

Vinod Kumar Vs. State and ors.

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Court : Rajasthan

Decided On : Aug-30-1968

Reported in : AIR1969Raj266; 1969CriLJ1268

Judge : D.S. Dave, C.J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 177, 178, 179, 180, 181, 181(2), 182 and 239; [Indian Penal Code \(IPC\), 1860](#) - Sections 406 and 411

Appeal No. : Criminal Revn. No. 265 of 1967

Appellant : Vinod Kumar

Respondent : State and ors.

Advocate for Def. : S.K. Tewari, Dy. G.A.,; S.L. Mardia, Adv. for Prabhu Dayal and;

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

Disposition : Petition dismissed

Judgement :

ORDER

D.S. Dave, C.J.

1. This is a revision application by one Vinod Kumar, under Section 439 of the Code of Criminal Procedure and it arises in the following circumstances.

2. The non-petitioner No. 2 Prabhudayal filed in the Court of Additional Munsif-Magistrate, Bikaner, a complaint against non-petitioner No. 3 Rakesh Kumar on 5-11-1965. It was stated by him that on 24-7-1965 Rakesh Kumar had obtained from him one transistor on hire on the condition that he would pay Rs. 5 per day for its use, but he failed to pay the amount which was due from him and further failed to return the transistor. It was alleged by the complainant that when he demanded the amount and asked for the return of the transistor from Rakesh Kumar, the latter replied that he had pledged it with one Nathmal Bubna, Proprietor, Sharda Hotel, Chandpole Gate, Jaipur, since he was in need of money. It was, therefore, prayed by the complainant that since the accused had committed criminal breach of trust in respect of the radio which was entrusted to him, he should be punished for an offence under Section 406, I.P.C.

3. On 28-2-1966 he presented another complaint before the same Court. In that complaint it was stated that although the Court had issued a search, warrant for the recovery of the transistor, accused Vinod Kumar manoeuvred against its recovery, that he had filed a suit against Rakesh Kumar, obtained a decree and got the transistor auctioned in execution of the decree, that Vinod Kumar had dishonestly received the stolen property from Rakesh Kumar knowing it to be stolen and, therefore, Vinod Kumar should also be tried along with Rakesh Kumar for an offence under Section 411, I.P.C.

4. On the basis of the above complaint, the Magistrate took cognizance of the offence under Section 411, I.P.C., against Vinod Kumar also and ordered a warrant to be issued against him. Against this order dated 28-2-1966, Vinod Kumar filed a revision application in the Court of Sessions Judge, Bikaner. It was argued on his behalf in that Court that no prima facie case under Section 411, I.P.C., was made out against him and the Magistrate ought not to have ordered a warrant to be issued against him.

This argument was repelled by the learned Sessions Judge by observing that it is an offence to keep an unlicensed radio, that the licence of the radio was in the

name of the complainant Prabhu Dayal, that Vinod Kumar had received the property knowing that there was no licence in the name of Rakesh Kumar and, under the circumstances, it could not be said that there was no prima facie case against the accused. With these observations, he dismissed the revision application. Not being satisfied with this order, Vinod Kumar filed a revision application in this Court. The application in this Court is based on a totally different ground which relates to alleged lack of jurisdiction on the part of the trial Court.

5. Smt. Renu Chatterjee, learned counsel for the petitioner, has urged that on the complainant's own showing, even the offence of criminal misappropriation or criminal breach of trust alleged against Rakesh Kumar took place at Jaipur and not at Bikaner, because, according to the complainant himself, although the transistor was received by accused Rakesh Kumar at Bikaner, it was 'not alleged if Rakeshkumar intended to commit criminal breach of trust so long as he was at Bikaner. All that was alleged by the complainant was that when Rakesh Kumar went to Jaipur and when he was in need of money, he pledged it with the proprietor of Sharda Hotel. Learned counsel proceeds to say that the offence alleged against Vinod Kumar is also said to have been committed by him at Jaipur and that although the Magistrate at Bikaner could take cognizance of the offence against Rakesh Kumar by virtue of the specific provisions of Section 181(2) of the Code of Criminal Procedure, he could not try a case against the petitioner Vinod Kumar at Bikaner because the offence of receiving stolen property, if at all, was committed at Jaipur and the provisions of Section 181, Criminal P. C., were of no help to the complainant.

It is pointed out that if it were a case of theft and receiving stolen property which was the subject-matter of theft, both the offences could still be tried together at Bikaner by virtue of the provisions of Section 181 (3), Criminal P. C., but that subsection could not apply to the present case. According to the learned counsel, Vinod Kumar could not be tried at Bikaner under any of the sections beginning from 177 to 183 and, therefore, all the proceedings taken in the Court of Additional Munsif-Magistrate, Bikaner, should be quashed.

6. In reply, it was urged by the learned counsel for the complainant that Vinod Kumar could be tried at Bikaner because of the provisions of Sections 180 and 181 (2), Criminal P. C. It is further urged that even If the provisions of these two sections are not attracted, he can be tried there because of the provisions of Section 239 (e), Criminal P. C.

7. I have given due consideration to the arguments of the learned counsel on either side. It may be pointed out that Chapter XV of the Code of Criminal Procedure which deals with the Jurisdiction of the criminal Courts in inquiries and trials and the venue of inquiry and trial, begins with Section 177 which lays down that every offence shall ordinarily be inquired into and tried by a Court within the local limits of whose jurisdiction it was committed. This section would obviously not apply to the petitioner Vinod Kumar, because it is not alleged by the complainant that the offence under Section 411, I.P.C., was committed by him at Bikaner.

Even against Rakesh Kumar, who is said to have been entrusted with the transistor by the complainant, it was not alleged if he committed the offence of criminal misappropriation or criminal breach of trust at Bikaner. It was also not alleged if Rakesh Kumar had any intention of misappropriating the transistor so long as he was in Bikaner. The allegation against him was that he went to Jaipur and since he was in need of money, he pledged it with the proprietor of Sharda Hotel. The actual misappropriation took place only when the transistor was pledged in breach of the conditions of entrustment.

8. Section 178, Criminal P. C., deals with the power of the State Government to order cases to be tried in different Sessions Divisions and has obviously no bearing on the present case. Section 179 provides that if a person is accused of the commission of any offence by reason of anything which, has been done, and of any consequence which has ensued, such offence may be inquired into or tried by a Court within the local limits of whose jurisdiction any such thing has been done, or any such consequence has ensued. Obviously, this section is also not attracted to the facts and circumstances of the present case, because the alleged offence of receiving the stolen property was not a necessary consequence of the first offence of criminal breach of trust.

In other words, it was an independent offence.

Then, we come to Section 180 on which the learned counsel for the complainant wants to rely. It lays down that when an act is an offence by reason of its relation to any other act which is also an offence or which would be an offence if the doer were capable of committing an offence, a charge of the first-mentioned offence may be inquired into or tried by a Court within the local limits of whose jurisdiction either act was done. In my opinion, this section also would not apply to the present case, because the only act alleged against Rakesh Kumar at Bikaner was that he had received the transistor on hire. That act on his part did not amount to an offence. According to the complainant himself, the offences of criminal breach of trust and receiving stolen property both took place at Jaipur.

Both of them, therefore, could certainly be inquired into and tried at Jaipur. The offence of alleged criminal breach of trust against Rakesh Kumar could also be tried at Bikaner because of the specific provisions of Section 181 (2), Criminal P. C. Section 180 thus is of no help in enabling the Court at Bikaner to try Vinod Kumar. According to learned counsel for the complainant, Vinod Kumar could also be tried at Bikaner because of the provisions of Section 181 (2), but that section only lays down that the offence of criminal misappropriation or of criminal breach of trust may be inquired into or tried by a Court within the local limits of whose jurisdiction any part of the property which is the subject of the offence was received or retained by the accused person, or the offence was committed.

The case against Rakesh Kumar would certainly be covered by this section, but the case of Vinod Kumar does not fall within the ambit of this section. Thus, Sections 177) to 182 would not enable the Court at Bikaner to inquire into and try the offence alleged against Vinod Kumar. The matter, however, does not end here, because it is also urged by the complainant's counsel that the Court at Bikaner had jurisdiction to try Vinod Kumar on account of the provisions of Section 239, Criminal P. C. In support of his argument, learned counsel has referred to *Purushottamdas Dalmia v. State of West Bengal*, AIR 1961 SC 1589.

9. The learned counsel for the petitioner contends that the observations made by their Lordships of the Supreme Court in that case should be taken to be confined

to the facts and circumstances of that case. It is pointed out that it was a case of criminal conspiracy and of certain overt acts committed in pursuance of the conspiracy beyond the jurisdiction of the Court where the conspiracy was hatched. It is contended that the said case is distinguishable on facts from the present case.

10. Learned counsel for the petitioner is true to the extent that the said case was one of criminal conspiracy and of certain overt acts committed in pursuance of the said conspiracy beyond the territorial jurisdiction of the Court, but this Court cannot ignore the observations made by their Lordships and the law which is laid down in the said case.

11. It was observed by their Lordships that 'jurisdiction of Courts is of two lands: One type of jurisdiction deals with respect to the power of the Courts to try particular kinds of offences. That is a jurisdiction which goes to the root of the matter and if a Court not empowered to try a particular offence does try it, the entire trial is void. The other jurisdiction is what may be called territorial jurisdiction. Similar importance is not attached to it.'

Their Lordships then proceeded to refer to the provisions of Sections 178, 188, 192 (2) and 531, Criminal P. C., to show how equal importance was not attached by the Legislature to territorial jurisdiction and observed as follows:--

'Territorial jurisdiction is provided just as a matter of convenience, keeping in mind the administrative point of view with respect to the work of a particular Court, the convenience of the accused who will have to meet the charge levelled against him and the convenience of the witness who have to appear before the Court. It is, therefore, that it is provided in Section 177 that an offence would ordinarily be tried by a Court within the local limits of whose jurisdiction it is committed.'

After citing Assistant Sessions Judge, North Arcot v. Ramaswami Asari, AIR 1914 Mad 330, to support the above observations, their Lordships further observed as follows:--

'It is further significant to notice the difference in the language of Section 171 and Section 233. Section 177 simply says that ordinarily every offence would be tried

by a Court within the local limits of whose jurisdiction it was committed. It does not say that it would be tried by such Court except in the cases mentioned in Sections 179 to 185 and 188 or in cases specially provided by any other provision of law. It leaves the place of trial open. Its provisions are not peremptory. There is no reason why the provisions of Sections 233 to 239 may not also provide exceptions to Section 177, if they do permit the trial of a particular offence along with others in one Court....'

The above observations (specially that which is contained in the last sentence) leave no room for any doubt that in their Lordships' view it is not only Sections 179 to 185 and 188, which provide an exception to the general rule laid down in Section 177, but the provisions of Sections 233 to 239, Criminal P. C., also provide exceptions to Section 177 about the venue or the place of inquiry or trial. This position was further clarified by their Lordships as under:--

'It is true that it is not stated in express terms either in Section 235 or Section 239, that their provisions would justify the Joint trial of offences or of persons mentioned therein in a Court irrespective of the fact whether the offences to be tried were committed within the jurisdiction of that particular Court or not. But such, in our opinion, should be the interpretation of the provisions in these two sections. The sections do not expressly state that all such offences which can be charged and tried together or for which various persons can be charged and tried together must take place within the jurisdiction of the Court trying them. The provisions are in general terms. Sub-sections (1) to (3) of Section 235 provide for the offences being charged with and tried at one trial and, therefore, provide for the trial of those offences at one trial in any Court which has jurisdiction over any of the offences committed in the course of the same transaction. The illustrations to Section 235 also make no reference to the places where the offences were committed. In particular, Illustration (c) can apply even when the offences referred to therein were committed at places within the territorial jurisdiction of different Courts. Similarly, Section 239 provides for the various persons being charged and tried together for the same offence committed in the course of the same transaction or accused of different offences committed in the course of the same transaction. Such offences or persons would not be tried together if some of the

offences are committed by some of them outside the Jurisdiction of the Court which can try the other offences, if the contention for the appellant be accepted and that would amount to providing, by construction, an exception for these sections.'

12. Now, it may be pointed out that Section 239 (e), Criminal P. C., provides that persons accused of an offence which includes theft, extortion, or criminal misappropriation, and persons accused of receiving or retaining, or assisting in the disposal or concealment of, property possession of which is alleged to have been transferred by any such offences committed by the first-named persons, or of abetment of or attempting to commit any such last-named offence, may be charged and tried together. It is crystal clear from the above provision that persons accused of an offence of criminal misappropriation and persons accused of receiving or retaining the property, possession of which is alleged to have been transferred by any such, offence, may be tried together. Applying this to the present case, Rakesh Kumar who is alleged to have committed criminal misappropriation in respect of the transistor and petitioner Vinod Kumar who is alleged to have committed the offence of receiving stolen property knowing that it was stolen property within the meaning of Section 411, I.P.C., may be tried together. It is not disputed by learned counsel for the petitioner that Rakesh Kumar can be tried at Bikaner because of the provisions of Section 181 (2), Criminal P. C. It, therefore, follows on the reasoning given by their Lordships of the Supreme Court that Vinod Kumar can also be tried with him at Bikaner because of the provisions of Section 239 (e), which, in their Lordships' opinion, provides an exception to Section 177, Criminal P. C.

13. It is contended by the learned counsel for the petitioner that Section 239, Criminal P. C., may be an exception to Section 177, Criminal P. C., but it is not an exception to Section 181 (2), Criminal P. C. In my view, there is no substance in this argument, because Section 181 itself provides an exception to Section 177 and as observed by their Lordships of the Supreme Court, Section 239 is a further exception to Section 177. In other words, Section 239 (e) extends the jurisdiction of the Court beyond that which is provided in Section 181 (2) and it cannot be urged that there is any kind of clash or inconsistency between them.

14. It may be pointed out that the observations made by their Lordships of the Supreme Court in AIR 1961 SC 1589, referred to above, were reiterated in L. N. Mukherjee v. State of Madras, AIR 1961 SC 1601. In R. K. Dalmia v. Delhi Administration, AIR 1962 SG 1821, Mr. Dingle Foot appearing for the appellant submitted before their Lordships that the observations made in Purushottamdas Dalmia's case, AIR 1961 SC 1589, required reconsideration. That argument was repelled.

15. There is, therefore, no merit left in the present revision application and it is hereby dismissed.

16. Learned counsel for the petitioner prays for leave to file an appeal in the Supreme Court, but since this Court has relied on the observations of their Lordships of the Supreme Court, I see no merit in the request and it is hereby dismissed.

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