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State Vs. Shrinath

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Court : Rajasthan

Decided On : Jan-30-1962

Reported in : AIR1963Raj14; 1963CriLJ218

Judge : J.S. Ranawat, C.J. and; P.N. Shinohal, J.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 235, 236, 237, 403, 403(1) and 403(2); ;Indian Penal Code (IPC) - Sections 409 and 477A

Appeal No. : Criminal Appeal Nos. 68 to 73 of 1961

Appellant : State

Respondent : Shrinath

Advocate for Pet/Ap. : Renu Chatterjee, Adv.

Disposition : Appeal dismissed

Judgement :

Ranawat, C.J.

1. These are six criminal appeals Nos. 68 to 73 of 1961, both inclusive. All these appeals arise from the judgment of the Additional Sessions Judge No. 1, Jodhpur, dated the 7th of May, 1960. The accused Shrinath was committed to Sessions by the First Class Magistrate No. 3. Jodhpur, for trial under Sections 409, 467, 471 and 477A, Indian Penal Code. He was in the employment of the Municipal Board,

Jodhpur, and in that capacity he was alleged to have committed criminal breach of trust in respect of certain sums of money from the 19th of June, 1954 to the 22nd of July, 1955. In all, he misappropriated Rs. 9,445/6/9. The accused drew up treasury challans from time to time and made deposit entries in the books of account when in fact' he pocketed the amounts in whole or in part. When the accounts were audited, one such item of embezzlement came to light and, on the report of the Administrator of the Municipality, a case under Section 409, Indian Penal Code was registered against him. It was revealed during the investigation that he had embezzled municipal funds from time to time to the extent of Rs. 9,445/6/9.

After commitment to the Court of Session, anobjection was raised on behalf of the accused thatthere was misjoinder of charges relating to misappropriation and falsification of accounts. TheAdditional Sessions Judge upheld the objection ofthe accused and he, therefore, split up the trialinto 12 separate cases. He tried the accused foran offence under Section 409, Indian Penal Codeand convicted him thereunder. On appeal, theconviction was upheld by this Court on the 15thof November, 1959. The learned trial Judgedropped three cases of offences under Sections 467and 471, Indian Penal Code and no appeal waspreferred from that order. When the trials ofthe other 8 cases were taken up for offences underSection 477A, Indian Penal Code, an objection wasraised that they were barred by Section 403 of theCriminal Procedure Code. The learned AdditionalSessions Judge, placing reliance on the decision inEmperor v. Jhabbar Mull, AIR 1923 Cal 179.allowed the objection. The State has, therefore, filed these six appeals from the orders of the Additional Sessions Judge, Jodhpur, by which the proceedings in the 8 cases were dropped.

2. The question involved in these appeals is whether the trials of the accused for offences under Section 477A, Indian Penal Code are barred under Section 403, Criminal Procedure Code for the transaction relating to offences under Section 409, Indian Penal Code with which he was charged and convicted included the facts about the alleged falsification of accounts. As already stated, the learned Additional Sessions Judge has relied on the decision of the Calcutta High Court in AIR 1923 Cal 179 in reaching the above mentioned conclusion. In that case, the

accused was acquitted of an offence under Section 408, Indian Penal Code and he was then prosecuted for an offence under Section 477A, Indian Penal Code in respect of the false entries made by him in the accounts for the amounts alleged to have been embezzled by him. It was observed by Sanderson, C. J. as follows:

'I have considered the matter, and I have come to the conclusion that, on the facts of this case, the accused ought not to be put on his trial m respect of these charges. If he were so tried, in my judgment, it would in effect amount to trying him again for the same offences as those upon which he has already been tried and acquitted by the jury, although the charges now before the Court are framed in a different manner.'

The decision in Jhabbar Mull Lakkar's case, AIR 1923 Cal 179 was followed by the Allahabad High Court in Mahadeo Prasad v. Emperor, 38 Cri LJ 368: (AIR 1937 All 117). In that case the accused was convicted of an offence under Section 408 or in the alternative, Section 408 read with Section 109, Indian Penal Code, by a First Class Magistrate. On appeal, the Sessions Judge set aside the conviction and sentence under Sections 408 or 408 read with Section 109, Indian Penal Code and directed the accused to be committed to the Sessions Court to stand his trial for an offence under Section 477A. Indian Penal Code. It was held by the High Court of Allahabad that after the accused had been acquitted of an offence under Sections 408 or 408 read with Section 109, Indian Penal Code, he could not be tried again on the same facts. The decision in Jhabbar Mull Lakkar's case, AIR 1923 Cal 179 was held to lay down good law.

3. Section 403, Criminal Procedure Code is as follows:

'403. Person once convicted or acquitted not to be tried for same offence.--(1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again lor the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under Section 236, or for which he might have been convicted under Section 237.

(2) A person acquitted or convicted of any offence may be afterwards tried for any distinct offence for which a separate charge might have been made against him on the former trial under Section 233, Sub-section (1).

(3) A person convicted of any offence constituted by any act causing consequences which, together with such act constituted a different offence from that of which he was convicted, may be afterwards tried for such lastmentioned offence, if the consequences had not happened, or were not known to the Court to have happened, at the: time when he was convicted.

(4) A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

(5) Nothing in this section shall affect the provisions of Section 26 of the General Clauses Act, 1897 (X of 1897), or Section 188 of this Code'. Under Section 403, Criminal Procedure Code, the trial of the accused for an offence under Section 477A, Indian Penal Code would be barred on account of his conviction under Section 409, Indian Penal Code if it is held that he could be charged and tried in the alternative of the offence under Section 477A when he was tried for an offence under Section 409, Indian Penal Code. But if it is held that the accused could be charged and tried for distinct offences of criminal breach of trust and falsification of accounts at the same trial, there would be no bar to his trial for the later offence after his conviction under the former. The answer to the question, thus, depends on the further question whether, on the facts of the case, the accused could be charged at the time of his previous trial in the alternative? If so his subsequent trial is barred. In other words it is necessary to determine having regard to the series of acts constituting the transac-tion whether the accused could be tried and convicted at the previous trial both for the offences of criminal breach of trust and falsification of accounts as per the provision of Section 235(1), Criminal Procedure Code or in the alternative as per Section 236, Criminal Procedure Code.

4. Section 235(1), Criminal Procedure Code reads as follows:

'If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for every such offence.'

The accused in the instant case is alleged to have forged treasury challans, and made false entries in the books showing deposits of various amounts of money in the treasury and thereby misappropriated the said amounts from time to time. He was tried for an offence under Section 409, Indian Penal Code only and was convicted. He could have been tried at the same trial both for the offence of criminal breach of trust and for falsification of accounts, as provided by Section 235(1). Even if the two offences are said to have been committed in a series of acts constituting one transaction, an accused can be convicted for both of them separately at one and the same trial for the essential ingredients of one offence are quite different from those of the other.

The ingredients of an offence under Section 477A, Indian Penal Code are that,--

(i) the person coming within its purview must be a clerk, officer or servant, or be employed or act in the capacity of a clerk, officer or servant,

(ii) he must wilfully and with intent to defraud (a) destroy, alter, mutilate or falsify any book, paper, writing, valuable security or account which belongs to or is in possession of his employer, or has been received by him for or on behalf of his employer, or (b) make or abet the making of any false entry in, or omit or alter or abet the omission or alteration of any material particular from or in, any such book, paper, writing, valuable security or account.

The ingredients of an offence under Section 409, Indian Penal Code are,--

(i) entrusting any person with property or with any dominion over property.

(ii) the person entrusted dishonestly mis-appropriating or converting to his own use that property, or dishonestly using or disposing of that property or wilfully suffering any other person so to do in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied which he has made touching the discharge of such trust,

(iii) the entrustment should be in his capacity of a public servant, or in the way of his business as a banker, merchant, factor, broker, attorney or agent.

A comparison or the ingredients of an offence under Section 409 with that of Section 477A, Indian Penal Code, makes it apparent that the ingredients of the two offences are different from each other and the only common point is the capacity of the accused being that of an employee. In one case he dishonestly misappropriates the property in violation of the trust, and in the other he falsifies the accounts with intent to defraud, etc. etc. There is thus no scope for any doubt as to whether one offence is committed or the other, and provisions of Sections 236 and 237, Criminal Procedure Code, cannot be invoked in such a case. Consequently at the time of the previous trial of the accused charges could not have been framed in the alternative for the two offences on the facts and circumstances of this case. There is no bar under Section 403(1), Criminal Procedure Code to the subsequent trial of the accused for an offence under Section 477A, I. P. C. for the simple reason that alternative charges could not have been framed against the accused at the previous trial as per Section 236, Criminal Procedure Code, for offences under Sections 409 and 477A, Indian Penal Code. This case is covered by Section 403(2), Criminal Procedure Code and subsequent trial is permissible under it.

We find support of this view by the following observations in Narasingha Rout v. Rameswar Mohapatra, AIR 1958 Orissa 141:

'Thus, the express terms of this Sub-section are to the effect that after the first trial and acquittal a fresh trial cannot be held on the same facts for any other offence for which he might have been charged under Section 236, or convicted, under Section 237, Cri. P. C. It does not support the view that on the same facts a fresh trial cannot be held under any circumstances.

On the other hand, Sub-section (2) of that section says that the previous acquittal in respect of an offence will not be a bar to a fresh trial for any distinct offence for which a separate charge might have been made against him in the former trial under the provisions of Sub-section (1) of Section 235, Cri. P. C. Hence if the two Sub-sections of Section 403, Cri. P. C. are construed together, the conclusion is

that if in the first trial an alternative charge could have been made, under Section 236, Cri. P. C. or the accused could have been convicted without such a charge under Section 237, Cri. P. C. the second trial on the same facts would be barred But if, in the first trial, a separate charge under Sub-section (1) of Section 235, Cri. P. C. might have been framed, a second trial for that offence will not be barred.'

5. In this view of the matter, the trial of the accused for offences under Section 477A, Indian Penal Code cannot be held to be barred by his conviction for an offence under Section 409, Indian Penal Code in respect of the same transaction. However, the accused has already been suitably punished for the offence of criminal breach of trust by 2 years' rigorous imprisonment and a fine of Rs. 1,000/-; and it appears rather harsh, though legal, to harass him by putting him to stand separate trials on charges of falsification of accounts which were committed for no other purpose than misappropriation of money. He should have been and could be tried together for all these offences. The learned Judge was in error in splitting up these cases and in ordering separate trials for them. We think the interest of justice would be served by dropping the proceedings of all these 8 cases.

6. We, therefore, maintain the order of dropping the proceedings although on different consideration. The appeals are dismissed.

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