In Re: Perianna Mudali and ors.

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Court : Chennai

Decided On : Aug-06-1941

Reported in : AIR1942Mad31; (1941)2MLJ420

Appellant : In Re: Perianna Mudali and ors.

Judgement :
ORDER

Horwill, J.

1. The prosecution case was that the Deputy Tahsildar saw a number of goats grazing in the forest and that finding that the owner had no license for so grazing them, he proceeded to drive them to the cattle pound. On the way, the Deputy Tahsildar was met by the first and second accused, who are brothers and owners of the goats, and by the third accused, their friend. Without disclosing the fact that the first and second accused were the owners of the goats they told the Deputy Tahsildar that they would assist him in driving the goats to the pound and they led him not to the pound but to their own pen. The Deputy Tahsildar duly drove the goats into the pen and upon entering the village to inform the village magistrate, he was told that the enclosure into which he had driven the goats was not a cattle pound but a private pen of the owners of the goats. The Deputy Tahsildar thereupon filed a complaint in the Court of the local Sub-Magistrate, and in due course a charge was framed against all the three accused under Sections 417 and 379, Indian Penal Code. The case has not yet ended; but this revision petition was

admitted because it was contended on behalf of the accused that the offence actually committed was one under Section 420, Indian Penal Code, an offence punishable only by a First Class Magistrate.

2. The leading case on the question as to the effect of trying persons for an offence less serious than was actually committed is to be found in King Emperor v. Ayyan I.L.R.(1901) Mad. 675 a decision of a Bench of this Court. The argument of the learned advocate for the petitioners is that the act of the Magistrate, whether the framing of the charge for a lesser offence was deliberate or not, makes his proceedings void; because Section 530-p of the Criminal Procedure Code says that if any Magistrate, not being empowered by law in this behalf, tries an offender, the proceedings shall be void. What that really means is pointed out in the case above referred to in these words:

The meaning of this is that if a Magistrate tries an offender for an offence beyond his jurisdiction his proceedings shall be void. In the present case the Deputy Magistrate did not try accused for an offence beyond his jurisdiction. He tried him for an offence punishable under Section 193, Indian Penal Code, that is, for an offence triable by a First Class Magistrate and therefore within his jurisdiction. His proceedings therefore were not void and the Sessions Judge was wrong in treating them as void. Where the facts disclose an offence within the jurisdiction of the Magistrate it seems to us a complete fallacy to say he is not empowered by law to try the person charged for the offence which is within his jurisdiction because the same facts disclose a more serious offence which is beyond his jurisdiction. He is expressly so empowered. Whether in so doing he adopts a proper course is another question. No doubt it is improper on the part of a Magistrate to intentionally ignore circumstances of aggravation which show that an offence beyond his jurisdiction was in fact committed as well as an offence within his jurisdiction.... It would also, in our opinion, be open to the revising and appellate authorities to set aside the Magistrate's proceedings and order a fresh trial, if such a course was required in the interests of justice but not otherwise; and the reason for setting them aside would be, not that they were void ab initio, but because they were improper and the interests of justice required them to be set aside.

3. A similar. question came up before Jackson, J., in Kattuva Rowther v. Suppan Asari (1926) 25 L.W. 86. The learned Judge draws from King Emperor v. Ayyan I.L.R.(1901) Mad. 675 the following proposition:

If a Magistrate entirely overlooks some fact which would carry, the case beyond his jurisdiction and tries the accused for a lesser offence, he is not held to have acted without jurisdiction. The question whether he has or has not entirely overlooked the circumstances would be one of fact. If on the other hand, he does not overlook the circumstance, but after his attention has been drawn to it he deliberately ignores it, his proceedings would be improper, though not void.

Venkatasubba Rao, J., in Setti Rangayya v. Somappa (1924) 20 L.W. 919 does not refer to King Emperor v. Ayyan I.L.R.(1901) Mad. 675 but his attention was drawn to 2 Weir's Criminal Rulings No. 517 dated 26th October, 1885, which was a case where the Magistrate had charged an accused under Section 417, Indian Penal Code, although the offence committed was one punishable under Section 420, Indian Penal Code. In this case it was laid down that as the accused had committed an offence under Section 417, as well as under Section 420, he could be legally convicted of both and therefore the Conviction of the minor offence was not absolutely illegal. But the learned Judges added:

But the doctrine that no tribunal can properly clutch at jurisdiction by intentionally ignoring facts of aggravation, which make the offence really cognisable only by a higher tribunal still holds good, and where the accused has himself objected to the jurisdiction, it is possible that the High Court would feel itself bound to interfere.

4. Venkatasubba Rao, J., who was dealing with a very similar question, followed that authority. It will therefore appear from the above decisions that whether or not the High Court should interfere would depend upon whether the Magistrate had deliberately overlooked certain aggravating facts with a view to securing for himself jurisdiction over the offence. If the Sub revealed had in f ac would be the Sub-Magistrate really believed that the whole body of facts revealed to him constituted an offence triable by him, and he had in fact jurisdiction to try the lesser offence, his proceedings would be proper and the High Court would not interfere.

5. On the facts of the present case, I am inclined to think that the accused would not have been guilty of an offence punishable under Section 420, Indian Penal Code; for even after the Tahsildar had driven the goats into the pen of the accused, he still retained control over them; and he would lose that control only if the accused did some act which would have prevented the Tahsildar from removing them again if he had so wished. Whether that view is correct or not, I do not think that there is any ground here for believing that the Sub-Magistrate clutched at jurisdiction. The learned advocate for the petitioners points out that the fact that the accused were also charged with theft indicates that both the prosecution and the Sub-Magistrate seemed to have realised that there was a constituent in the offence which was rather more than was required for a charge under Section 417, a constituent which showed that the Tahsildar had parted with possession in favour of the accused because of the deceit that had been practised on him. On the facts as narrated to me by the learned advocate for the petitioners, it is difficult to see how there was an offence of theft. There might have been, if the accused afterwards took the goats away to some other place without the Tahsildar's permission--or perhaps if they had prevented the Tahsildar from having access to the goats. The evidence however is not before me; and so I do not wish to express any opinion as to whether the offence of theft was committed or not. If there was, it was probably not a part of the same transaction which led to the offence of cheating. On the facts before me, I am not prepared to say that the Magistrate is wrong or that any interference is called for from this Court.

The petition is accordingly dismissed.