

In Re: Sri Ram Shastry

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Court : Andhra Pradesh

Decided On : Dec-18-1959

Reported in : AIR1960AP375; 1960CriLJ889

Judge : Sanjeeva Row Naidu, J.

Acts : Part B States (Laws) Act, 1951 - Sections 6; [Indian Penal Code \(IPC\), 1860](#) - Sections 466 and 467; Hyderabad Penal Code (IPC), 1324 F - Sections 395; [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 423

Appeal No. : Criminal Revn. Case No. 589 of 1958 and Criminal Revn. Petn. No. 498 of 1958

Appellant : In Re: Sri Ram Shastry

Advocate for Def. : K. Kolanda Reddy, Adv. for ;Public Prosecutor

Advocate for Pet/Ap. : T.V. Sarma, Adv.

Judgement :

ORDER

Sanjeeva Row Naidu, J.

1. This Crl. R. C. No. 589 of 1938 is directed against the judgment and order of the Addl. Sessions Judge, Hyderabad who confirmed the con-viction and sentence of the petitioner passed by the 2nd City Magistrate, Division No. 1 Hyderabad, who

had tried the petitioner under Section 471 I. P. C. and found him guilty. The sentence passed was one year's rigorous imprisonment and a fine of Rs. 100/-.

2. Mr. Sarma the learned counsel for the petitioner has urged that the offence in this case viz., of using a forced document as genuine was, even according to the prosecution, committed some time before 23-1-1949, a fact which is not disputed. He contended that on that date, the Indian Penal Code was not in force in the Hyderabad State and instead the Hyderabad Penal Code was in force.

3. He further points out that Section 6 of the Part B States (Laws) Act (III of 1951) clearly lays down that the extension of the I. P. C., the Cr. P. C., and other enactments to the Hyderabad State will not affect whatever had taken place under the previous Act, and that any investigation or institution of proceedings in respect of something done or happened under the previous laws could be proceeded with as if the Part B States (Laws) Act (III of 1951) had not been passed. The relevant portion of Section 6 in question is as follows:

'If immediately before the appointed date (i.e., 23-2-1951) there is in force in any Part B State any law corresponding to any of the Act or Ordinance now extended to that State, that law shall, save as otherwise expressly provided in the Act, stand repealed: Provided that the repeal shall not affect:

(a) the previous operation of any law so repealed or anything duly done or suffered thereunder, or

(b) any right, privilege, obligation or liability acquired, accrued or incurred under any law so repealed, or

(c) any penalty, forfeiture or punishment incurred in respect of any offence committed against any law so repealed, or

(d) any investigation legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if this Act had not been passed.'

It may be seen from the above section that in so far as this case is concerned, the passing of Act III of 1951 and the extension of the I. P. C., and the Code of Criminal Procedure to the Hyderabad State on 23-2-1951 would not affect the institution and the trial of the offence committed in the year 1949 when the Hyderabad Penal Code and the Hyderabad Code of Criminal Procedure were in force. In other words, any offence committed in the State of Hyderabad prior to 23-2-1951 when Act III of 1951 came into force, has got to be dealt with, tried and punished under the provisions of the Hyderabad Penal Code and in accordance with the Hyderabad Code of Criminal Procedure, which were in force on the date of the offence in question.

4. So the petitioner in this case, hereinafter to be referred to as the accused, should have been prosecuted under the provisions of the Hyderabad Penal Code and tried under the provisions of the Hyderabad Criminal Procedure Code, and both the enactments must have been regarded as continuing for the purposes of these proceedings against the accused. It is unfortunate that this had not been noticed by the courts below and what we find is that the accused had been charged for an offence punishable under Section 471 I. P. O. and sentenced under that section, having been tried under the provisions of the Cr. P. C., 1898.

Mr. Sarma contends that this is clearly illegal and it is not open to the 2nd City Magistrate to charge the accused in this case with an offence punishable under the I. P. C., which was not in force in the Hyderabad State on the date of the offence and try and punish him in accordance with the provisions of the Cr. P. C., 1898, which was not in force in the Hyderabad State on the date of the offence. It is, therefore, urged that the entire proceedings are de-void of jurisdiction and must be quashed.

5. I have no difficulty whatsoever in coming to the conclusion that the charge, conviction and sentence of the accused under Section 471 I. P. C. is incompetent and the trial of the accused held under the provisions of the Cr. P. C., 1898, is also illegal and incompetent. It is clearly a case of something done without jurisdiction, which having regard to the language employed in Section 530 Cr. P. C., is void. It has to be noticed in this connection that the Hyderabad Penal Code has

provisions, similar to those relevant under the I. P. C.

For instance, Section 400, Hyderabad Penal Code deals with the offence of using a forged document and the punishment is the same as that provided for the category of forgery involved in the offence. Similarly, Section 394, Hyderabad Penal Code defines 'forgery', and renders it punishable with two years' rigorous imprisonment and fine. This corresponds to Section 465 I. P. C. Again Section 395, Hyderabad Penal Code deals with an offence corresponding to the one made punishable under Section 466 of the I. P. C. but the sentence provided for appears to be only two years' rigorous imprisonment and fine.

Similarly the offence under Section 390, Hyderabad Penal Code corresponds to the one under Section 467, I. P. C. but here again the sentence is only two years rigorous imprisonment and fine. It may be necessary to notice in this connection that the offence under Section 466, I. P. C. is punishable with imprisonment of either description for a term which may extend to seven years and fine, whereas an offence under Section 467, I. P. C. is punishable with imprisonment for life or with imprisonment of either description for a term which may extend to ten years and fine.

It may thus be seen that although there are corresponding provisions in, the Hyderabad Penal Code, the language employed may not be regarded as exactly similar to the language employed in the corresponding sections of the Indian Penal Code. In any case, the sentences provided for aggravated forms of forgery in the Hyderabad Penal Code are much less and different from the punishments provided for Under Sections 466 and 467 I. P. C. There may be other structural differences in the parallel sections but it is unnecessary for me to notice the same. It has not been disputed in this case that the accused has not been tried under the provisions of the Hyderabad Code of Criminal Procedure nor was he charged, tried and punished for the offences under the Hyderabad Penal Code.

6. There are also differences in the matter of the forum where the offences could be tried, between the provisions of the Indian Criminal Procedure Code and the provisions of the Hyderabad Criminal Procedure Code. Under Sch. I, Chapter XVII of the latter Code, an offence under Section 391 which corresponds to the one

under Section 471, Indian Penal Code, is triable by a Court of Session, District Judge or a First Class Magistrate whereas the offences punishable Under Sections 395 and 396 of the Hyderabad Penal Code are triable by the Sessions Judge or the District Judge.

There are, therefore, fundamental differences between the provisions of the Hyderabad Penal Code and the provisions of the Indian Penal Code and also between the provisions of the Hyderabad Criminal Procedure Code and the Indian Criminal Procedure Code. It cannot, therefore, be said that the trial in this case had been validly and lawfully held.

7. Another point was taken by Mr. Sarma and it is this. On the allegations in the charge-sheet and on the case put forward by the prosecution the accused is said to have made use of a document viz., an Intermediate Examination Certificate purported to have been issued by the Aligarh University, as genuine. As the matter has come before this court in revision it is not necessary for me to go into the facts or quash the findings of the court below, which in any case have not been shown to be illegal or unsupported by the evidence on record.

The finding of the learned Second City Magistrate which is confirmed by the Additional Sessions Judge, is that the accused had made use of a document namely an Intermediate Examination Certificate purporting to have been issued by the Registrar of the Aligarh University, and it is this certificate that has been shown to be false or forged by the evidence in the case. Obviously such a certificate falls within the categories of documents enumerated in Section 466, I.P.C. which is as follows:

'Whoever forges a document, purporting to be a record or proceeding of or in a court of Justice, or a register of birth, baptism, marriage or burial, or a register kept by a public servant as such, or a certificate or document purporting to be made by a public servant in his official capacity, or an authority to institute or defend a suit, or to take any proceedings therein, or to confess judgment, or a power of attorney, shall be punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.'

This read with Section 471 I. P. C., Mr. Sarma point out, would in effect and law, be the offence which according to the allegations of the prosecution is said to have been committed by the accused. A reference to the schedule of the Code of Criminal Procedure, 1898 shows that the offence under Section 366 is triable by a Court of Session and similarly the offence under Section 471 read with Section 366 is also punishable by Court of Session. Now turning to the corresponding provisions of the Hyderabad Criminal Pro-cedure Code we find that the offence of the kind described in Section 366, I. P. C. is the one that is defined in Section 395 of the Hyderabad Penal Code and this offence is triable under Hyderabad Criminal Procedure Code by the District Judge or the Sessions Judge and not by the First Class Magistrate.

In other words, whether we take the provisions of the Indian Penal Code read with tho provisions of the Code of Criminal Procedure 1898 or we take the provisions of the Hyderabad Penal Code read with the provisions of the Hyderabad Criminal Procedure Code, the Second City Magistrate, Hyderabad, had no jurisdiction to try the offence in question. On this ground also the conviction and sentence will have to be set aside.

8. The only question, therefore, that falls to be considered is whether a re-trial should be ordered. In arriving at a decision on this point Mr. Sarma points out that the interests of justice do-not demand such a course. He states that the offence is alleged to have been committed prior to 23-1-1949 and is nearly eleven years' old. He also states that notwithstanding the fact that the offence was detected as far back as 1953, the prosecution took solid five years to complete investigation into the case and filed the charge sheet only in 1958.

9. Another circumstance which is pressed into service by Mr. Sarma, the learned counsel for the accused is, that the petitioner had already suffered ono month of the imprisonment which according to the judgment of this court is illegal and had been set aside. In addition, he states that the agony and the mental torture the accused must have suffered during all these long years awaiting his fate on the possible charges to be levelled against him would itself act as sufficient punishment. It is also pointed out that the accused had been dismissed from

service even in 1953 and had lost the job which he had so much coveted, to secure by resorting to this offence, on the allegations of the prosecution.

10. It is true that the offence of using a forged document, particularly of the kind that is involved in this case, is a serious matter, and if proved, the accused ought not to escape punishment, but having regard to the inordinate, and, in my opinion inexcusable delay in launching the prosecution in this case, and also in view of the fact that more than ten years have elapsed since the alleged offence is said to have been committed and having regard also to the circumstances that the accused had already suffered some portion of the imprisonment however small, I feel that the interests of justice do not demand that the accused should be ordered to be retried.

11. I would, therefore, quash the conviction and sentence passed against the accused. The bailbonds of the accused will be cancelled and the fine if any paid by him will be refunded.

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