In Re: Subramanian Chettiar

In Re: Subramanian Chettiar

SooperKanoon Citation : sooperkanoon.com/792567

Court : Chennai

Decided On : Jan-17-1957

Reported in : AIR1957Mad442; 1957CriLJ765

Judge : Ramaswami, J.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 190, 195, 342, 476, 537 and 559

Appeal No. : Criminal Revn. Case No. 102 of 1956 and Criminal Revn. Petn. No. 91 of 1956

Appellant : In Re: Subramanian Chettiar

Advocate for Def. : V.V. Radhakrishan, Adv. for ;Public Prosecutor

Advocate for Pet/Ap. : K.S. Jayaram Ayyar, Adv.

Disposition : Revision dismissed

Judgement :
ORDER

Ramaswami, J.

1. This is a revision which has been filed against the conviction and sentence by the learned Assistant Sessions Judge, Tirunelveli, in Sessions Case No. 78 of

1955 and confirmed by the learned Sessions Judge of Tirunelveli Division in C. A. No. 217 of 1956.

2. V.C. Subramanian Chettiar, the Revision petitioner before me, had married one Pichai Ammal the only daughter of Sankarakuttalathammal. There was a daughter by that marriage. Sometime afterwards both Pichai Animal and this daughter died, This Sankarakuttalathammal viz., the ex-mother-in-law of this Revision Petitioner had inherited properties of considerable value from her deceased husband. There was interminable civil litigations about it which came up to High Court and eventually this petitioner got a share of the properties. On account of these litigations there was bitter ill-feeling between this Revision Petitioner and the said Sankarakuttalathammal.

3. P.W. 1 Chitraputran Chettiar had married Sankarakuttalathammal's brother's daughter by name Gomathi. There was a son by that marriage. I have just referred to the litigations between Sankarakuttalathammal and this petitioner not only on the civil side which came up to the High Court but also on the criminal side, in which this petitioner finally got a share, In the said litigations Sankarakuttalathammal was being assisted by that Chitraputran Chettiar. Sankarakuttalathammal had come to take up, her residence with that Chitraputran Chettiar.

It is not surprising in these circumstances that in 1941 Sankarakuttalathammal gifted some of her properties to Chitraputran Chettiar's wife Gomathi under Ex. P-2. Gomathi was put in possession of the properties. The pattas for these properties were transferred in her name: Vide Exs. P-3 to P-8. Subsequently Gomathi Animal alienated some of those properties and bequeathed the rest to her minor son under Ex. P-23 in 1950. This Gomathi died subsequently and after her death Chitraputran Chettiar has been in possession of the properties on behalf of his minor son.

4. On 14-6-1951 Sankarakuttalathammal made a Will as per Ex. P-24 giving the other properties she had to Chitraputran Chettiar. On account of the fact that Sankarakuttalathammal had become bedridden by that time, the Sub-Registrar was brought to the house and Ex. P-24 was registered. Some time later on 5-10-

1951 Sankarakuttalathammal executed a gift deed Ex. P-25 in favour of P.W. 1. This was also registered in P.W. 1's house by the Sub-Registrar. Ten days later Sankarakuttalathammal died. P.W. 1 performed her obsequies.

5. After Sankarakuttalathammal's death the properties covered by Ex. P-25 have been in the possession and enjoyment of P.W. 1. The Revision Petitioner and others began to interfere with P.W. 1's possession of those properties. Thereupon he filed a petition M. C. No. 3 of 1952 on 1-3-1952 before the Executive Second-Class Magistrate, Sanka-rankoil, under S. 144, Cr. P. C., against this petitioner and some others: vide Ex. P-25.

This petitioner contested that petition. He filed a counter Ex. P-27 on 31-3-1952. On the same day (31-3-1952) he filed an unregistered Will Ex. P-28 purporting to have been executed by Sankarakuttalathammal on 15-10-1951, when it will be remembered that Sankarakuttalathammal had become practically bed-ridden and could not move out of the house of P.W, 1, where she had been residing for some considerable time.

6. On coming to know that this petitioner had filed Ex. P-28, and which P.W. 1 knew Could be demonstrated beyond all doubt as a fabricated Will, P.W. 1 filed a petition Ex. P-29 on 31-3-1952 itself to impound Ex. P-28. Then this petitioner finding that (ho fat was on the fire, promptly applied for the return of Ex. P-28. The Executive Second Class Magistrate, Sankarankoil, refused to return Ex. P-28 to the petitioner and impounded it. An order under S. 144, Cr. P. C., was passed in favour of P.W, 1.

The petitioner filed an appeal therefrom and that appeal was dismissed for default. In M. C. No. 3 of 1952 (he Executive Second Class Magistrate, Sankarankoil, examined his petitioner as R. W. 1, EX. P-33 is his deposition recorded, with all formalities prescribed by law, therein. P.W. 1 came to know that this petitioner had applied for registration copies of Exs. P-2 and P-25 and himself applied for copies of those copy applications. Exs. P-34 and P-35 are the copies supplied to him.

7. Thereupon Chitraputran Chettiar, P.W. 1, filed a petition under S. 476, Cr. P. C., against this petitioner before the Executive Second Class Magistrate,

Sankarankoil. On that petition the Magistrate filed a complaint Ex. P-38 against the petitioner before the Sub-Magistrate of Sankarankoil. Chitraputran Chettiar filed a private complaint against 8 others viz., the beneficiary under Ex. P-28 (accused 2), the Hukdar thereunder (accused 6), the attestors to Ex. P-28 (accused 3 and 5 to 9) and the writer thereof (accused 4).

8. The learned Sub-Magistrate after an elaborate enquiry committed these accused to the Sessions and there the learned Assistant Sessions Judge acquitted accused 2 to 9 and found this petitioner, Sub-ramanian Chettiar, guilty of the offence under Section 471. . I. P. C., and sentenced him to R.I. for two years, taking into consideration that he was 51 years old and that the case had dragged on for more than a year.

There was an appeal therefrom and the learnedSessions Judge of Tirunelveli in an elaborate judgment considered the entire evidence in the case andcame to the conclusion that the prosecution hadbrought home the offence to this petitioner (accused 1) beyond reasonable doubt and dismissed theappeal remarking that having regard to the gravityof the offence committed by the appellant the sentence of R.I. for 2 years cannot be said to be excessive.

9. This Revision has been preferred therefrom on two grounds viz., that there are no materials to show that the petitioner knew or had reason to believe that the document which he was using in the proceedings under Section 144, Cr. P. C., was a forged and fabricated one and secondly, that the Magistrate who preferred the complaint had no jurisdiction.

10. Point 1: In regard to the finding that the petitioner (accused 1) made use of a document known to him to be forged in the criminal proceedings under Section 144, Cr. P. C. I am bound by the findings, of fact of both the Courts below, based upon ample and satisfactory evidence. That it is a forged document cannot be disputed. A comparison of the thumb impressions purporting to be that of Sankarakuttalathammal in Ex. P-29 with the undisputed thumb impressions found on two registered documents executed by Sankarakuttalathammal, Exs. P-24 and P-25, showed, according to the Finger Print Expert P.W. 6 that the alleged thumb impressions in Ex. P-28 'are not those of Sankarakuttalathammal.

Bolh the lower Courts examined the reasons put forward by the Finger Print Expert and satisfied themselves that the opinion of the Finger Print Expert was correct. It was not the endeavour of the learned advocate for the Revision Petitioner to persuade me that the finding of both the Courts below is incorrect. I have compared the thumb impressions 'myself and examined the-reasons given by P.W. 8 and have satisfied myself that this Conclusion is also correct.

11. On that conclusion that Ex. P-28 is a forged document, this petitioner Subramanian Chettair had a powerful motive to make use of the document - knowing it to be-forged for the purpose of defeating and defrauding Chitraputran Chettiar, P. W. 1. That ha did make use of the document on the foot of its being a genuine document in the proceedings under Section 144, Cr. P. C., to which he was a party in the Second Class Magistrate's Court, Sankarankoil was not disputed by him either in the trial Court or in the appellate Court. That fact was admitted by him when examined under Section 342, Cr. P. C.

In order to get over the damning evidence of his knowledge that Ex. P-28 was forged, this petitioner came forward with the story that four months after die death of Sankarakuttalathammal one Pichai Chettiar delivered to him Ex. P-28 as the Will executed by Sankarakuttalathammal and that he believed it to be true. This was sought to be supported by D.W. 1 who stated that he was present when Pichai Chettiar delivered the document to this petitioner. This story was put forward for the first time in the trial Court and not in the committal Court, though this D. W, 1 was examined in the committal Court itself.

This D.W. 1 never even whispered about this D. W. 1 also does not disclose when that alleged delivery look place. The learned Assistant Sessions Judge who saw this D.W. 1 in the box disbelieved his evidence. That this document has been fabricated and had come into existence after the death of Sankarakuttalathammal is proved in another way. Within four days after the death of Sankarakuttalathammal, this petitioner applied as per Exs. P-34 and P-35, for registration copies of the two gift deeds Ex3. P-2 and P-25 executed by Sankarakuttalathammal in favour of Gomathi Ammal and P.W. J.

The petitioner got registration copies of both those documents on 23-10-1951: vide Exs. P-50 and P-51. It was long after that, this petitioner is said to have got Ex. P-28 from Pichai Chettiar. How could this petitioner have believed that Ex. P-28 could have been genuine when a perusal of it could have shown beyond doubt that all 'the properties comprised therein had already been disposed of by Sankarakuttalathammal under the two gift deeds and therefore by no stretch of imagination she could have executed this unregistered Will.

Then this petitioner was the village Munsif of the place where the properties arc situated. The patta for those properties comprised in Ex. P-2 was transferred in the name of Gomathi Animal. Exs. P-9 to P-22 are kist receipts given to her and some of these receipts have been issued by this petitioner, accused I. There was no reason why Sankarakuttalathammal who had registered every document should go in if it were true for an unregistered Will though it is said that it was executed at Puliangudi where is a Sub-Magistrate's Office. How could this petitioner believe in these, circumstances that Sankarakuttalathammal animal who had no title would have bequeathed the properties in his favour under Ex. P-28?

Then there is also intrinsic evidence in Ex. P-28 to show that it is' a forged document brought about with reference to the registration copies of Exs. P-2 and P-25 got by the petitioner some time earlier. The learned Sessions Judge has examined thoroughly this aspect of the case in para. 16 of his judgment and has come to the conclusion that Ex. P-28 has been brought into, existence with the active, abetment of this Revision Petitioner as an examination 'of Exs. P-2 and P-28 will show. Inasmuch as no endeavour was made to canvass the correctness of this inference of the learned Sessions Judge it is unnecessary for me to discuss this aspect of the case further,

It is enough to indicate that I entirely agree with this reasoning. It will be remembered in this connection how, realising that the other side when they applied for copies had tumbled to the fact that he was making use of a forged Will, the petitioner made frantic efforts to get back from Court Ex. P-28 in order obviously to destroy it before any copy of it court be got by the other side. This petitioner had to do this because in Ex. P-30 he has stated:

'There is no ground whatever for impounding the Will produced by the counter-petitioner. It is a genuine and valid document and has not been found otherwise by any Court.'

In his examination-in-chief as R.W. 1 in M.C. No. 9 of 1952 (Ex. P-33) this petitioner has stated:

(After quoting the extract in the vernacular, the Judgment proceeded further;)

In other words, this evidence showed that the Will was given to him direct by Sankarakuttalathammal and it will be noticed that the present version is that Pichal Chettiar handed it over to him. But when he was confronted with Ex. P-33 this petitioner Stated 'I don't remember(tm). This he had to do because on 19-5-51 the accused applied to the Executive Officer, Puliangudi, for the transfer of register in his name. In this he has claimed only as ft reversioner and not as a beneficiary under the Will. Similarly on the reminder petition which he filed on 7-1-52.

The Will has obviously been fabricated after 19-10-51 and after he had preferred the copy applications on 18-10-51. Above all would the deceased woman who bitterly hated this petitioner suddenly have bequeathed properties then under an unregistered Will and that too almost a day prior to her death when she was under the protection of Chitraputran Chettiarl. These facts conclusively show that this petitioner undoubtedly made use of a forged document knowing it to be forged and it was on account of this convincing evidence that both the lower Courts have come to the conclusion, which they have done.

12. The concurrent finding of the lower Courts that the petitioner on the clearest possible evidence is guilty of using a forged document know-Ing it to be forged is correct and it is confirmed. Point I therefore fails.

13. Point 2: The point of law taken is that the learned Executive Second Class Tahsildar Magistrate of Sankarankoil who preferred this complaint had no jurisdiction and that consequently the further proceedings thereon are void and incurable.

This contention is devoid of substance because on the facts it is found that the complaint was preferred by the same Court as that in which the offence of making use of a forged document known to be forged took place.

In Sankarankoil Taluk in Tirunelveli District, the Court of the Executive Second Class Magistrate is presided over by officers of the rank of Tahsildar or Deputy Tahsildar empowered in this behalf. When this P. W. 1 Chitraputran Chettiar preferred Ex. P-28 it was taken on file in M. C. No. 3 of 1952 and the Magistrate then presiding over the Court of the Executive Second Class Magistrate, Sankarankoil, was Deputy Tahsildar. It was in these proceedings that this petitioner Subramanian Chettiar filed the disputed Will Ex. P-22 along with his counter Ex. P-27.

That Deputy Tahsildar presiding over the Court of the Executive Second Class Magistrate passed an order allowing the petition. Subsequently it was found that particular officer though exercising Second Class powers had not been specially empowered in regard to proceedings under Section 144, Cr. P. C. Therefore, the Tahsildar of Sankarankoil who is ex-officio Executive Second Class Magistrate and one of the Magistrates of that Court though normally he does not do criminal work devoting himself as he does entirely to revenue work, took the case on his file as M. C. No. 47 of 1952 and the proceedings Continued before him and it was that Executive Second Class Magistrate's Court which passed the order Ex. P-31 allowing the petition.

Then another Magistrate of the Deputy Tahsildar's rank has been posted and he has been attending to the criminal work of this area as Executive Second Class Magistrate, It was this successor who heard the petition filed under Section 476, Cr. P. C., by P.W. 1 Chitraputran Chettiar and launched the complaint. Thus, the Court in which Exs. P-27 and P-28 were produced and the Court which treated them as evidence and passed the order evidenced by Ex, P-31 are identical viz., the Executive Second Class Magistrate and the order evidenced by Ex. P-31 viz., the launching of the complaint was by a Magistrate who was the successor-in-office of theirs,

Therefore, I entirely agree with the learned Sessions Judge that the Magistrate who laid the complaint was the successor of the Magistrate who passed the order in M. C. No. 47 of 1952 in relation to which the offence in question was committed,

14. It is now well-settled law and it has also been laid down in Section 559, Cr. P. C. that the powers and duties of a Magistrate may be exercised or performed by his successor-in-office. This section was substituted for the original Section 559 by the Code of Criminal Procedure (Amendment) Act XVIII of 1923. Prior thereto, there were certain specific provisions e.g., Section 11 and Section 350 by which the successor-in-office was empowered to exercise the powers of his predecessor-in- office.

There were differences of opinion in other cases as to whether and when, the successor-in-office could exercise the functions of his predecessor, the general trend of opinion, however, being that the word 'Court' implied an idea of continuity, and that the powers under the Code, having been conferred on Courts, they could be exercised by the successor in-officc. Sub-section (1) of Section 559 gives effect to this view. Thus, a complaint under Section 476 of the Code should be made by the Magistrate who is presiding in the Court at the time of the complaint, and not his predecessor-in-office before whom the offence specified in Section 195 was committed.

The well-known AIR Commentaries on the Code of Criminal Procedure, Vol. 3, p. 3092, N. (3), rely upon Ram Ajodhya Singh v. Emperor, : AIR1927 Pat327 : 28 Cri LJ 643 (A); Emperor v. Baldeo Prasad, : AIR1924 All770 (B), it was held that a successor in a Court is the same, as his predecessor in that Court and that it therefore necessarily follows that the predecessor who has departed to another Court can no longer be held to. be a presiding officer of the first Court. The earner decisions in Mohammad Ibrahim v. King-Emperor, 16 Cri LJ 97: AIR 1914 All 537 (D) and Nawal Singh v. Emperor, 13 Cri LJ 302 (AH) (E), were relied upon. In that case it was held that the Court which dealt with the matter in various stages resulting in the launching of the complaint was the Court of the City Magistrate, whatever might have been the changes in the personnel throughout.

In AIR 1926 Lah 305 (C), it was laid down that a Court under Section 195(c) includes a successor-in-office of the Magistrate before whom an offence is committed; therefore when an offence is committed in respect of which sanction is required before a particular Magistrate presiding in the Court, his successor-in-office can make a complaint in respect of that offence.

In : AIR1927 Pat327 (A), it was held that under Section 195, Clause (1), Sub-Clause (b), it is only the Court that can file the complaint for the offence committed before it, and not the particular public servant concerned

In Behari Lal v. Abdul Qadir, AIR 1940 Lah 292 (F), it was held:

'If a case or proceeding has been before various Courts and an offence is alleged to have been committed in that proceeding or case falling under the various sections prescribed in Section 195, Criminal P. C., then all tho Courts have Jurisdiction to make the complaint though, normally speaking, the proper Court to make the complaint is the Court which finally tried and determined the suit. Hence, where an offence is committed in the course of a suit before a Court and that suit is subsequently transferred to another Court the latter Court is competent; to make a complaint under Section 195,

Successors-in-off ice of the Senior Subordinate Judge are perfectly competent to deal with the proceeding under Section 476 and order or not order a complaint under Section 195 as they think fit'

15. Therefore, there is no substance in this point of law taken at all and if I am referring to Section 537, Cr. P. C., in tin's connection it is not because that it is relevant for the purpose of this case bat because the learned Advocate having made a reference thereto in terms, which unless cleared up would lead to misapprehension in the minds of lower Courts. The contention of the learned Advocate is that any error or omission or irregularity in complaint under S, 476, Cr. P. C., is not covered by the curative provision under Section 537, Cr. P. C., by reason of the fact that Clause (b) of that section as it stood before 1923 has been omitted in the amended Criminal Procedure Code after 1923. The repealed clause ran:

'of the want or any irregularity in any section required by Section 195, or any irregularity in proceedings taken under Section 470, or'

It is pointed out in all the standard Commentaries on the Code of Criminal Procedure (AIR Commentaries on the Code of Criminal procedure. Fourth Edn., Vol 3, P- 2985; Sohoni's Code of Criminal Procedure, 12th Edn., p. 1150; Sit John Woodroffe's Criminal Procedure in British India, page 637; Dr. Nandlal's Code of Criminal Procedure, (Vol II, p. 1957-58) that this amendment viz., omitting Clause.(b) is only consequential one to that of the abolition of private sanction under Section 195 and that this does not affect the law as it stood before 1923 & that an error, omission or irregularity in a complaint or in a sanction is even under the present section curable.

The 'want' of a complaint as required by law will affect the 'competency' of the Magistrate to deal with the case and is not a curable error. The 'want' of a sanction required under any provision of law will, similarly affect the competency of the Court and is not curable under this section. But quite different would' be the irregularities in sanctions granted and in such cases irregularities in sanction will be curable to the extent permissible under Section 537, Cr. P.C.

Thus, a sharp, distinction is drawn between initiation of proceedings without sanction as required by the sections of the Code and irregularities in sanctions granted, the former being a defect which vitiates the proceedings ab initio and not an irregularity curable under Section 537, Cr. P. C., and the latter sharing that of other irregularities of a like nature being curable to the extent laid down in Section 537, Cr. P. C. To sum up want of sanction cannot be cured but irregularities in sanction can be cured.

The irregularity complained of in this case is not in the initiations of the proceedings without sanction but would at the best amount to irregularity in sanction. I must however make it clear that this discussion does not really arise on the facts of this case, because I have found that the Court which preferred the complaint is the same Court in which the offence complained of was committed, and the Magistrate who preferred the complaint is the successor-in-office of the Magistrate before whom the forged document knowing it to be forged was

made(Sic) of.

16. Before parting with this case 1 must add that a very feeble attempt was made to suggest that the requirements of Section 342, Cr. P. C., were not complied with. But it is now well settled law that it is not sufficient for the accused merely to suggest that he has not been fully examined as required by Section 342, Cr. P. C., as was sought to be suggested but that he must also show that such an examination has materially prejudiced him and which the learned Advocate did not endeavour to demonstrate and is also not apparent from the record.

On the other hand it is found that the circumstances appearing in die evidence against the accused had been put to him and no fact has been used against him and in regard to which he has not been given a chance to explain and there has been no disregard of the provisions of Section 342, Cr. P. C., resulting in grave prejudice to the accused vitiating the trial. In any event the learned counsel was unable to tell me how his client was prejudiced and what other questions ought to have been put to the appellant and what answers his client would have given.

I am satisfied there was substantial compliance with the provisions of Section 342. These principles are laid down in Bhawan Singh v. State of Punjab Criminal Appeal No. 12 of 52: AIR 1953 SC 214 (G) and Vijendrajit v. State of Bombay : AIR 1953 SC247 Hate Singh v. State of M.B. : AIR 1953 SC468 (I); Ajmer Singh v. State of Punjab : 1953 CriLJ521 . Bejoy Chand v. State of West Bengal : 1952 CriLJ644 , Tara Singh v. The State : [1951]2SCR729 , Bihari Singh Madho Singh v. State of Bihar : AIR 1954 SC692 , Karnal Singh v. State of Punjab, AIR 1954 SC 204 (N); Zwinglee Arel v. State of M. P. : AIR 1954 SC15 , Machander v. State of Hyderabad : 1955 CriLJ1644 . Therefore, the vague suggestion that the requirements of Section 342, Cr. P. C., have not been completely fulfilled completely fails.

17. In the result, the conviction is correct andthe sentence is appropriate. Both are confirmed andthis Revision is dismissed.