

Raghavan Vs. State of Kerala

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Court : Kerala

Decided On : Jun-30-1998

Reported in : 1998CriLJ3649

Judge : S. Marimuthu, J.

Acts : Indian Penal Code (IPC) - Sections 34, 304B and 498A; Code of Criminal Procedure (CrPC) , 1974 - Sections 300; [Constitution of India](#) - Article 20(2)

Appeal No. : Crl. M.C. No. 2794 of 1996

Appellant : Raghavan

Respondent : State of Kerala

Advocate for Def. : S.U. Nazar, Public Prosecutor

Advocate for Pet/Ap. : P. Vijaya Bhanu and; Manojkumar, Advs.

Judgement :

ORDER

S. Marimuthu, J.

1. This petition has come before this Court for review of the order passed by the Assistant Sessions Judge, Thrissur, framing charge against the petitioner, his wife and son in S.C. Nos. 88 and 89 of 1994. In S.C. No. 88 of 1994, first accused is

the present petitioner, father and the 2nd accused is his son. In S.C. No. 89 of 1994, first accused is the son, 2nd accused is the father and the 3rd accused is the mother.

2. The facts as culled out from the arguments of the learned counsel, Mr. Manojkumar, for the petitioner and the learned Public Prosecutor, Mr. S.U. Nazar, are summarised hereunder: On 4-7-1992 at about 6.30 p.m., the victim by name Sumathi, wife of the son accused Balakrishnan and daughter-in-law of the other two accused, Raghavan (present petitioner) and Ammalu, committed suicide by jumping into the well. On the complaint lodged by one of the brother of the deceased to the police on 5-7-1992, a case was registered in Crime No. 69/92 of Erumapetty Police Station under Section 498-A read with Section 34, I.P.C. against the father and son.

3. Since the parents of the deceased were not satisfied with the investigation in Crime No. 69 of 1992, yet another brother of the deceased filed a private complaint before the Magistrate under Sections 304-B and 498-A read with Section 34, I.P.C. against the son, the father and mother. That was the case in S.C. No. 89 of 1994. The police charge-sheeted case was assigned S.C. No. 38 of 1994. Learned Sessions Judge of Thrissur Division on receipt of the case records from the Judicial First Class Magistrate, Kunnankulam. ' made over the case to the Assistant Sessions Judge, Thrissur for trial and disposal.

4. The Assistant Sessions Judge on receipt of records of both the cases, heard the counsel for': the accused (including the present petitioner, father) and the Addl. learned Public Prosecutor and perused the records of both the cases and framed charge in S.C. No. 88 of 1994 under Section 304-B and 498-A read with Section 34, I.P.C. against the father and son. In S.C. No. 89 of 1994, the Asst. Sessions Judge framed charge against the son, father and mother under the same Sections of the Indian Penal Code. In both the cases, the accused denied the charge framed against them.

5. Now the grievance of the petitioner, father, as urged by his counsel is that originally in the police case registered in Crime No. 69 of 1992, the case was investigated for the offence alleged to have been committed under Section 498-A

read with Section 34, I.P.C. and on the basis of the investigation, final report was also filed by the police under the same Section But, however, the Assistant Sessions Judge has framed the charge in addition to the above Section, under Section 304-B, I.P.C. also and it is not in accordance with rule of law and, therefore, on that short ground, it has to be quashed. It was also his contention that the accused persons should not be subjected to two trials in respect of a single offence. Learned counsel for the petitioner, Mr. Manojkumar, in this aspect, as stated supra, has raised a question of law. Learned Public Prosecutor, Mr. Nazar, also, to some extent in this context, submitted as to the legal position raised by the learned counsel for the petitioner.

6. The Assistant Sessions Judge admittedly has framed charges in two separate sessions cases for the same occurrence. Article 20(2) of the [Constitution of India](#) provides that no person shall be prosecuted and punished for the same offence more than once. Section 300 of the Code of Criminal Procedure would provide that a person who has been once tried by a Court of jurisdiction for an offence and convicted or acquitted of the said offence shall not be liable to be tried again for the same offence. No doubt, Section 300 of the Code of Criminal Procedure comes into application only after the final disposal of the criminal case. However, the spirit of the Section 300, Cr.P.C. reflecting thereon is so conspicuous that a person cannot be subjected to face for the same offence in two separate trials. Article 20(2) of the Constitution is also manifestly clear that the accused cannot be prosecuted and punished for the same offence in two separate criminal prosecutions. On the above statutory laws, a rule of law can be rightly laid down in the present case before me, to the effect that the petitioner, the father-in-law of the victim, cannot be subjected to face the trials of the two sessions cases in respect of the same offence said to have been committed. Hence the learned Asst. Sessions Judge is not correct in framing the charges in respect of the same offence against the present petitioner, his wife and son in one and against the petitioner and his son in the other case. In the private complaint in S.C. No. 89 of 1994, charge has been framed against the present petitioner, his wife and son under Section 304-B and 498-A read with Section 34, I.P.C. In the police charge sheeted case, S.C. No. 88 of 1994, the wife of the present petitioner is not an accused. Therefore, criminal prosecution can be rightly proceeded with only in

S.C. No. 89 of 1994 wherein all the three persons are the accused. In the private complaint (S.C. No. 89 of 1994), the list of witnesses has been annexed as per law. In the final report of the police in S.C. No. 88 of 1994, the names of the witnesses are mentioned. But the names of one Srinivasan, Suseela, Leela Raghavan, Suresh, Rajan and some of the police investigating officers (excepting Dy. S.P.) have not been stated as witnesses in the private complaint (S.C. No. 89 of 1994). Therefore, the above names found in the final report of the police can be included as witnesses in the complaint in S. C. No. 89 of 1994 as supplementary witnesses of the complainant. Learned Sessions Judge would examine all the witnesses, viz. those who are already cited as witnesses in the private complaint and also those stated supra (in the police final report) as supplementary witnesses of the complainant (in S.C. No. 89 of 1994) and dispose of the case in accordance with law.

7. The investigating officers in the police charge sheeted case in S.C. No. 88 of 1994 shall render all assistance by producing the relevant records to the Court to record a satisfactory finding on merit. The additional Public Prosecutor of that Court will appear for the complainant along with the advocate already engaged by the complainant in S.C. No. 89 of 1994.

8. On account of my foregoing reasons, the charge framed by the Assistant Sessions Judge in S.C. No. 88 of 1994 stands quashed. The case diary of the police, as I have pointed out above, in Crime No. 69 of 1992 (S.C. No. 88 of 1994) shall be considered by the Assistant Sessions Judge for all purposes, legally needed.

9. In respect of the trial is concerned in S.C. No. 89 of 1994, learned Sessions Judge can proceed the same in accordance with my observations made above. This Crl. M.C. is thus, disposed of.