

Babusing Jodhasing Jamadar Vs. State

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Court : Gujarat

Decided On : Mar-14-1968

Reported in : AIR1969Guj324; (1969)GLR998

Judge : N.G. Shelat, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 260, 260(1) and 537;
[Indian Penal Code \(IPC\), 1860](#) - Sections 34, 323, 332, 504 and 506

Appeal No. : Criminal Appeal No. 790 of 1967 with Criminal Revn. Appln. No. 450 of 1967

Appellant : Babusing Jodhasing Jamadar

Respondent : State

Advocate for Def. : A.H. Thakar, Asst. Govt. Pleader in Cr. Appeal No. 790/67 and; D.C. Trivedi, Adv. in Cr. Rev. Appln.

Advocate for Pet/Ap. : D.C. Trivedi, Adv. in Cr. Appeal No. 790/67 and; A.H. Thakar, Asst. Govt. Pleader in Cr. Rev. Appln.

Judgement :

ORDER

N.G. Shelat, J.

1. This appeal arises out of an order passed on 26-9-67 by Mr. B.N. Doctor, City Magistrate, 10th Court, Ahmedabad, in Summary Case No. 50 of 1965 whereby the appellant-accused came to be convicted and sentenced to suffer rigorous imprisonment for seven days and to pay a fine of Rs. 100/-, or in default, to suffer further rigorous imprisonment for ten days for an offence under Section 332 read with section 34 of the Indian Penal Code. He is further convicted and sentenced to pay a fine of Rs. 100, or, in default, to suffer rigorous imprisonment for ten days for an offence under Section 323 read with Section 34 of the Indian Penal Code. In respect of the other offences for which he came to be charged he has been acquitted.

2. One Shri Kantilal Bapalal Mody, an Advocate and a receiver appointed by the City Civil Court in Civil Suit No. 806 of 1961, filed a complaint Ex. 1 against the accused-appellant in respect of offences punishable under Sections 323, 504 and 506 of the Indian Penal Code in the Court of the City Magistrate, 10th Court, Ahmedabad. The process was directed to be issued against the accused in respect of offences under Sections 323, 504 and 506 Part I of the Indian Penal Code. Since the offences were triable under a summary procedure as contemplated in Section 260(1) of the Criminal Procedure Code, the learned Magistrate followed the procedure contemplated in Chapter XXII of the Code. After recording the substance of evidence of some of the witnesses, the learned Magistrate framed a charge Ex. 5 against the accused in respect of his having committed offences punishable under Sections 332, 323 and 504 of the Indian Penal Code. In the alternative, he was charged for the offences under Sections 332 and 323 read with Section 34 of the Indian Penal Code. The same procedure was continued even thereafter, and after considering the effect of the evidence adduced in the case, found the accused guilty and sentenced him as stated above. Feeling dissatisfied with that order, the accused has come in appeal.

3. Mr. Trivedi, the learned advocate for the appellant-accused, contended that the summary procedure followed by the learned Magistrate in respect of the offences with which he came to be charged, was not legal and that the proceedings, therefore, are liable to be quashed. Section 260 provides as follows:--

'260(1) Notwithstanding anything contained in this Code -

(a) any Presidency Magistrate, (City Magistrate).

(b) ** ** ** **

(c) ** ** ** **

may, if he or they think fit, try in a summary way all or any of the following offences:--

(a) offences not punishable with death, imprisonment for life or imprisonment for a term exceeding six months;

XX XX XX (2) XX XX XX In other words, an offence punishable with imprisonment for a term exceeding six months cannot be tried by following the summary procedure contemplated in Chapter XXII of the Code. That is no doubt subject to Clauses (b) to (m) set out therein. The offence under Section 332 is punishable with imprisonment of either description for a term which may extend to three years or with fine or both. Since this offence does not fall under any of the Clauses (b) to (m) and as the punishment for this offence is more than six months, it cannot be tried following the summary procedure in the case. While, therefore, at the early stage i.e. before the charge came to be framed by the learned Magistrate, the summary procedure adopted by him may have been proper in view of the offences punishable under Sections 323, 504 and 506 of the Indian Penal Code falling under Clauses (c) & (j) of Sub-section (1) of Section 260 of the Criminal Procedure Code, but once the learned Magistrate on the material before him decided to frame a charge also in respect of an offence under Section 332 of the Indian Penal Code, he could not have continued to proceed with the case following the same summary procedure. That would affect the accused in a considerable manner for he would, otherwise, get advantage of a regular trial in the case. A little carefulness would have spared the trouble of the accused having to face a retrial and also the public time.

4. Now section 530 of the Code is as under:--

'530. If any Magistrate, not being empowered by law in this behalf, does any of the following things, namely:--

** ** (c) tries an offender summarily, or

** his proceedings shall be void.'

The learned Magistrate was, as pointed out above, not empowered by law to try any accused summarily in respect of any such offence under Section 332 of the Indian Penal Code, and if he, therefore, did so, the proceedings in that respect have to be quashed as they are void. It would not be an irregularity curable/ under Section 537 of the Criminal Procedure Code. The learned Magistrate had, therefore, committed a grave error in law in continuing the same summary procedure after his having framed a charge under Section 332 of the Indian Penal Code. The mere fact that the two other offences such as falling under Sections 323 and 504 of the Indian Penal Code were triable in the summary manner, does not entitle or authorise him to try the accused in respect of other offence under Section 332 of the Indian Penal Code by the same procedure.

5. In those circumstances, the entire proceedings in the case shall be quashed. The order of conviction and sentence passed by the learned Magistrate against the accused-appellant is, therefore, set aside. The fine, if paid, shall be refunded to the accused-appellant.

6. The case shall be sent back to the Court of the Chief City Magistrate, Ahmedabad, who shall transfer it to be placed before any Magistrate other than the Magistrate who finally decided the case, for disposal in accordance with law.

7. The State of Gujarat has filed Criminal Revision Application No. 450 of 1967 for enhancement of the sentence passed against the accused in the case. In view of the order already passed in this main appeal, this application would not survive and stands dismissed.

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