

Niranjan Vs. Emperor

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Court : Allahabad

Decided On : Mar-05-1934

Reported in : AIR1934All811; 150Ind.Cas.1140

Appellant : Niranjan

Respondent : Emperor

Judgement :

ORDER

Bennet, J.

1. This is an application in revision on behalf of one Niranjan who has been sentenced by the appellate Court to 9 months' Rule I, under Section 411, Penal Code. The application has been argued only on legal grounds which are expressed in the first ground of revision as follows:

Because the joint trial of the applicant with Musai and Badri is illegal and the whole trial is vitiated.

2. The trial Court framed two charges as follows: A charge sheet against Niranjan, Musai and Badri charging them that on 5th September 1933, they were found in dishonest possession of two bullocks of Dwarka which they knew or had reason to believe to be stolen and therefore were guilty of an offence under Section 411, Penal Code. There was also a charge sheet framed against; Musai with two heads

firstly, that on 16th September 1933, he was in dishonest possession of a bullock belonging to Ramcharittar which he knew or had reason to believe to be stolen and thereby committed an offence under Section 411, I.P.C., and secondly that on the 18th September 1933 he was in in dishonest possession of a bullock belonging to Ramcharittar which he knew or had reason to believe to be stolen and thereby committed an offence under Section 411, I.P.C. Musai was convicted on all three charges and Niranjana and Badri were also convicted of the offence charged against them.

3. These convictions were upheld by the appellate Court. So far as the charge of the 5th September 1933 is made against all the three accused persons it undoubtedly comes under the provision in Section 239(a) Cr. P.C., 'persons accused of the same offence committed in the course of the same transaction.' That section lays down that those persons 'may be charged and tried together.' There was therefore quite legally a joint charge and a joint trial against all three accused for the transaction of the 5th September 1933. I find that this fact distinguishes this case from all the rulings which have been quoted because in none of those rulings was this condition satisfied. The question before this Court is whether as regards the accused Musai it was legal to add the two charges in regard to the 16th September and the 18th September 1933 which concerned him alone and which were also under the same Section 411, I.P.C. As regards Musai Section 234(1) provides as follows:

When a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences, (whether in respect of the same person or not), he may be charged with, and tried at one trial for any number of them not exceeding three.

4. This sub-section provides that Musai may be tried at one trial for any number of these offences not exceeding three. He was tried in this manner, and as regards Musai there was nothing illegal in the proceeding. The suggestion of Learned Counsel for Niranjana is that because Section 234(1), Criminal P.C., was applied to Musai the proceeding would in some way be barred by the provisions of Section 239, Criminal P.C. Now, Section 239 is sometimes inaccurately referred to as the

only section which authorises a joint trial. The section in the opening words does not merely refer to a joint; trial, but it refers to something different and it states: 'The following persons may be charged and tried together,' and in the margin the reference is 'What persons may be charged jointly.' In each of the Sub-section (a) to (g), there are references to joint; charges. The section appears to me to lay down the cases where there may be a joint charge for which certain persons may be tried together. In the present case the section applies in its Sub-section (a) to the joint charge of 5th September 1933. More particularly in Sub-section (c) which was added by Act 18 of 1923, there is a provision for an adaption of Section 234 for the case of joint charges for more than one accused. But the section does not appear to me to exclude the procedure which has been adopted by the Magistrate in the present case. There is nothing in the section specifically stating that as regards one or more of the persons accused there should be no application to that person or persons of the previous sections such as Section 234. Learned Counsel has failed to show any ruling which would prohibit such applications. I now proceed to deal with the rulings on which he has relied. His first ruling was *Ram Sahai v. Emperor* A.I.R. 1921 All. 408. In that case the facts are stated on p. 611, (of 19 A.L.J.). The Court does not appear to have held that there was any one of the different dacoities for which all the accused could be jointly tried under the provisions of Section 239(a). In *Ram Prasad v. Emperor* A.I.R. 1921 All. 246, there was a ruling in regard to four persons who were tried jointly at one trial for three dacoities committed by them, all at different places. on two dates.

5. It was held that the joint trial was not warranted by Section 239, Criminal P.C., and was illegal. Whatever the merits of this decision may have been in the year 1931, it has no longer any validity because that particular case has now been provided for in Section 239(c) by Act 18 of 1923. Reference was also made to *Sewak v. Emperor* : AIR1928 All417 . In that case there was no charge under Section 239(a) and no charge under any other sub-section of Section 239, Cr. P.C. The Court had tried two persons charged with harbouring two offenders, and two persons charged with harbouring two different offenders. There was no ground under Section 239 for a joint trial. In *Janeshar Das v. Emperor* : AIR1929 All202 , a learned Single Judge of this Court held that Section 239(c) will not cover six charges, but will only cover three charges. This has no bearing on the question

before the Court. In *Paltu v. Emperor* : AIR1933 All354 , there was a case where there was no charge on any Court which would come under any of the provisions of Section 239, Criminal P.C. This therefore was not a case which has any bearing on the present case. As no authority has been shown for the proposition advanced by Learned Counsel I consider that it has not been shown that there was any illegality in the trial. The Courts below have assumed that there was an illegality and have held that the accused were not in any way prejudiced by the alleged illegality. This forms the second ground of the revision Learned Counsel was obscure as to how his client Niranjana could have been in any way prejudiced. He suggested that the mind of the Court might have been prejudiced against Niranjana by evidence produced against Musai on the charges which did not concern Niranjana, and in ground No. 3 it is suggested that Musai should have been called as a witness against the applicant so that he could have been cross-examined.

6. The calling of Musai as a witness had nothing to do with the charges in which Niranjana was not concerned. The defence of Niranjana was that Musai, who was a servant, was the guilty person and that he was to blame and that Niranjana was not to blame. So far as the mind of the Court would be influenced at all by the separate charges against Musai that influence would be to the effect that Musai was guilty of these offences of dishonest possession of bullocks on occasions on which Niranjana was not concerned, and therefore the indication would be that on the joint charge it was Musai who was more likely to be guilty and not Niranjana. The addition of the separate charges therefore would be in favour of the accused Niranjana and not to his prejudice. I consider that no ground has been made out for revision. Accordingly I refuse this application in revision.