

Prabhakaran Vs. State of Kerala

Prabhakaran Vs. State of Kerala

SooperKanoon Citation : sooperkanoon.com/723591

Court : Kerala

Decided On : Dec-02-1985

Reported in : 1986CriLJ1411

Judge : S. Padmanabhan, J.

Appellant : Prabhakaran

Respondent : State of Kerala

Judgement :

ORDER

S. Padmanabhan, J.

1. On the basis of the arguments advanced before me, the simple question for consideration is whether the prosecution is barred by limitation under Section 468 of the Criminal P.C.

2. The revision petitioner is the accused in C.C. 3/80 on the file of the Judicial First Class Magistrate, Alwaye. He was charge-sheeted for having committed offences punishable under Sections 39 and 44 of the Indian Electricity Act. The Magistrate convicted him under both the counts. For the offence under Section 39 he was sentenced to pay fine of Rs. 500/- and for the offence under Section 44, the sentence awarded was fine of Rs. 250/-. He preferred Crl. Appeal 52/81 before the Additional Sessions Judge, Parur. The appeal was allowed in part. Conviction and

sentence for the offence under Section 39 of the Indian Electricity Act were set aside and he was acquitted on that count. Conviction and sentence under Section 44 of the Indian Electricity Act were maintained. The criminal revision petition is directed against the said conviction and sentence.

3. For the offence under Section 39 of the Indian Electricity Act, the punishment prescribed is that of the offence of theft under Section 379 I.P.C. which is imprisonment up to a period of three years. For the offence under Section 44 of the Indian Electricity Act the punishment provided is only fine extending up to Rs. 500/-. Section 468 of the Code of Criminal Procedure provides for a bar to taking cognizance after the period of limitation. According to Section 468(2)(a), the period of limitation is six months, if the offence is punishable with fine only. If the offence is punishable with imprisonment for a term exceeding one year, but not exceeding three years the period of limitation provided under Section 468(2)(c) is three years. Section 469 of the Code says that the period of limitation, in relation to an offender, shall commence on the date of the offence or where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the first day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier. In this case the crime was admittedly detected on 20-9-1977. If so the period of limitation, according to Section 469(1)(b), will commence on 20-9-1977. The case was registered on 22-9-1977. Charge was laid before court only on 6-12-1978 which is evidently more than a year after the commission of the offence was made known to the aggrieved person or to the police officer as the case may be. Under Section 468(2)(a) of the Cr. P.C the prosecution for an offence under Section 44 of the Indian Electricity Act was evidently barred by limitation by that time. But the revision petitioner was prosecuted not only for an offence punishable under Section 44 of the Indian Electricity Act but also for the major offence punishable under Section 39 of the Indian Electricity Act, the punishment of which is imprisonment up to three years. If so under Section 468(2)(c) of the Code the prosecution would have been well within time because the period of limitation provided is three years.

4. Before the Magistrate the revision petitioner pleaded that he cannot be prosecuted for the offence under Section 44 of the Indian Electricity Act since the

charge under that section has already become barred by limitation. That contention was rejected on the basis of Section 468(3). In this case prosecution was both under Sections 39 and 44. By the time when the charge was laid prosecution for the offence under Section 44 alone was barred by limitation. Section 468(3) provides that for the purpose of the section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment. That means in computing the period of limitation for a prosecution which involves major and minor offences, the offence involving the maximum punishment alone will be taken into account. If taking cognizance of that offence is not prohibited because the prosecution is within the period of limitation, cognizance of the minor offences will go along with it even if independent charges for those offences themselves became barred by limitation. It was on this ground that the Magistrate rejected the plea of limitation in relation to the offence under Section 44.

5. That finding was seriously challenged before me. Section 468(3) was introduced for the first time by Section 33 of the Cr. P.C. Amendment Act, 1978 (Act 45 of 1978) which came into operation only on 18-12-1978. The case was charge-sheeted on 6-12-1978 before this provision came into force. It was argued that the provision cannot be retrospective. If prosecution for an offence has already become barred by limitation, there is no question of the right reviving by a provision which came into force subsequently. One of the objects of the provision for limitation is to prevent cases being filed long out of time as a result of which material evidence may disappear and to ensure fairness of trial as enshrined in Article 21 of the Constitution. But there is the possibility of a contention that even without Section 468(3) the petition envisaged by that sub-section was available because prosecution for several offences together was not prohibited, but permitted. Those questions are only of academic interest and importance in this case because even otherwise the revision petitioner can succeed on the ground of limitation. Anyhow it is doubtful whether without Section 468(3) a prosecution for offences which were barred by limitation could have been successfully launched along with prosecution for an offence which was not barred.

6. Now the position is that acquittal of the revision petitioner by the Sessions Judge for the offence under Section 39 has become final because it is not challenged by the State by filing an appeal. That means he has not committed an offence punishable under Section 39 and he could have been prosecuted only for the offence under Section 44. If so, period of limitation for the entire prosecution could have been as if the offence committed was one under Section 44 alone. Otherwise the position will be that dishonest complainants and investigating officers could easily overcome the bar of limitation by incorporating some major offences also without bona fides. If the ultimate acquittal for these offences will have no change in the impact of limitation, then successful prosecutions for minor offences could be very well had even after the expiry of limitation. I do not think that it is the correct position.

7. It is true that Section 468(1) has incorporated a prohibition against courts in taking cognizance after expiry of the period of limitation. That means a duty is cast upon the court to apply its mind even before taking cognizance to decide whether the prosecution is within time or not. But that pre-cognizance stage decision will be without notice to the accused. It may happen that even after application of mind the courts may wrongly take cognizance of barred offences without realising that they are barred by limitation. Cognizance taken by courts cannot bar the accused from raising the question of limitation after they enter appearance on receipt of process or even during trial or at the conclusion of trial. At the conclusion of trial if the accused is acquitted for the major offences and found guilty only for the minor offences, the cognizance of which was barred by limitation, on that ground alone the trial courts could acquit the accused. The appellate or revisional courts also could consider the question of limitation and acquit the accused in cases where the conviction is only for offences which were barred by limitation even when cognizance was taken by the trial court or the committing court. Period of limitation could be computed only in relation to the offence proved against the accused.

8. In this case as matters now stand, the prosecution is justified only for the offence under Section 44. At the time when cognizance was taken, the offence was already barred by limitation by expiry of time. If so, cognizance was bad and illegal. Conviction on a barred prosecution is a further illegality.

The criminal revision petition is allowed. Conviction is set aside and the revision petitioner is acquitted. Fine, if paid, will be refunded.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com