

Badrinath Naik Vs. State

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Court : Orissa

Decided On : Nov-06-1992

Reported in : 1993(I)OLR88

Judge : S.C. Mohapatra, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 212(2) and 219

Appeal No. : Criminal Revision No. 175 of 1989

Appellant : Badrinath Naik

Respondent : State

Advocate for Def. : Addl. Standing Counsel

Advocate for Pet/Ap. : Y. Das, Adv.

Disposition : Revision allowed

Judgement :

S.C. Mohapatra, J.

1. Setting aside the conviction and sentence and remitting back the case for fresh trial by the appellate Court is grievance of the accused in this revision.

2. Accused was ,the Secretary of Gurunthi Service Co-operative Societies. He was charged to face trial for having committed breach of trust of several amounts in the year 1981-82. Total amount of mis-appropriation was alleged to be Rs. 68,257.07 paise .Accused denied the charge and, pleaded not to be guilty. On trial he was convicted Under Section 409, IPC, and was sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs. 5,000/- in default to undergo simple imprisonment for six months. In appeal by the accused, it has been held that provision of Section 219 read with Section 212 of the Code of Criminal Procedure has not been complied with. Appellate Court has, therefore directed a fresh trial as provided Under Section 464, Cr PC.

3. Under Section 464, Cr PC the Court of appeal being of opinion that failure of justice has in fact been occasioned by not complying ' with requirement of Section 219, Cr PC directed retrial. Section 219, Cr PC reads as follows :

'219. Three offences of same kind within year may be charged together-(1) 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.

(2) Offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Indian Penal Code (45 of 1860) or of any special or local law :Provided that, for the purpose of this section, an offence punishable under Section 379 of the Indian Penal Code (45 of 1860) shall be deemed to be an offence of the same king as an offence punishable Under Section 380 of the said Code, or of any special or local law,shall be deemed to be an offence of the same kind as an attempt to commit such offence, when such an attempt is an offence.'

If this provision alone is applied, appellate Court might be correct that each item of criminal breach of trust was an offence and therefore, accused could not have been tried at or a trial for any number of item more than three. However, Section 212(2), Cr PC is a special provision relating to criminal breach of trust or criminal misappropriation. It reads as follows :

'212. Particulars as to time, place and person-(1) The charge shall contain such particulars as to the time and place of the alleged offence, and the person (if any) against whom, or the thing (if any) in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.

(2) When the accused is charged with criminal breach of trust or dishonest misappropriation of money or other movable property, it shall be sufficient to specify the gross sum or, as the case may be, describe the movable property in respect of which the offence is alleged to have been committed, and the dates between which the offence is alleged to have been committed, without specifying particular items or exact dates and the charge so framed shall be deemed to be a charge of one offence within the meaning of Section 219 :Provided that the time included between the first and last of such dates shall not exceed one year.

This provision makes it clear that the gross sum during the entire period of one year can be specified. It is true that while specifying the gross sum, the dates are to be specified without which the accused may be prejudiced and the same would not be a curable irregularity. Where, however details are given, charge in respect of more than three items may not be a failure of injustice, in view of Section 212(2), Cr PC.

3. Since appellate Court has not given the due importance to Section 212(2), Cr PC and accused does not claim prejudice, appellate Court is required to hear the merits. In case accused relies on Section 219, Cr PC appellate Court can consider the question along with merits without directing retrial

4. Is result, revision is allowed, appellate order is set aside and it is directed that the appeal shall be heard on merit.