In Re: Osaman Ali

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Court : Andhra Pradesh

Decided On : Nov-26-1958

Reported in : AIR1959AP520; 1959CriLJ1138

Judge : Sanjeeva Rao Nayudu, J.

Acts : Criminal Prosedure Code , 1898 - Sections 222, 233, 234, 235, 236, 239 and 403

Appeal No. : Criminal Revn. Case Nos. 688 and 689 of 1958 and Criminal Revn. Petn. Nos. 576 and 577 of 1958

Appellant : In Re: Osaman Ali

Advocate for Def. : D. Sivarama Krishna, Adv. for ;Public Prosecutor

Advocate for Pet/Ap. : Mirza Munawar Ali Baig, Adv.

Disposition : Revision dismissed

Judgement :
ORDER

Sanjeeva Rao Nayudu, J.

1. The simple point that arises for consideration in these Revision Petitions is whether the prosecution in respect of two charges of criminal misappropriation

should not be allowed to proceed with and should be quashed in view of the fact that two other charges of criminal misappropriation against the same accused have ended in acquittal.

2. The main ground that is urged on behalf of the petitioner is, that Section 222(2) of the Code of Criminal Procedure, permitted the inclusion of a gross sum in respect of which the offence of criminal misappropriation is alleged to have been committed within a period of one year, without having to specify the particular items and the exact dates, and the charge so framed shall he deemed to be a charge for an offence within the meaning of Section 234, Criminal P. C.

From this it is contended by the learned counsel for the petitioner, that as the prosecution could have preferred one charge in respect of the gross amount made up of several sums misappropriated by the accused, including the sums which were the subject-matter of the two charges that are now being proceeded with, it would he illegal for the prosecution to try the accused on these charges. The plea apparently is based on Section 403, Criminal P. C., which embodied the well-known principle of autrefois acquit. Section 403, Criminal P. C., is as follows:

'403 (1), A person who has once been tried by a Court of competent jurisdiction for an of-fence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force not be liable to be tried again for the same offence nor on the same facts for any other offence for which a different charge from the one made against him might have been made under Section 236, or for which he might have been convicted under Section 237.

(2) A person acquitted or convicted of any offence may be afterwards tried for any distinct offence for which a separate charge might have been made against him on the former trial under Section 235, Sub-section (1).

(3) A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such lastmentioned offence, if the consequences had not happened, or were not known to the Court to have happened, at the time when he was convicted.

(4) A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

(5) Nothing in this section shall affect the provisions of Section 26 of the General Clauses Act, 1897, or of Section 188 of this Code.

Explanation: The dismissal of a complaint, the stopping of proceedings under Section 249, the discharge of the accused or any entry made upon a charge under Section 273, is not an acquittal for the purposes of this section.'

It may be seen from this section that the following conditions required to be fulfilled before that Section could be taken advantage of by an accused person:

(1) He should have once been tried by a Court of competent jurisdiction for an offence;

(2) He should either have been convicted or acquitted of the offence; and

(3) Such a conviction or acquittal should have remained in force.

Once the above conditions are fulfilled, the accused can claim that he is not liable to be tried again for the same offence or on the same facts for any other offence for which a different charge from the one made against him might have been made under Section 236, Criminal P. C., or for which he might have been convicted under Section 237, Criminal P. C.

3. The Section itself recognises that where a person is so convicted or acquitted of any offence, he may afterwards be tried for any distinct offence for which a separate charge might have been made against him in the former trial under Section 235, Sub-section (1). In other words, Section 403 has no application to a case where the subsequent offence for which the accused was being tried did not form part of or had nothing to do with the offence for which he had already been tried e. g., where an accused person is alleged to have committed four distinct and

separate acts of misappropriation for separate ascertained sums of money, it is open to the prosecution either to try three of them, if committed within the space of one year, at one trial and try the remaining charge at another trial or try each one of these charges separately in separate trials; for Section 233 clearly lays down that for every distinct offence of which any person is accused of, there shall be a separate charge and that every such charge shall he tried separately. The separate trials need not be held in cases covered by Sections 234, 235. 236 and 239, Criminal P. C.

The correct legal implications of S, 233, Criminal P. C., have been considered at great length in a Bench Decision of this Court to which I was a party in Bhupalli Malliah, In re. Referred Trial No. 40 of 1958 and Criminal Appeals Nos. 613 to 615 of 1958: : AIR 1959 AP477 . The principle of framing charges, therefore, is, that unless otherwise indicated, every distinct offence should be subject-matter of a separate charge and unless the case is covered by one or the other of the four sections quoted in Section 233, Cr. P. C., there must necessarily be a separate trial in respect of each charge and that even in cases which fall within sections 234, 235, 236 and 239, it would still be open to the prosecution to have these charges tried separately.

4. It Is contended by the learned counsel for the petitioner that since under Section 222(2) Cr. P. C. the prosecution have got the right to put in a lump sum including the gross amount misappropriated in the charge, the section must be deemed to imply that they are bound to do so. This contention is clearly unsustainable, for Section 222(2) is only an enabling section and not a disabling one.

It enables the prosecution, when they consider taking such a course as appropriate, or convenient, or necessary, to put in a gross sum representing the total amount misappropriated by the accused, instead of framing a large number of separate charges in respect of small sums of money which go to make up the gross amount. To spell out from such an enabling section a disability on the part of the prosecution to follow the procedure which is enjoined by the sections of the Code, such as 233, is, in my opinion, clearly wrong.

In support of the proposition that where an accused person has been tried on two distinct offences he cannot be tried again for two other offences, reliance is sought to be placed on the decisions reported in Rex v. Daya Shankar, : AIR1950 All167 ; Emperor v. Anant Narayana, AIR 1945 Bom 413; and Sidh Nath v. Emperor, : AIR1950 All167 , is a case which dealt with a charge which included more than three offences of the same kind committed in the course of one year and it was rightly held therein that this was contrary to Section 234(1) Cr. P. C. In that particular case, the accused person was put on trial for more charges than three. Their Lordships quite rightly observed:

'The charge in the present case having combined more than three offences of the same kind was in direct contravention of Section 234, Criminal P. C.' .. .. But the learned counsel argues that irrespective of the question of prejudice to the accused, the trial being in contravention of a mandatory provision of law, was bad and the defect cannot be cured by Section 537 Criminal P. C. We have after giving our anxious consideration in the matter come to the conclusion that the contention of learned counsel must prevail,'

This decision has no application to the point involved in the present revision. In fact, in view of the amendment to Section 537 and having regard to the observations of the Supreme Court in Slaney v. State of M. P., (S) : 1956 CriLJ291 , it is a matter of extreme doubt whether the views expressed by their Lordships of the Allahabad High Court in the above quoted case could be held to be any longer good law.

5. In AIR 1929 Cal 457, it was laid down that it is not desirable that an accused should be tried as many times as he had committed the offences when no could have been tried for all of them at one trial. This principle has been dissented from and overruled in Purnananda Das Gupta v. Emperor, AIR 1939 Cal 65 at p. 71 (FB), wherein their Lordships of the Calcutta High Court observed as follows : --

'Mr. Roy when dealing with the particular case of Jiban Dhupi invited us to hold that in some way or other the principle laid down in Section 403 could be extended and to give to Jiban Dhupi the benefit of the spirit underlying the provisions of that section rather than to apply the clear and precise words of the section itself. We

arc unable to take that view of the matter.

We think the principles underlying the English Common Law pleas of autrefois convict and autre-fois acquit have been embodied so far as this country is concerned within the limits, however, narrow they may be or have been stated to be, of the language of the statute itself. In our view, it would be bewildering and, indeed, might result in great injustice to the community at large were we to endeavour to stretch the language or extend the principles in the way we have been invited to do by Mr. Dinesh Ch. Roy.

The summing up of this matter therefore is that we entirely agree with the learned Commissioner that the plea under Section 403, Criminal Procedure Code, fails as regards all the three appellants whose case we have now considered, namely Purnananda Das Gupta, Niranjan Ghosal and Jiban Dhupi.'

6. These observations are in consonance with the well-known principle of law and of interpreta-tion of statutes, that when a particular principle of law or jurisprudence is embodied in a statute, the intention of the statute is obvious viz., to set out what according to the Legislature is the correct scope of that principle. The attempt to enlarge the same would virtually amount to defeat the very purpose of the Legislature embodying that principle in a provision in the statute. In this connection, the following passage of Maxwell (Maxwell on the Interpretation of Statutes, Xth Edition) at pages 4 and 5 is relevant:

'When the language is not only plain but admits of hut one meaning, the task of interpretation can hardly be said to arise. It is not allowable, says Vattel, to interpret what has no need of interpretation. Absoluta sententia expositare non indigel (plain words need no explanation). Such language best declares without more, the intention of the lawgiver, and is decisive of it. The rule of consj traction is 'to intend the Legislature to have meant what they have actually expressed.'

It matters not, in such a case, what the consequence may be. Where, by the use of clear and unequivocal language capable of only one meaning, anything is enacted by the Legislature, it must be enforced, even though it be absurd or mischievous.

When once the meaning is plain, it is not the province of a Court to scan its wisdom or its policy. Its duty is not to make the law reasonable, but to expound it as it stands, according to the real sense of the words.'

7. I have, therefore, no doubt whatsoever that in this case Section 403 Cr. P. C., has absolutely no application. I would, therefore, respectfully express my dissent from the decision in AIR 1945 Bom 413.

8. A number of decisions have also been cited by the learned Counsel for the petitioner which seem to proceed on the footing that where the subsequent charges are based on identical evidence, when the charges on which the accused had been previously tried and acquitted, it would not bo proper to try the accused over again. I most respectfully disagree with this proposition. The evidence on any one charge, as pointed out by their Lordships of the Supreme Court, can in no ease be exactly identical with the evidence on another charge, and it is for this reason that their Lordships held that no case can serve as a precedent on facts, as the facts always vary.

Further, to lay down such a proposition would lead to the most serious consequences for, when fresh evidence is forthcoming and when the subsequent charges could be supported on that evidence, and particularly when the nature and availability of that evidence could not have been anticipated, before the trial on the earlier charges is held, it would defeat the ends of justice to prevent the trial of the subsequent charges simply because the previous charges ended in an acquittal.

9. Further, in this case, the evidence on the subsequent charges is certainly not identical with the evidence on the previous charges, for, these charges relate to committing misappropriation of different sums of money relating to different individuals committed at different times and at different places; and even if the principle adumbrated by these decisions could be accepted as correct, that principle could not apply to this case on the facts. This is a case where the accused is alleged to have committed distinct and different offences of criminal misappropriation in respect of different in-dividuals and in relation to different sums of money and committed at different places and times. There is no law which can

stand in the way of the prosecution in respect of the subsequent charges going on simply because the earlier charges happened to end in an acquittal.

10. I am fully in agreement with the decision reported in Kanakayya v. Emperor, AIR 1930 Mad 978, which is a case almost on all fours with the present one, and follow the same. A decision of this court namely, Ramachandra Chotty v. State of Andhra, (1955) Andhra LT (Cri) 247 : (AIR 1958 Andhra 102), has been brought to my notice, wherein the question of extending the principle underlying Section 403 of the Code of Criminal Procedure came up for discussion.

Reliance was placed in that decision on the case reported in AIR 1929 Cal 457. As pointed out earlier, the principle laid down by this decision has been expressly dissented from and Overruled by the Full Bench of the Calcutta High Court in AIR 1939 Cal 65, (FB). It is unfortunate that this Full Bench decision had not been brought to the notice of the learned Judge who decided that case.

11. In the result, both the Revision Petitions fail and are dismissed.