

In Re: Govindaswami

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Court : Chennai

Decided On : Apr-23-1953

Reported in : AIR1954Mad401; (1954)IMLJ455

Judge : Somasundaram, J.

Acts : [Indian Penal Code, 1860](#) - Sections 21 and 409; General Clause Act, 1897 - Sections 26; [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 190; Prevention of Corruption Act - Sections 5(1); Madras District Municipalities Act, 1920 - Sections 358

Appeal No. : Criminal Revn. Case No. 84 of 1953 and Criminal Revn. Petn. No. 79 of 1953

Appellant : In Re: Govindaswami

Advocate for Def. : Asst. Public Prosecutor

Advocate for Pet/Ap. : S. Sitarama Aiyar and ;S. Rajaraman, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

Somasundaram, J.

1. This petition is by the accused who has been convicted (or an offence under Section 408, I. P. C., and sentenced to rigorous imprisonment for one year and a fine Rs. 200.

2. The petitioner was a bill collector in the Tiruchirapalli Municipality and as such he was charged with having collected taxes to the tune of Rs. 1935-4-10 and having misappropriated the same. He was charged under Section 408, I. P. C. and convicted of that offence. There can be no doubt that the bill collector is a public servant within the meaning of Section 21, I. P. C. as is clear from Section 358 of the District Municipalities Act. The Additional First Class Magistrate should undoubtedly have framed a charge under Section 409, I. P. C. and convicted him. However the fact that he framed charge for a lesser offence cannot be said to have caused prejudice to the accused as he only had the benefit of defending on a minor offence. But the point that is taken before me by Mr. Sitarama Aiyar is that the petitioner being a public servant must have been charged only for an offence under Section 5(l)(c) of Act II of 1947. This is an offence which is created by Act II of 1947, the object of it being to make more effective provision for prevention of bribery and corruption.

3. No doubt Section 5 of Act II of 1947 defined what misconduct by a public servant is and in that misconduct, in addition to the receipt of bribes, it is provided by clause (c) that any dishonest or fraudulent misappropriation or otherwise conversion by a public servant for his own use of any property entrusted to him, he will be guilty of misconduct. The learned counsel contends that this provision repeals 'pro tanto' Section 409, I. P. C. He relies on a decision of the High Court of East Punjab reported in -- the State v. Gurcharan Singh' the learned Judges state as follows :

'I would therefore adhere to my previous decision and hold again that as long as Section 5 of Act II of 1947 remains in force the provisions of Section 409, I. P. C. so far as they concern offences by public servant are 'pro tanto' repealed by Section 5(l)(c) of Act II of 1947.'

'This judgment has been referred to and dissented from by Ramaswami J. in -- 'Satyanarayana-murthi; In re' : AIR1953 Mad137 . With great respect to the

learned Judges of the Punjab High Court I do not agree with the reasons-given by them. I agree with Ramaswami J. on this point

4. In my opinion no question of repeal of Section 409, I. P. C. arises on account of the provision of Section 5(l)(c) of Act II of 1947. Ramaswami J. in the above decision referred to, points out that under Section 26 of the General Clauses Act, 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. Section 26 of the General Clauses Act really provides that where the same act falls within two or more sections of different enactments, the offender can be prosecuted under either or any of these enactments; but he shall not be liable to be punished twice for the same act. This section of the General Clauses Act clearly shows that Section 409, I. P. C. cannot be considered to have been repealed by Section 5(l)(c) of Act II of 1947.

5. Apart from this, as pointed out in - 'Dholiah v. Sub Inspector of Police, Wellington Station' : AIR1931 Mad702 , when a complaint sets forth certain facts disclosing a minor offence and also a grave offence, the prosecution should ordinarily be for the graver offence. In this case, the offence under Section 409, I. P. C. is punishable with transportation for life whereas an offence under Section 5(l)(c) of Act II of 1947 is punishable only with seven years rigorous imprisonment, or with fine, or with both. There is no doubt that the offence under Section 409, I. P. C. is graver than the offence under Section 5(l)(c) of Act II of 1947. The prosecution must, therefore, be for the graver offence under Section 409, I. P. C. even though the facts disclosed fall within Section 5(l)(c) of Act II of 1947. In this view the conviction for an offence under Section 408, I. P. C. is justified. The evidence does not disclose any circumstances which can be taken into consideration on the question of sentence. I see, therefore, no reason to interfere with the sentence either. The conviction and sentence are, therefore, confirmed and the petition is dismissed.