

In Re: V.V. Satyanarayanamurthy

In Re: V.V. Satyanarayanamurthy

SooperKanoon Citation : sooperkanoon.com/782229

Court : Chennai

Decided On : Jul-23-1952

Reported in : AIR1953Mad137; (1952)2MLJ777

Judge : Ramaswami, J.

Acts : [Prevention of Corruption Act, 1947](#) - Sections 5(1); [Indian Penal Code \(IPC\), 1860](#) - Sections 5, 41 and 409

Appeal No. : Criminal Revn. Case No. 603 of 1952 and Criminal Revn. Petn. No. 499 of 1952

Appellant : In Re: V.V. Satyanarayanamurthy

Advocate for Pet/Ap. : Adavi Rama Rao, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

Ramaswami, J.

1. This is a revision petition sought to be filed against the affirming judgment of the learned Sessions Judge of Krishna in C.A. No. 17 of 1952 confirming the conviction and sentence of the Additional First Class Magistrate of Vijayawada in C. C. No. 432 of 1950.

2. The facts of the case have been fully set out in the judgments of the lower courts and the record shows that there was valid, acceptable, 'and adequate evidence for the conviction that followed and the sentence is also found to be appropriate. Therefore, there are no grounds to interfere in regard to the merits as well as the extent of the sentence.

3. The substantial point of law taken before me is the contention based upon the decision of the Punjab High Court in -- 'The State v. Gurcharan Singh', , wherein it was held that Section 5(1)(c) of Act II of 1947 repealed 'pro tanto' Section 409 I. P. C. But with greatest respect for the decision, I find no reasons whatsoever for holding that Section 5 (1) (c) of the Prevention of Corruption Act repeals Section 409 I. P. C.

4. A 'Special law' is a law applicable to a particular subject: see Section 41 I. P. C. Under Section 5 I.P.C., no special Jaw is repealed, varied, suspended or affected by the enactment of the Indian Penal Code. Although an offence is expressly made punishable by a special or local law, it will be also punishable under the Penal Code, if the facts come within the definition of the Code: -- 'The Queen v. Ramachandrappa' 6 Mad 249. The general principle of law is that the Penal Code would apply if the acts fall within the Indian Penal Code though there may be specific offences and penalties under the special Act. Accordingly, the High Court of Madras held that a prisoner might be punished under Section 465 I. P. C. for making a false declaration under Section 5 of Act X of 1841 (Ship, Register), though a specified penalty is provided by Section 23 of that Act. (See Rulings of 1865 on Section 5). There have been similar decisions in regard to other special Acts. It is enough to cite a few cases. In regard to offence under Indian Penal Code and Provincial Insolvency Act, see -- 'Queen v. Ramachandrappa', 6 Mad 249; for offences under Local Boards Act and Indian Penal Code, see -- 'Molaiappa Goundan v. Emperor', 52 Mad 79; for conviction under Indian Penal Code though offence falls within purview of Motor Vehicles Act also, see -- 'Jiwa Ram v. Emperor', AIR 1932 AH 69; for offences under Salt Act and Indian Penal Code, see -- 'Emperor v. Joti Prasad : AIR1932 All18 ; for Indian Railways Act and Indian Penal Code, see -- 'Kuloda Prosad Mazumdar v. Emperor', 11 C W N 100 distinguished -- 'Chandi Pershad v. Abdur Rahman', 22 Cal 131, wherein it was

held that a special penal provision as in the Railways Act would not always-exclude the operation of the Penal Code.

The most familiar example however is of the identical provisions contained in the Indian Penal Code regarding rash and negligent driving and under the Motor Vehicles Act. Thus where the accused while driving a motor car on the wrong side of the road and at a blind corner between two roads of considerable traffic came into collision with a motor bicycle and caused damage to the side car of the bicycle it was held that the accused was guilty of an offence under Section 279 I. P. C. and the sentence of three months' rigorous imprisonment served on the accused by the lower court was upheld. It was argued on behalf of the accused in this case that the more appropriate section would be Section 59 of the Motor Vehicles Act but the judges remarked that the offence committed by the accused was serious and that the mere fact that the Motor Vehicles Act also contained a provision for dealing with offences of this nature would not exclude the operation of the Indian Penal Code. Therefore, it is idle to contend that a special law repeals the provisions of the Indian Penal Code because both of them deal with offences arising under both the Acts.

5. There are however two important restrictions. No prosecution under the Special law is admissible if it appears upon the whole frame of the Special Act that it was intended to be complete in itself and to be enforced by the penalties created by it. See -- '*Chandi Pershad v. Abdur Rahman*', 22 Cal 131. The court of session has jurisdiction to hear appeals on sentences passed by a Magistrate under such special and local laws (Rulings of Madras High Court, 1865, on Section 409 CrI. P. C. Act XXV of 1861); and conversely, it is no reason for quashing a conviction under a special law, for instance, under Section 29 of Act V of 18iiI (General police), that the facts would constitute an offence punishable under the Penal Code: -- '*Kasimuddin in re*', 4 Myn Cri. 17. If the magistrate proceeds under the Penal Code it is better to drop the charge under the local Act. But secondly, a person cannot be punished under both the Penal Code and the Special law for the same offence. If an offence under a special law is likewise one under the Penal Code it is punishable either under the special law or under the Code as laid down in -- '*Queen v. Ramachandrappa*', 6 Mad 249 and-- '*Kasimuddin in re*', 4 Myn. CrI.

17; but of course not under both as laid down in -- 'Rex v. Husson Ali', 5 N. W. P. 49. See also Section 26 of the General Clauses Act X of 1897, viz., where an act or omission constitutes an offence under two or more enactments the offender is liable to be prosecuted and punished under either or any of those enactments but shall not be liable to be punished twice for the same act or omission.

6. Therefore, there are no grounds to interfere in revision and this revision case is dismissed.

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