anr.

Advocate for Def. : C. Padmanabha Reddy, Adv. for Public Prosecutor

Advocate for Pet/Ap. : N.M. Sastry, Adv.

Disposition : Revision allowed

Judgement :

Anantanarayana Ayyar, J.

1. In P. S. C. No. 10 of 1961, there was an enquiry by the Judicial Second Class Magistrate, Alur against the sole accused, B. Parameswarappa for an offence under Section 302 I. P. C. In that enquiry the prosecution examined two witnesses

namely, Boya Arjunappa and Chinna Thimmappa of Molagavalli; those two persons denied ail knowledge of the occurrence and the commission of the offence. But, each of them had given a statement earlier under Section 164 Cr. P. C. namely, Ex. P. 1 by Arjunappa and Ex. P. 2 by Thimmappa before the Judicial Second Class Magistrate, Adoni, to the effect that he had seen the commission of the offence by the accused A. P. P. I filed a petition before the J. S. C. M. Alur under Section 479A Crl. P. C. requesting the Court to order prosecution of the two witnesses for perjury in the final order disposing of the case. The learned Magistrate passed an order dated 16-1-1962 discharging the accused on the ground that there is no evidence against him. In that order, the learned Magistrate also mentioned as follows: -

'There is no doubt from their own Admissions in their evidence that they have given false statements under Section 164 Cr. P. C. before the J. S. C. M. (Adoni) on oath and that they have spoken the truth in this Court quite contrary to it. But the suggestion of the learned A. P. P. I to the witnesses is that they had spoken the truth before the J. S. C. M. Adoni and falsehood before this Court and the suggestion is denied. Whichever statement is true or whichever is false, it is clear that P. Ws. 1 and 2 had given false statements on oath either before the J. S. C. M. Adoni or before this Court .....

Prima facie it is clear that the two witnessed had intentionally given two statements on oath one before the J. S. C. M. Adoni and another before this Court and the one given before this Court is evidently false with the knowledge that it was false in the absence of any circumstances and natural conduct exhibited by the accused to show that the first statement was vitiated by torture, coercion and undue influence. I, therefore, hold that the two witnesses P. Ws. 1 and 2 had given Intentionally false evidence before this Court on oath, and that for the eradication of the evils of perjury and fabrication of false evidence and in the interests of justice it is expedient that the two witnesses P. Ws. 1 and 2 shall be prosecuted for the offence under Section 193 I. P. C. which appears to have been committed by them after giving them an opportunity to appear and show cause, why they should not be prosecuted.'

2. Accordingly, the learned Magistrate gave an opportunity to the witnesses to appear before him on 31-1-1962. The two witnesses appeared before the learned Magistrate and made a statement giving the explanation that on account of torture and threats by the Police, they had given the earlier statements under Section 164 Cr. P. C. (Ex. p.1 and Ex. P.2) before the J. S. C, M. Adoni falsely. After considering the said explanation, the J. S. C. M. Alur passed an order dated 31-1-1962 that a complaint be filed before the Judicial First Class Magistrate, Adoni for an offence under Section 193 I. P. C.

3. In pursuance of that order dated 31-1-1962, a complaint was filed by the J. S. C. M. Alur against the two witnesses before the J. F.C. M. Adoni for the said offence under Section 193 I. P. C. In that complaint, it is mentioned as follows: -

'Thus in the capital case of murder, the accused intentionally gave two statements on oath which were diametrically contradictory to each other in relevant facts and perjured either before the Judicial Second Class Magistrate, Adoni or before this Court (J. S. C. M. Alur) or in both the judicial proceedings. ... ... The accused has therefore given false evidence intentionally and knowing that it was false before this Court on oath on 12-1-1962 in P. R. C. No. 10/61 during the Judicial enquiry contradictory to the intentional false statements made on oath before the Judicial Second Class Magistrate, Adoni under Section 164 Cr. P. C. in Ex. p.1, knowing them to be false also and thereby committed an offence punishable under Section 193 I. P. C.'

Being aggrieved with the institution of complaints, the two witnesses (petitioners) have preferred this revision petition.

4. Shri N.M. Sastry, the learned Counsel for the petitioners', points out that, apart from the depositions of the two witnesses in the Committing Court (J. S. C. M. Alur) and their statements under Section 164 Cr. P. C. before the J. S. C. M. Adoni there is no other evidence (independent of the above depositions and statements) to show as to whether the depositions in the committing court are false or whether the statements under Section 164 Cr. P. C. are false. He also contends that the conclusion that one of them is false can be arrived at only on the basis that the other is true and that there is no material for holding that both are false. He draws

my attention to the fact that though the J. S. C. M. Alur has given a definite finding in his order of discharge dated 16-1-1962 and also categorically mentioned in the complaint filed in pursuance of the order dated 31-1-1962, that the depositions of the two witnesses in the enquiry in P. K. C. No. 10/1961 were false, he (J. S. C. M. Alur) has also stated in the complaint that the statement under Section 164 Cr. P. C. by each witness was also intentionally false. The learned Counsel argues that the learned Magistrate (J. S. C. M. (Alur) has given mutually contradictory findings in saying in one place that both the depositions and the Section 164 Cr. P. C. statements are false and in another place by stating that the statements under Section 164 Crl. P. C. were true and that the depositions were false.

5. Illustration (b) to Section 236 Cr. P. C. runs as follows: -

'A states on oath before the Magistrate that he saw B hit C with a club. Before the Sessions Court A stated on oath that B never hit C. A may be charged in the alternative and convicted of intentionally giving false evidence, although it cannot be proved which of these contradictory statements was false.'

Consequently, if complaint were laid even against either of the two witnesses to the effect that his statement under Section 164 Cr. P. C. or his deposition in the enquiry in P. R. C. No. 10/61 was false, there can be a conviction. But the important question is whether it is expedient in the interests of justice on the present material to file a complaint against the witnesses and whether the finding of the learned Magistrate that it is so expedient is correct or liable to be set aside in revision.

6. In Ningappa v. Emperor, AIR 1941 Bom 408 Beaumont, C. J., observed as follows: (at p. 409)

'The question then is whether it is expedient in the interests of justice that such a charge should be made.

Now, to my mind, in determining that question it is obviously essential that the Court should) make up its mind whether it was the statement before the Magistrate under Section 164, or the statement subsequently made in Court, which was false.

I gather from the judgment of the learned Additional Sessions Judge that he is disposed to think that it was the statement made under Section 164 which was false; but there is really in evidence to enable us to determine which of the two statements was false. If the statement in Court was false, then, I agree that in the interests of justice there should be a prosecution; but sup-posing it was the statement under Section 164 which was false, what then? No doubt, a man making a statement on oath before a Magistrate under Section 164 should speak the truth; but if he does not, the least he can do is to tell the truth when subsequently he goes into the witness box. To prosecute a man who has resiled from a false statement made under Section 164 is to encourage him in the belief that it pays to tell a lie and stick to it. It is far better that a man should escape punishment for having made a false statement under Section 164 than that he should be induced to believe that it is to his interest, however, false the statement may have been, to adhere to it, and thereby save himself from prosecution. The danger of such a course leading to the conviction of innocent persons is too great to be risked. The learned Government Pleader contends that if a prosecution is not sanctioned in a case of this kind, the practice of taking statements under Section 164 may as well be abandoned. If that result follows, I am by no means satisfied that it will be a bad thing.'

The learned Chief Justice quoted with approvalthe view taken by Sir Lawrence Jenkins in Emperor v. Tripura Shankar Sarkar, ILR 37 Cal 618 at p. 622 as follows (page 410):

'This, then, is how matters stand. The Court is convinced that, of the contradictory statements now under consideration, those made in this Court were true, but those before the Magistrate were false, and on a careful consideration of the events leading up to the examination before the committing Magistrate, and of the conditions under which that examination was conducted, we are clearly of opinion that the sanction sought should not be given. Had Tripura repeated here the false story he told before the Magistrate, no such application as the present would have been made; is it to be granted because he had told the truth here? Certainly not.'

The learned Chief Justice finally concluded as follows (at p- 410):

'In my opinion, that reasoning applies, not only when the Court is satisfied that it is the earlier statement, which is false but also when the Court is hot satisfied to the contrary. As I am not satisfied in this case that it was the statement made before the committing Magistrate which was false. I am of opinion that it is not expedient in the interests of justice that there should be a prosecution. The appeal, therefore will be allowed.'

The principle of the above decision with regard to Section 476 Cr. P. C. has been accepted and applied in several decisions by the Madras High Court: vide. In re Narsigadu AIR 1949 Mad 502 and In re Bayamma : AIR1953 Mad745 .

7. Shri C. Padmanabha Reddy, appearing on behalf of the Public Prosecutor, points out that the above decision of the Bombay Court in AIR 1941 Bom 408 related to Section 476 Cr. P. C. Whereas in the present case the order concerned has been passed by the J. S. C. M. Alur under Section 479-A Cr. P. C. In particular, he points out the wording of Section 479-A (1) Cr. P. C. (as amended) as follows :-

'(1) Notwithstanding anything contained in Sections 476 - 479 when any ..... Criminal Court is of opinion that any person appearing before it as a witness has intentionally given false evidence 'in any stage of the judicial proceeding' or has intentionally fabricated false evidence for the purpose of being used in any stage of the judicial proceeding .....'

Shri Padmanabha Reddy contends that the words 'in any stage of the judicial proceeding' will also include the case of giving false evidence in a statement under Section 164 Cr. P. C. It is true that the wording of Section 479A(1) Cr. P. C. makes it clear that it will cover also cases of giving false evidence in statements under Section 164 Cr. P. C. But, it must be remembered that even before Section 479-A Cr. P. C. was introduced by the Amendment Act XXVI of 1955, there was a provision in Section 476 (1) Cr. P. C. itself to the effect 'which appears to have been committed in or in relation to a proceeding in that Court'. The words 'in relation to' were sufficient to cover statements made under Section 164 Cr. P. C. also. So, the principle of the decision of the BombayHigh Court in AIR 1941 Bom 408 applies to the present case under Section 479-A Cr. P. C. just as it did to the

facts of that case under Section 476 Cr. P. C.

8. A perusal of the orders of the learned Magistrate dated 16-1-1962, 31-1-1962, the complaint and the material on record would go to show that it cannot be concluded with certainty or with satisfaction that it was the statement by either of the witnesses under Section 164 Cr. P. C. which was true and the statement which was made in the P. R. Enquiry (P. R. C. No. 10 of 1961) which was false. Consequently, I hold that it is not expedient in the interests of justice to prosecute the two witnesses (P. Ws. 1 and 2), following the principle of the decision in AIR 1941 Bom 408.

9. I, therefore, allow this revision petition, set aside the orders of the lower Court dated 16-1-1962 and 31-1-1962 and direct withdrawal of the complaints, filed against Arjunappa and Chinna Thimmappa in accordance with the above orders, in the Court of the Judicial First Class Magistrate, Adoni in C. C. Nos. 42 and 43 of 1962.