

Kameshwar and anr. Vs. State

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Court : Allahabad

Decided On : Aug-13-1957

Reported in : AIR1958All318; 1957CriLJ276

Judge : R.K. Chowdhry, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 233, 235(1) and 239

Appeal No. : Criminal Revn. No. 411 of 1957

Appellant : Kameshwar and anr.

Respondent : State

Advocate for Def. : Yasoda Nandan, Adv.

Advocate for Pet/Ap. : K.K. Bajpai, Adv.

Disposition : Revision allowed

Judgement :

ORDER

R.K. Chowdhry, J.

1. This is an application in revision by Kameshwar and Murli, who were the two accused in Sessions Trial No. 109 of 1956 before a learned Assistant Sessions Judge of Kanpur. They along with one Ram Ratan are alleged to have entered into

a criminal conspiracy to cheat and to have succeeded in doing so by selling forged railway receipts to a number of shop-keepers of Kanpur in the month of August 1955. It was alleged that five such sales were effected.

Charges for offences under Sections 420, 467 and 468 I P C. were framed against them in respect of each of the five sales, and there was a common charge of criminal conspiracy under S 120B in respect of all the said offences. Ram Ratan was absconding so that these charges were framed only against Kameshwar and Murli, and as the Magistrate who enquired into these offences was of the view that he could not adequately punish them he made an order committing the accused for trial by the court of session.

The trial came up before an Assistant Sessions Judge of Kanpur, and on an application made in that behalf by the prosecution, the learned Assistant Sessions Judge by his order dated 7-1-1957 split up the case into six trials, one in respect of the charge under Section 120B, I. P. C., and five others in respect of the charges under Sections 420, 467 and 468, I. p. C., relating to each of the five transactions of sale of allegedly forged railway receipts. Kameshwar alone went up in revision against that order to the learned Sessions Judge of Kanpur who rejected the revision on 14-2-1957.

Thereafter the present revision was filed by both the accused, Kameshwar and Murli. The learned Assistant Sessions Judge appears to have passed the order in question by a misinterpretation of the word 'transaction' in Section 239 (d), Criminal Procedure Code, since he has referred to the five sales as five transactions. In point of fact, according to the prosecution case the applicants had committed different offences in relation to the sales in question.

The point for determination therefore was whether those different offences had been committed 'in the course of the same transaction' within the intendment of Section 239 (d). To that aspect of the matter the learned Assistant Sessions Judge seems to have given no thought. The omission appears to have been caused by the said misinterpretation of different offences as different transactions.

2. The learned Sessions Judge seems to disagree with the view of the learned Assistant Sessions Judge, and he did so in view of the fact), that there was also a charge of criminal conspiracy against the two accused persons. The learned Sessions Judge was however not sure whether, on account of the charge of criminal conspiracy, there could have been a joinder of the charges and a single trial since he remarked that he was not quite sure if the view taken by the trial court was correct and, further, that in the case of a conspiracy 'probably' all the charges could be tried and enquired into in one trial.

He went on to hold however that the provisions with regard to joinder of charges being only discretionary, the learned Assistant Sessions Judge appeared to have exercised the discretion properly inasmuch as the splitting up of the case into the various trials was likely to facilitate defence.

3. Since neither of the two courts below would appear to have examined the legal position of the matter, it becomes necessary to do so now. The number of persons charged being more than one, the relevant provision relating to joinder of charges is the one contained in Section 233 of -the Code.

And since those persons were not accused of the same offence, or of more than one offence of the same kind within the meaning of Section 234 of the Code, and since the case did not fall under any of the specific categories mentioned in Clauses (e), (f), (g) of Section 239, it had only to be seen whether the applicants were 'persons accused of different offences committed in the course of the same transaction' within the purview of Clause (d) of that section.

There could be no doubt with regard to the prosecution allegation as to the applicants having committed different offences. The only question therefore was whether those offences had been committed in the course of the same transaction.

4. Neither the word 'transaction' nor the phrase 'same transaction' has been defined in the Code. And quite advisedly so, since both connote ideas so kaleidoscopic in character as to elude definition. A clue to what 'same transaction' means is however furnished by the wording of Clause (1) of Section 235 of the

Code which lays down one of the rules of joinder of charges when more offences than one are committed by the same person.

It permits of joinder of charges in one trial of offences committed 'in one series of acts so connected together as to form the same transaction'. There is no such amplification of the phrase 'same transaction' in Clause (d) of Section 239, but that is presumably due to the fact that, the context (namely, joinder of charges) being the same, the undefined phrase is meant to be interpreted alike in both the sections. *Shri Nath v. Puran Mal*, AIR 1942 All 19 (PB) (A).

In Section 239 as well as in Section 235 an offence or offences should therefore be deemed to be committed in the course of the same transaction if the same be committed in one series of acts so connected together as to form the same transaction. Whether the series of acts are so connected as to form the same transaction would depend on the facts and circumstances of each case. Illustrations (a) to (h) appended to Section 235 are meant, as illustrations are always meant, for guidance of those who seek to gather the intention of the legislature.

The *vinculum juris* which interlinks a series of acts so intimately as to form the same transaction is different in each case. It may be proximity of time and place or continuity of action or community of purpose and design or relation of cause and effect or that of principal and subsidiary. But since the illustrations could not by their very nature be exhaustive of the intention of the legislature, the above are not the only ways in which a series of acts may be so connected together as to form the same transaction. Any attempt at a definition of the term 'same transaction' with reference only to the links afforded by the illustrations, particularly when the Legislature itself has not defined the term, would therefore be an attempt in the wrong direction. All that the Legislature has done is to afford in Clause (1) of Section 235 a pointer or an index to the determination, in accordance with the facts and circumstances of each case, of the question of whether certain offences can be said to have been committed in the course of the same transaction.

That pointer or index is: Are the series of acts resulting in the commission of the offences so connected together as to form the same transaction? The nature of

the connection of the series of acts is therefore the determining factor.

5. Where therefore a number of offences are alleged to have been committed in pursuance of a criminal conspiracy, the link which unites the various offences is the link of conspiracy so that, whatever be the offences committed in pursuance of the conspiracy, there would be at least one single crime which the accused would be said to have committed in respect of all of them, namely, the crime of criminal conspiracy. Qua the offence of criminal conspiracy therefore the various offences could be said to have been committed 'in the course of the same transaction'.

It has therefore been held that where several persons enter into a criminal conspiracy to commit offences, and offences are committed in pursuance thereof, the offences should be deemed as having been committed in the course of the same transaction. *Babulal Chaukhani v. Emperor*, and *S. Swaminathanam v. State of Madras* : 1957 CriLJ422 .

6. The learned Sessions Judge was no doubt right that the matter of joinder of charges in one and the same trial is a matter within the discretion of the trial court. This would be apparent from the fact that whereas the general principle under Section 233 with regard to there being a separate charge and a separate trial in respect of each distinct offence of which any person is accused is mandatory, the other provisions relating to joinder of charges which follow and are contained in Sections 234, 235, 236 and 239, are merely discretionary since the word used in S 233 is 'shall' and that used in the other sections is 'may'.

At the same time, that discretion has to be exercised judicially and not arbitrarily. And one good test for exercising the discretion one way or the other would be to see whether it would lead to the prejudice or harassment of the accused. The learned Sessions Judge was of the view that as there would be a separate set of witnesses in respect of each of the five sales, the defence might find it difficult to subject the witnesses to proper cross-examination.

There is nothing to show that the prosecution witnesses in respect of each sale would necessarily be different from those relating to the others; but even supposing that to be so, it does not appear how cross-examination of the various

sets of witnesses would be rendered difficult by reason of a Joinder of all the charges in one trial. On the other hand, it has been urged on behalf of the present applicants that they would be seriously prejudiced in their defence since they are poor persons and are not possessed of adequate financial resources to stand separate trials in respect of the various charges.

Splitting up of the case into separate trials should not therefore have been resorted to where such a course was, likely to prejudice the accused in their defence although joinder of charges in one trial was permissible under the law. It is manifest therefore that discretion in regard to the splitting up of the case into several trials has been improperly exercised in the present case.

7. The application in revision is accordingly allowed, the order of the learned Assistant Sessions Judge splitting up the case into several trials is set aside and he is directed to proceed with the trial of the applicants on a Joinder of all the charges in one trial under Section 239 (d), Criminal P. C. The record of the case will be sent down forthwith to enable him to do so without further delay.

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