SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

In Re: Mahalinga thevar

In Re: Mahalinga thevar

SooperKanoon Citation : sooperkanoon.com/798910

Court : Chennai

Decided On : Apr-23-1957

Reported in : AIR1959Mad521; 1959CriLJ1441

Judge : Ramaswami, J.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 233 and 403; Constitution of India - Article 20 and 20(2); Indian Penal Code (IPC), 1860 - Sections 34, 302 and 449

Appeal No. : Criminal Misc. Petn. No. 378 of 1957

Appellant : In Re: Mahalinga thevar

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

Advocate for Pet/Ap. : M. Damodaram Naidu, Adv.

Disposition : Petition dismissed

Judgement :
ORDER

Ramaswami, J.

1. This is a petition filed against the order 'made by the learned Sub Magistrate of Sattur in P. R. C. Nos. 2 and 5 of 1957 and M. P. No. 105 of 1957.

2. The facts are: The Sub-Inspector of Police Elayirampannai, filed a charge sheet against three persons for offences punishable under Sections 449 and 302 read with Section 34 I. P. C. It was taken on file as P. R. C. No. 1 of 1957 on 14-2-1957. Subsequently one Muthurakkammal wife of the deceased, gave a private complaint implicating along with these three persons another Ayyappa Naicker with respect to the same murder. Her sworn statement was recorded and the case was taken on file as P. R. C. No. 2 of 1957 against four persons under Sections 302, 302 read with Section 109 and under Section 449 I. P. C.

3. The advocate for the accused filed a memo to the effect that since there cannot be two separate enquiries against the same accused in respect of the same criminal transaction, P. R. C. Nos. 1 and 2 of 1957 may be clubbed together and enquired into, adopting the procedure prescribed for private complaints which is the procedure most favourable to the accused. On that the Assistant Public Prosecutor endorsed that he had no objection. Thereupon the learned Sub Magistrate passed an order that as per the decision in Subrayalu v. Kailasam Pillai, 1935 Mad WN Crl. 109, and the joint memo filed by the parties, these two cases would be clubbed together and the evidence recorded in P. R. C. No. 2 of 1957 and the procedure for private complaints would be adopted. Thereafter this procedure to be adopted in such cases seems to have been the subject matter of Judicial Magistrates' Conference held at Sivaganga and the clubbing of these cases appears to have been favoured.

4. But subsequently the Honourable Judges in charge of the Magistrates (Rajagopalan and Somasundaram JJ.) issued a circular in regard to the procedure to be adopted in trying two cases, one filed by the police against say three accused and the other filed by a private complainant against the same three accused and another citing some more witnesses not cited in the police charge sheet. It will be noticed that under the amended Criminal Procedure Code, the procedure to be adopted in regard to R. C. cases to be committed on police complaint and R. C. Cases to be committed on private complaints, is widely different. It is not possible to say which is more favourable to the accused. It would be certainly open to the accused who has been committed and later on convicted under the one procedure to argue that the other procedure, should have been

adopted and if it had been adopted he would not have been prejudiced and would have secured a discharge and later on an acquittal. Therefore, my learned brothers seem to have come to the conclusion that the two cases should be shown as two P. R. cases and that they should be, tried separately following the procedure laid down in cases of case and counter, thereby avoiding several pitfalls like misjoinder of charges etc.

5. The procedure to be adopted in this State for trial of case and counter, has been set out by me in Thota Ramakrishnayya v State, : AIR1954 Mad442 , wherein t have reviewed the entire case law of this High Court on the subject. I am bound to point out here that the conclusions arrived at by me are all in conformity with the Full Bench decision of this court in Mounaguruswami Naicker in re, 64 Mad LJ 150: AIR 1933 Mad 367. I am mentioning this because, apparently on some inaccurate representation, my learned brother,. Somasundaram J. in a recent decision seems to have implied that the principles of the decision of the Full Bench were in some way different from the principles set out in : AIR1954 Mad442 . This is not so. The principles are: Where a case and a counter-case are tried by a Sessions Judge, no hard and fast rule can be laid down in regard to the procedure to be adopted.

Trials must be separate and in quick succession and separate judgments should be delivered. The conclusion in each case must be founded on and only on the evidence in each case. To avoid conflicting decisions and to arrive at a judgment after having a complete picture, it is advisable to complete the trial in both the cases and deliver judgments after hearing arguments in both the cases.

6. It is quite true, as pointed out by the learned advocate for the accused, that this procedure is cumbrous and needlessly burdensome. But the remedy lies only in the hands of the legislature. In regard to ease and counter wherein the same burdensomeness arises, Jackson J., when he was the Sessions Judge of Malabar tried the following expedient and pointed it out in Krishnayya Naidu In re, 58 Mad LJ 547: AIR 1930 Mad 505, after he became a Judge of this High Court sitting , with Wallace J.

'In case the depositions given by two witnesses as defence witnesses in one case were filed with the consent of both parties when they were examined as prosecution witnesses in the counter case, such a procedure is neither prohibited nor illegal but saves a good deal of time of the court. No prejudice can be said to be caused to the accused. This procedure is justified especially when the depositions were filed with the consent of the parties and when the witnesses were examined in the presence of the accused and sworn to the truth of their previous depositions.'

But as pointed out in this very decision, a Bench of this court which heard the appeal from the judgment of Jackson J. as District Judge of Malabar in Ummar Hajee In re, 43 Mad LJ 659: AIR 1923 Mad 32 considered this procedure wholly irregular and condemned it in no uncertain terms. Therefore in Krishna Pannadai In re, 58 Mad LJ 352: AIR 1930 Mad 190, Jackson J. made another suggestion.

'The only way in which such a procedure can be justified is by setting up a fiction that the case and a counter case are really one, and this fiction should be made a reality by statute. If a court were empowered to link cases, as they link files in a Secretariat, there would also be the incidental advantage of a great saving of time.'

But that suggestion has not commended itself to the executive and the legislature. The following extract from the report of the Uttar Pradesh Judicial Reforms Committee presided by Mr. Justice Wanchoo, Vol. I, p. 52, is also apposite:

'A suggestion has been made that a special procedure should be adopted for the trial of cross cases. It will not be feasible to provide a separate procedure for the bearing of cross cases, but it will save a good deal of time of the court if cross cases are disposed of by a single judgment and authority given to the court to refer to the evidence in either case. With this end in view a section may be added in Chapter XXIV Crl. P. C. in the following words:

'Where the court considers two or more cases to be cross cases it shall be open to the court after notice to the parties at the commencement of the trial, to dispose of both or all of them by a single judgment and refer to evidence recorded in any of the cases for the purpose of arriving at its decision. A copy of the judgment shall

be placed on the record of the other case or cases.'

Other changes in law, where necessary, may also be made to give effect to the above suggestion.'

This fruitful suggestion also has not been given effect to either in Uttar Pradesh or in the recent amendments of the Criminal Procedure Code. It is possible that it may be taken up by the Law Commission of which Mr. Justice Wanchoo himself is a distinguished member. Therefore, this argument of burdensomeness fails in the face of the larger principles involved.

7. The next and final argument is the usual vain and irrelevant invocation which has become fashionable with some criminal lawyers of the Constitution of India and it is stated that this procedure will offend Article 20(2) of the Constitution of India, viz., that no person shall be prosecuted and punished For the same offence more than once. The principle embodied in the maxim nimo bis debet punvi pro uno deticto that no citizen should be put in jeopardy of his life or Liberty more that once pro adem causa i.e., for the same cause as it is sometimes written is so well known to every jurisprudence that almost in every Constitution one finds provision against a person being put to the trial in respect of the same offence more than once.

In Section 26 of the General Clauses Act, 1897, and the Code of Criminal Procedure Section 403, we find an elaboration in all its niceties and distinctions. In the case of Rex v. Barron, 1914 2 K. B. 570, Lord Reading C. J., in giving the judgment refers to a statement of the law by Hawkins J., us follows:

'It is against the very first principles of criminal law that a man should be placed twice in jeopardy upon the same facts.'

The leading American decision under the fifth Amendment to the Constitution of the U. S. A. corresponding to Article 20(2) is Kepner v. The United States, (1904) 195 U. S. 100. Emperor v. J. Mclyer : AIR1936 Mad353 is a leading decision by a Full Bench of his Court wherein the tests of double jeopardy under Section 403 Crl. P. C. have been laid down.

The scope of Article 20(2) is laid down in Maqbool Hussain v. State of Bombay, : 1983ECR1598D(SC) , Venkatraman v. Union of India, : 1954 CriLJ993 , Sm. Kalawati v. State of H. P., : 1953 CriLJ668 , and the implication of the word 'and' in Clause 2 of Article 20 in re Devanugraham, : AIR1952 Mad725 and Rajnarain Singh v. Atmaram, : AIR1954 All319 , Upendrachandra v. State, AIR 1954 Assam 106 and Gopalkrishna Naidu v. State of M. P. AIR 1952 Nag. 170. The present is not one such case. The procedure recommended by my learned brothers and which if I may say so respectfully commends itself to me seeks to avoid this double jeopardy and only indicates the procedure to be adopted in order to ensure that the other principles like the proper joinder of charges etc., are carefully preserved also for the accused. Therefore, the invocation of Article 20(2) of the Constitution is in vain and is an irrelevant invocation. The petition is dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com