

Natarajan Vs. the State

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Court : Chennai

Decided On : Nov-19-1990

Reported in : 1991CriLJ2329

Judge : Janarthanam, J.

Appeal No. : Cri. M.P. No. 7548 of 1987

Appellant : Natarajan

Respondent : The State

Advocate for Def. : A. Shanmugham, Addl. Public Prosecutor

Advocate for Pet/Ap. : N. Ganapathy, Adv., ;M/s Pathy and Sundaram

Judgement :

ORDER

1. One M. Mahalingam is a native of Kumbakonam. He claims to be the foster son of one (Tmt) Hemavathi, who died on 11-12-1963, leaving behind her immovable and movable properties. She was stated to have left a registered trust deed dated 31-8-1962 in respect of the management of her immovable properties. She was also stated to have executed a will dated 6-10-1963 in respect of her movable properties. The said foster son is the sole legatee the abovesaid will.

2. On 2-8-1982 the said Mahalingam gave a complaint before the Chief Judicial Magistrate, Kumbakonam against one Natarajan and two others, which was in turn, forwarded to the Kumbakonam Police Station. South under S. 156(3), CrI.P.C. for further action. On receipt of the complaint, which was registered in Crime No. 283/82, investigation was taken up and after completing the formalities of the investigation, a final report under S. 173(2), Cri.P.C. had been laid before the Chief Judicial Magistrate, Thanjavur at Kumbakonam for the alleged offences under Ss. 457 and 380, I.P.C. against one Natarajan and two others.

3. The case was taken on file as C.C. No. 671 of 1982 by the Chief Judicial Magistrate, Kumbakonam and subsequently it was transferred to the file of the Additional Chief Judicial Magistrate, Kumbakonam, who in turn, took it on his file as C.C. No. 86 of 1983. Learned Additional Chief Judicial Magistrate, on consideration of the materials placed before him, acquitted all the three accused by his order dated 7-2-1984.

4. In respect of the same occurrence, the said Mahalingam gave a complaint before the Superintendent of Police, Thanjavur West district on 13-11-1986 for alleged offences under Ss. 404 and 408, I.P.C. against Natarajan alone (the first accused in the previous complaint - the petitioner herein). The Superintendent of Police, in turn forwarded the complaint to the District Crime Branch for investigation. A case was in fact registered in Crime No. 30/6. After completing the investigation, a final report under S. 173(2), Cri.P.C. was laid before the Chief Judicial Magistrate, Thanjavur at Kumbakonam, against the said Natarajan for the alleged offences under Ss. 404 and 408, I.P.C., which was taken on file as C.C. No. 319 of 1987.

5. The accused, on receipt of process, entered his appearance and engaged a counsel of his choice. Charges had been framed and at that stage, the petitioner-accused had come forward with the present action invoking the inherent jurisdiction of this Court to quash the criminal proceedings initiated against him.

6. The sole and lone ground urged by learned counsel for the petitioner is that S. 300, Cri.P.C. will operate as a bar for the present prosecution initiated against him. Learned Additional Public Prosecutor would however repeal such a submission.

7. There is no pale of controversy that the facts which impelled the said Mahalingam to initiate earlier criminal proceedings against the petitioner-accused and two others are exactly the same for the initiation of criminal proceedings in the instant case. The moot question that arises for consideration is as to whether it is legally permissible to initiate criminal proceedings, in the instant case, on the same set of facts as arose in the previous criminal proceedings, on the face of the salient provisions adumbrated under S. 300. Cri.P.C.

8. Sub-section (1) of S. 300, Cri.P.C., which is relevant for our purpose, may be extracted for better appreciation of the case and it runs as follows :-

'300. 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 for 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 sub-sec. (1) of S. 221, or for which he might have been convicted under sub-sec. (2) thereof.'

9. The sub-section, as extracted above, consists of two limbs. The first limb deals with the case of a person, who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence. Such a person shall not be liable to be tried again for the same offence while such conviction or acquittal remains in force. The case on hand is not at all attracting the first limb of the sub-section. The reason is rather obvious. In the earlier case, the petitioner-accused was tried along with two others for an offence under Ss. 457 and 380, I.P.C. and in the present case, he is now facing prosecution for the offences under Ss. 404 and 408, I.P.C. Since the present prosecution is not for the same offence for which he had been tried earlier, the first limb of sub-sec. (1) cannot be said to be attracted.

10. The second limb of the sub-section deals with the same facts for any other offence for which a different charge from the one made against him might have been made under sub-sec. (1) of S. 221 or for which he might have been convicted under sub-sec. (2) thereof. The principle of this limb of the section is that

whether an accused can be tried at one trial for several offences and if he has not been so tried for all the offence, but only for a few, whether he should not be put again in jeopardy for the offences for which he might have been tried at that time; but had not been tried. The expression 'might have been made' means 'might have been lawfully made'. In the case on hand, as already stated, the facts in the earlier prosecution are exactly the same and identical to the facts in the present prosecution. The sordid fact is that the petitioner-accused had been tried in the earlier case for the offence under Ss. 457 and 380, I.P.C. and he had been acquitted thereof. The verdict of acquittal so rendered was not at all further agitated and still remains in force. In such state of affairs, on the same set of facts, he cannot be charged for the offences under Ss. 404 and 408, I.P.C., inasmuch as the second limb of the sub-sec. (1) of S. 300, Cri.P.C. stares at the face of the investigating agency. In this view of the matter, the petition deserves to be allowed.

11. In the result, the petition is allowed and the criminal proceedings initiated against the petitioner-accused in C.C. No. 319 of 1987 on the file of the Chief Judicial Magistrate, Thanjavur at Kumbakonam shall stand quashed.

12. Petition allowed.