

Shanthilal Vs. State of A.P.

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Court : Andhra Pradesh

Decided On : Mar-21-2002

Reported in : 2002(2)ALT(Cri)80

Judge : T. Ch. Surya Rao, J.

Acts : Indian Penal Code (IPC) - Sections 395, 397, 411 and 412; Code of Criminal Procedure (CrPC) - Sections 319

Appeal No. : Criminal Revision Case No. 1123 of 2001

Appellant : Shanthilal

Respondent : State of A.P.

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : C. Praveen Kumar, Adv.

Disposition : Criminal revision case allowed

Judgement :

ORDER

T. Ch. Surya Rao, J.

1. This Revision Case has been directed against the order dated 12.09.2001 passed by the learned VII Additional District and Sessions Judge, Fast Track

Court, Visakhapatnam, in Crl.M.P.No. 92 of 2001 in S.C.No. 20 of 2001. Under the impugned order, the learned Judge directed the petitioner along with two others to be impleaded as supplemental accused No. 3.

2. The factual matrix may be set forth at the outset for the brevity and better understanding of the matter herein below thus: The Inspector of Police, CCS Team I, Visakhapatnam City, registered a case in Crime No. 36/98 under Section 395 of the Indian Penal Code as against five accused and eventually laid the charge sheet. As against the second accused in P.R.C.No. 2 of 1999 alone, it has been committed to the Court of Session, which was taken cognizance of by the Sessions Court as S.C.No. 20 of 2001. Later, it was transferred to the file of the Fast Tract Court-cum-VII Additional District and Sessions Judge, Visakhapatnam, for trial in accordance with law.

3. The sole accused has been facing trial before that Court. The charges under Sections 397 and 412 of the Indian Penal Code were framed against him. During the course of trial, as many as 11 witnesses were examined on the side of the prosecution and the documents Exs.P.1 to P.14 were got marked besides M.Os. 1 to 9. On 20.07.2001 after the examination of P.Ws.10 and 11, the learned Sessions Judge, on a perusal of the entire evidence recorded that far and having been satisfied about the reasonable and sufficient grounds, directed show cause notices to be issued to P.W.9 and the shop owner of Visakha Jewellery, by name, Dinesh Jain as to why they shall not be impleaded as accused in this case for the offence punishable under Section 411 of the Indian Penal Code. Pursuant to the said notices, the respondents 1 and 2 before the Court below who were sought to be arrayed as accused filed their written explanations. In the explanations submitted by the respondent 2-Dinesh Jain, it was pleaded, inter alia, that he was not the owner of Visakha Jewellery.

4. So as to buttress his plea, he filed a memo along with Exs.D.1 and D.2, namely, Form D-1 and Form-B Certificate of Registration. After having perused those documents, by another docket order 16.08.2001, the learned Judge directed a show cause notice to be issued to respondent No. 3, who is the present revision petitioner. Pursuant to the said show cause notice, R.3 appeared through his

counsel and filed his written explanation pleading, inter alia, that no doubt he was the sole proprietor of Visakha Jewellery shop but he never stayed in the said premises for the last more than three years and had been running his business in Mumbai and visiting all the places in the country to promote his business and he was no way concerned with the alleged offence. After having heard on either side, the learned Judge directed R.1 to R.3 to be impleaded as supplemental accused 1 to 3 respectively in Sessions Case No. 20 of 2001.

5. Respondent No. 3, who is the present revision petitioner, alone is assailing the said order in the present Revision Case. Confessedly, the revision petitioner is the proprietor of Visakha Jewellery shop. Supplemental accused No. 1 was examined on the side of the prosecution as P.W.9 to bring home the fact that the main accused in the case sold M.Os. 4 to 9 - gold ornaments to him. M.Os. 4 to 9 are the subject matter of theft in the case, according to the case of the prosecution.

6. During the course of his evidence, P.W.9 deposed on oath that he had been working as sales man in Visakha Jewellery shop; and that on 24.04.1999 Kancharapalem Police came to their shop and questioned him about the purchase of gold articles-M.Os. 4 to 9 from the person whom they brought to the shop; and that immediately thereafter he handed over M.Os. 4 to 9-ornaments which he purchased from the said person to the Police.

7. In the cross-examination, he stated that he handed over those articles to the owner of the shop. It may be mentioned here that the prime accused denied the said sale and suggested to the witness that what he deposed was false. Since the name of the owner of the shop was not disclosed in the evidence of this witness, a question was put to the witness by the Court, to which the witness answered that the owner was one Dinesh Jain; and that he purchased M.Os. 4 to 9 for an amount of Rs.8,000/-; and that by taking the said amount from the owner-Dinesh Jain, he paid the same to the vendor-accused.

8. The witness was further emphatic that the owner was present in the shop on the date i.e. 24.04.1999 when the Police visited the shop.

9. In this background, as aforesaid, the supplemental accused were sought to be added.

It is appropriate here to consider Section 319 of the Code of Criminal Procedure - the provision germane in the context for consideration and the same may be extracted herein below thus:

'319. Power to proceed against other persons appearing to be guilty of offence: -
(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused the Court may proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court, he may be arrested, or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under sub-section (1), then-

(a) the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard;

(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.'

10. From a perusal of the provision herein above excerpted, what is sine qua non is that it should appear from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused.

11. Therefore the evidence adduced in the case shall disclose that the proposed accused appear to have committed an offence.

In the instant case, except the evidence of P.W.9, there has been no other evidence disclosing prima facie the commission of the offence by the revision petitioner. It is obvious, therefore, that the testimony of P.W. 9 alone is the basis for arraying the revision petitioner as supplemental accused. The evidence of P.W.9 is quite unequivocal that it is he who purchased M.Os. 4 to 9 from the prime accused in the case. It discloses further that he handed over M.Os. 4 to 9 to his owner and the name of the owner is one Dinesh Jain. His evidence further shows that he paid an amount of Rs. 8,000/- as price for M.Os. 4 to 9 after having taken the said amount from the owner-Dinesh Jain.

12. It is obvious thus that the source of consideration passed in this case for purchasing M.Os. 4 to 9 is the said Dinesh Jain. It is quite immaterial at this stage to consider whether he is the owner or not of Visakha Jewellery shop.

There has been no whisper whatsoever in the evidence of P.W.9 about the revision petitioner. Of course, the revision petitioner is no other than the brother of the said Dinesh Jain and he is the owner of the shop.

13. His plea, inter alia, in his explanation was that he was not present at the relevant time in Visakhapatnam as he was away in Mumbai and in fact he has been residing there.

From this evidence available on record, would it appear that the revision petitioner has committed an offence is the moot question. Pausing here for a moment, it may be mentioned here that as many as 11 witnesses have been examined in the case. The main Investigating Officer, who is the list witness No. 12, appears alone to be examined. Therefore, it is obvious that the evidence on the side of the prosecution was almost on the verge of being closed.

14. At this stage, is it expedient to add a person as supplemental accused, which invariably involves a de novo trial insofar as that person is concerned is yet another important question to be considered. It is apt here to consider a recent pronouncement of the Apex Court in MICHAEL MACHADO v. CENTRAL BUREAU OF INVESTIGATION. In para 11 of the said Judgement, the Apex Court held thus:

'The basic requirements for invoking the above section is that it should appear to the court from the evidence collected during trial or in the inquiry that some other person, who is not arraigned as an accused in that case, has committed an offence for which that person could be tried together with the accused already arraigned. It is not enough that the court entertained some doubt, from the evidence, about the involvement of another person in the offence.

In other words, the court must have reasonable satisfaction from the evidence already collected regarding two aspects.

First is that the other person has committed an offence. Second is that for such offence that other person could as well be tried along with the already arraigned accused.'

15. In the instant case, except Exs.D.1 and D.2 marked by the Court below when produced by the second respondent along with a memo, there is no other evidence, which discloses that the revision petitioner is the owner. Of course, there is no gainsaying of the same.

16. However, the evidence of P.W.9 is otherwise. P.W.9 is so categorical and unequivocal that the amount of Rs.8,000/- paid by him to the accused-vendor has been given to him by one Dinesh Jain.

17. Therefore, it is not only a case where there is no semblance of evidence implicating the revision petitioner in the case, nay a case where it is otherwise which shows that the amount has been paid by one Dinesh Jain. With this evidence available on record, there is no reason to believe that the revision petitioner appears to have committed the offence. Apropos the second point it is apt here to extract the observations of the Apex Court in para 12 of its Judgement referred to supra thus:

'But even then, what is conferred on the court is only a discretion as could be discerned from the words 'the court may proceed against such person'.

18. The discretionary power so conferred should be exercised only to achieve criminal justice. It is not that the court should turn against another person

whenever it comes across evidence connecting that other person also with the offence. A judicial exercise is called for, keeping a conspectus of the case, including the stage at which the trial has proceeded already and the quantum of evidence collected till then, and also the amount of time, which the court had spent for collecting such evidence.

It must be remembered that there is no compelling duty on the court to proceed against other persons.'

19. In the present case, inasmuch as there is no reasonable prospect that the case as against the revision petitioner ending in conviction and as it involves the re-commencement of the whole process of trial as against the revision petitioner, I am of the considered view that the whole exercise becomes futile and it is not worth wasting the whole labour already undertaken by the Court by examining as many as 11 witnesses.

20. For the foregoing reasons, the order impugned has to be interfered with for enabling the Court below to proceed with the trial to its normal culmination.

In the result, the Criminal Revision Case is allowed and the impugned order insofar the present revision petitioner is concerned, is hereby set aside.

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