

Satya Narain Sinha Vs. the State

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Court : Allahabad

Decided On : Nov-14-1958

Reported in : AIR1959All703; 1959CriLJ1265

Judge : A.N. Mulla, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 222, 222(2), 240 and 561A

Appeal No. : Criminal Revn. No. 318 of 1958

Appellant : Satya Narain Sinha

Respondent : The State

Advocate for Def. : Shankar Sahai, Asstt. Govt. Adv.

Advocate for Pet/Ap. : Tej Narain, Adv.

Disposition : Application rejected

Judgement :

ORDER

A.N. Mulla, J.

1. This is an application under Section 561-A, Cr. P. C. in which it is prayed that the proceedings in the Sessions Trial No. 52/1 of 1953 may be quashed as the

applicant has been acquitted and unless a fresh commitment is made the trial cannot proceed.

2. There are two aspects which have been presented before met. The first contention has been that when the original commitment was made, the trial Court amended the charge and prosecuted the applicant only for a specific period and this amounted to his staying the prosecution of the applicant in respect of the other period and on a correct interpretation of Section 240, Cr. P. C, this stay amounts to an order of acquittal, The other, contention advanced before me is that this second prosecution is now sought to be revived after a lapse of more than 2 1/2 years and this amounts to a persecution and the Courts should not permit the prosecuting agency to persecute the applicant in this manner.

3. I will take up the first contention. When the Magistrate committed this case, he framed a charge and he stated in this charge that criminal misappropriation was committed by the applicant between October 1951 and March 1953 and the total amount of money which was criminally misappropriated was Rs. 16,904-6-0. The charge framed by the Magistrate was obviously defective for under the Criminal Procedure Code even after utilising the provisions of Section 222 (2) a charge relating to a period of more than one year could not have been framed. The Sessions Judge therefore, had to amend this charge and he very rightly framed a charge relating to a period between 16-5-1952 and 6-4-1953.

The result was that the total amount of misappropriated money also decreased from Rs. 16,904/-and odd annas to Rs. 8,319/- and odd annas. The applicant was convicted and sentenced to two years' rigorous imprisonment and a fine of Rs. 8,000/-The Sessions Judge after convicting him in this case did not proceed to try the applicant for the misappropriation committed by him in the remaining period which was included in the charge framed by the Magistrate. The applicant went up in appeal, but his appeal was dismissed with the modification that the fine of Rs. 8,000/- was reduced to a fine of Rs. 5,000/-. The appellate Court dismissed this appeal on 12-7-1957. The trial Court had convicted him on 17-11-1955, and it was in May 1958 that the prosecuting agency again presented a petition before the Sessions Judge, Lucknow, that the applicant should be prosecuted for the

misappropriation committed by him between October 1951 and May, 1952.

The Sessions Judge granted this prayer and transferred this case for disposal to an Additional Sessions Judge. The applicant made a prayer before the Additional Sessions Judge that his prosecution will not be legal and, therefore it should be quashed. The Additional Sessions Judge observed that the case has been transferred to him by the Sessions Judge and, therefore, he has no option, but to proceed with the trial of the case. The applicant then came up before this Court and presented this application.

4. It would be seen from the history given above that after the applicant was convicted on, 17-11-1955, neither the Court tried the applicant nor the prosecution made any prayer that the applicant should be made to stand a second trial for the offence committed by him during that period which was not covered in the first trial. It is contended before me that an inference should be drawn from this conduct that both the Court and the prosecution were satisfied that the applicant has been adequately punished in the first trial and, therefore it was neither desirable nor necessary to proceed with the second trial. I am inclined to agree with this contention.

The very fact that even after the appeal was dismissed by the High Court the prosecuting agency took ten months to file a fresh application indicates that it was at a very late stage that the prosecution decided to press the second prosecution of the applicant. I am, however, of the opinion that this delay on the part of the prosecuting agency to insist upon this prosecution does not make the second prosecution illegal. It is certainly a circumstance which should weigh with the trial Court when it awards sentence to the applicant, if it finds that the charges are made out against him.

The applicant is obviously prejudiced by the procedure adopted by the prosecution. If the second trial had proceeded immediately after the first trial and the Court was satisfied that the applicant was guilty but was adequately punished in the first trial, was open to the Court to make the two sentences of imprisonment concurrent. The applicant has now almost undergone the entire sentence inflicted upon him and even if the trial Court now comes to the conclusion that the applicant

has been adequately punished, it cannot give him this relief. I cannot help feeling that there is an element of persecution in this belated prosecution.

The better way for the prosecution was that if it really felt that the applicant was not adequately punished, it should have made a prayer for the enhancement of sentence awarded to the applicant in the first case. No such prayer was made at that time which indicates that even the prosecution did not consider it an inadequate sentence. Changes must have taken place during these three years and perhaps the prosecuting agency which was satisfied three years ago is no longer functioning and some other agency feels that the punishment awarded was inadequate. The fate of accused persons cannot be subjected to the individual idiosyncrasies of prosecuting agencies.

There should be a finality in these matters and even if the first prosecuting agency was wrongly satisfied, its discretion should not have been disturbed. However, as observed by me above I cannot quash these proceedings because I cannot hold that this second prosecution is illegal and an abuse of the process of law nor can I say that it is against the interest of justice. The right to prosecute an offender for committing an offence no doubt rests with the prosecuting agency, but the Courts are expected to award sentences in a manner which takes every circumstance into account and not to play into the hands of the prosecuting agency. Even if the case is proved against the offender the question of determining the amount of sentence is entirely within the discretion of the Court and though it cannot stop the prosecution from biting it can remove its teeth.

5. The counsel for the applicant drew my attention to Section 240, Cr. P. C. I am of the opinion that Section 240, Cr. P. C. does not help the applicant in his contention.

6. Section 240, Cr. P. C. runs as follows :

'When a charge containing more heads than one is framed against the same person, and when a conviction has been had on one or more of them, the complainant, or the officer conducting the prosecution, may, with the consent of the Court, withdraw the remaining charge or charges, or the Court of its own

accord may stay the inquiry into, or trial of, such charge or charges. Such withdrawal shall have the effect of an acquittal on such charge or charges unless the conviction be set aside, in which case the said Court (subject to the order of the Court setting aside the conviction) may proceed with the inquiry into or trial of the charge or charges so withdrawn.'

7. The counsel for the applicant contends that the word 'withdrawal' used in this section includes a stay made by the Court and as in this case the trial Court did not proceed with the second trial, it is clear that it stayed the trial on the remaining charges and, therefore, this stay has the effect of an acquittal. In my opinion this meaning cannot be given to the words used in Section 240, Cr. P. C. If the Legislature intended that withdrawal should also include stay made by a trial Court, I fail to see why the Legislature could not have expressed itself in clear and unambiguous terms. It was very easy for the Legislature to say that such 'a withdrawal or stay' shall have the effect of an acquittal instead of using the word withdrawal alone.

The Legislature has used two different words for the termination of proceedings by two different authorities. It used the word 'withdrawal' when the prosecuting agency does not want to press the remaining charges. It used the word 'stay' when the Court in its discretion does not proceed to try the accused on the remaining charges. It was, therefore, conscious of the two different meanings of these two terms and yet in the very next sentence it has used only the word 'withdrawal' and has omitted to add the word 'stay'. I am therefore, of the opinion that where the Court does not proceed with the remaining charges, it does not amount to a withdrawal within the meaning of Section 240, Cr. P. C. and, therefore, such stay cannot operate as an acquittal.

8. The counsel for the applicant placed a decision of the Patna High Court before me in *Jeobaran Singh v. Ram Kishun Lal*. 27 Cr. L T 359 : (AIR 1925 Pat 623), in which the following observation was made by a learned Single Judge of that Court. The paragraph runs as follows :

'If conviction is obtained on such a trial the Court should stay the inquiry into or trial of the other charges which will have the effect of an acquittal of the accused

on those charges subject to the event of the conviction being set aside by higher authorities.'

9. It seems to me that the learned Judge was not primarily concerned at the moment with interpreting the language of Section 240, Cr. P. C., but had only made a passing reference. The discretion exercised by the Court not to proceed with the remaining charges cannot be equated with a withdrawal of those charges by the State. The word 'Stay' by itself indicates that the matter is to be kept in abeyance and in case the first order of conviction is set aside it can be brought out of cold storage again, The word 'withdrawal' on the other hand connotes a dropping of the charge and not keeping it in abeyance and so it could only be revived with the permission of the Court who sets aside the order of conviction.' Till then such withdrawal operates as an acquittal.

10. In view of my observation made above. I reject this application. The trial Court should, how-ever, decide whether the applicant has been adequately punished or not and if it comes to the conclusion that the applicant has been adequately punished then in case it finds him guilty it can award a sentence to the applicant which would be consistent with this conclusion. Whether the applicant has paid the fine or not would be relevant in considering the adequacy of the punishment.

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