

In Re: Appasamy Aiyar

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Court : Chennai

Decided On : Dec-12-1924

Reported in : AIR1925Mad1122; (1925)49MLJ276

Appellant : In Re: Appasamy Aiyar

Judgement :

ORDER

Wallace, J.

1. The question raised in this revision petition is whether when a Criminal Court has taken cognizance of an offence for perjury, before the amendment of the Criminal Procedure Code, on a sanction order to a private individual granted before the Code was amended, but has not completed the trial before the amended Code, which abolished all such sanctions, came into force, the trial can go on without fresh complaint under the amended provisions of Section 476, Criminal Procedure Code. The point is one of first impression and is not very easy to decide. The petitioner is the accused in the perjury case. The First Court had refused the sanction, The Lower Appellate Court granted it. The petitioner moved the High Court to revoke that sanction after the amended Code came into force. The High Court held that, under the amended Code, such an application would not lie and dismissed it. The petitioner complains that the amendment of the Code should not have been used to deprive him of his opportunity of moving that the sanction ought to be set aside and that, if the amended procedure is to govern his

case, it must be held to govern it from the beginning. Had a complaint been put in to the Lower Court under the new Code, the petitioner would have had a right of appeal to this Court. As the Lower Court's order is merely one granting his sanction, the petitioner, by the amendment of the Code, is now left without a remedy in the nature of appeal or revision against that Order. That, however, is not the point really before us now ; it has been settled already by the High Court's Order. The point before us now is whether the trial which has been properly begun on a sanction order must now be dropped owing to the amendment of the Code. Our attention has been drawn by both sides to two recent rulings of this Court--neither of them, however, is exactly on all fours--which are reported in *Nataraja Pillai v. Rangaswami Pillai* ILR (1923) M 384 : 1923 46 MLJ 274 and *Sesha Aiyar v. The Public Prosecutor* (1923) 19 LW 463. In the latter case, a Bench held that the production of sanction was a mere matter of procedure. There the application was to revoke a sanction granted under the old Code. The learned Judges referred to the *Nataraja Pillai's* case ILR (1923) M 384 : 46 MLJ 274 and agreed with the view there expressed, that no party had a vested right of appeal or revision in the matter of getting a sanction revoked. *Nataraja Pillai v. Rangaswami Pillai* ILR (1923) M 384 : 46 MLJ 274. case was the converse case in which the party moved the High Court to grant a sanction which the Lower Court refused. I was a party to that decision. The *Natanaja Pillai v. Rangaswami Pillai* ILR (1923) M 384 : MLJ 274. case looks at the point from the standpoint of a complainant, while the *Sesha Aiyar v. The Public Prosecutor* (1923) 19 LW 463. case looks at it from the standpoint of an accused, but there is no essential difference in the conclusion that the matter is one entirely of procedure, and it is plain that the old Section 195 did not draw any appreciable distinction between the position, as accused or complainant, of the parties in the matter of moving the High Court either to grant a sanction refused or to revoke a sanction granted.

2. In order to decide as to whether a trial founded on a sanction and properly begun on a procedure which has been altered by the amended Criminal Procedure Code can now go on, it is essential not to confuse ' cognizance ' with ' jurisdiction.' Once a Court is properly seized of a case, I do not see that any amendment of law except an amendment which takes away its jurisdiction to try the offence can affect the Court's authority to proceed with the trial. To hold that an

amendment of the procedure of trial under the Code automatically brings to an end all trials founded on the original procedure--which is really the contention of the petitioners--is not a conclusion which appears to me justified either in law or in common sense. The consequence of an amendment of procedure is not that all matters properly begun under the old procedure collapse and have to be begun again under the new procedure, but that they shall be continued under the new procedure from the time when the new procedure came into force. If that were not the intention of the legislature, I think it was bound to have said so. Cognizance founded on a sanction order was merely a barrier which had to be crossed before a Court reached the stage of trial, and, once that barrier had been crossed, I do not see what authority short of interference by a Court of Appeal in revision empowered to cancel the sanction order, or legislation ad hoc can reverse the process. This is the view taken by a learned Judge of this Court in Criminal Miscellaneous Proceedings No. 606 of 1924 and! this also the view stated, although without reasons in *Muthia Goundan v. Chinna Nallappa Goundan* (1923) 19 LW 392. to which also I was a party.

3. The petitioner appeals to some observations of mine in *Nataraja Pillai v. Rangaswami Pillai* ILR (1923) M 384 : 46 MLJ 274. that 'obviously the Court has power to discharge or acquit an accused person of a charge which requires previous sanction if, in the course of the trial and before judgment is pronounced, it is brought to its notice that no sanction has been obtained and I can see no difference between such a case and a case where the sanction on which the trial is proceeding has been set aside during the trial,' but these really do not help him, because in such a case, the prosecution was either not properly begun at all under the old Procedure, or, if it had properly begun under the old Procedure, it has also properly come to an end under the old Procedure by the revocation of the sanction. What the petitioner sought to do in that case was to revise the old Procedure after the new Procedure had come into force. I can, therefore, see no reason to interfere in revision in this case and dismiss the petition.

Madhavan Nair, J.

4. The facts of this case are not disputed. Sanction under Section 195 of the old Criminal Procedure Code to prosecute the petitioner for perjury was refused by the first Court. The Appellate Court granted the sanction. An application filed by the petitioner to revoke that sanction after the amended Code came into force was dismissed by the High Court on the ground that under the amended Code such an application would not lie. Proceedings against the petitioner began on the sanction granted under the old Code, but were not completed before the amended Code came into force, and, now a charge has been framed against him for offence under Section 193 of the Indian Penal Code. The present petition is to revise the order framing the charge and for quashing all proceedings against the petitioner in connection with this charge on the ground that such proceedings are bad in law inasmuch as those were started without a written complaint by the Court, as is now required under the new Code of Criminal Procedure.

5. The point arising for our consideration is whether the trial which has been properly begun on a sanction order granted to a private individual under the old Code and the charge framed against him should now be considered bad in law, because of an alteration in the procedure laid down by the amended Code. The learned vakil for the petitioner has relied upon two decisions of this Court, namely *Nataraja Pillai v. Rangaswami Pillai* ILR (1923) M 384 : 1923 46 MLJ 274 and *Sesha Aiyar v. The Public Prosecutor* (1923) 19 LW 463. in support of his argument. In *Nataraja Pillai v. Rangaswami Pillai* ILR (1923) M 384 : 46 MLJ 274. an application was made to the High Court to set aside an order revoking a sanction granted under Section 195 of the old Code of Criminal Procedure. It was held that such an application does not lie after the amendment of the Code and that no party has a vested right of appeal or revision in getting a sanction order revoked. In *Sesha Aiyar v. The Public Prosecutor* (1923) 19 LW 463 it was held that an application made to the High Court after the amended Code has come into force to revoke a sanction granted under Section 195 of the old Code is not maintainable. The learned Judges expressed the view that 'the production of a sanction for the cognizance of certain specified offences was purely a matter of procedure,' and also held, following *Nataraja Pillai v. Rangaswami Pillai* ILR (1923) M 384 : 46 MLJ 274. that no private party has a 'vested right of appeal in a sanction matter which would be preserved in spite of the amendment of the law.'

Relying on these decisions it has been argued that, since the grant or the revocation of sanction is purely a matter of procedure which is affected by an alteration of the law, the proceedings commenced in pursuance of a sanction granted under the old Code are also bad in law in view of the alteration in the procedure laid down in the amended Code. It appears to me that neither of the two decisions above referred to deals with this question now raised before us.

6. On the other hand, the decisions in *Muthia Goundan v. Chinna Nallappa Goundan* (1923) 19 LW 392 and Criminal Miscellaneous Petition No. 606 of 1924 brought to our notice by the learned Public Prosecutor have a direct bearing on the question and the latter one suggests the correct principle to be applied in the present case. In *Muthia Goundan v. Chinna Nallappa Goundan* (1923) 19 LW 392. the learned Judges, Ramesam and Wallace, JJ., express their view that the new Criminal Procedure Code Amending Act does not affect the complaint filed under the Act before the amendment. In Criminal Miscellaneous Petition No. 606 of 1924 it was held by Krishnan, J. that ' the amendment of the Criminal Procedure Code did not affect complaints already filed on sanction properly obtained. Section 195 requires the sanction only to enable the Court to ' take cognizance ' of certain offences and, once the case is launched and cognizance has been taken by the Magistrate, the fact that he commits the case to the Sessions for trial does not affect the question.' It seems to me that this decision lays down the correct principle. The production of sanction, which is purely a matter of procedure, is a pre-requisite of certain prosecutors [see *Sesha Aiyar v. The Public Prosecutor* (1923) 19 LW 463.]. Sanction is required only to enable the Court to take cognizance of certain offences and, when once the case is launched and cognizance has been taken by the Magistrate of any offence nothing short of an amendment which specifically takes away the jurisdiction of the Court to try the offence can affect the right of the Court to go on with the trial according to law.

7. In my view, an alteration in the law of procedure relating to the grant of sanction cannot invalidate proceedings validly began under the old Procedure. If the intention of the legislature was to annul such proceedings also, then it would have expressed such intention in appropriate language. Applying the principle indicated in Cr. M.P. No. 606 of 1924, I would hold that the proceedings of the Magistrate in

this case are not ultra vires and illegal.

8. I. would, therefore, dismiss this petition.

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