

In Re: C. Devanugraham

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Court : Chennai

Decided On : Jan-25-1952

Reported in : AIR1952Mad725; (1952)1MLJ550

Judge : Ramaswami, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 403 and 403(1);
[Constitution of India](#) - Article 20(2)

Appeal No. : Criminal Revn. No. 525 of 1951 and Criminal Revn. Petn. No. 520 of 1951

Appellant : In Re: C. Devanugraham

Advocate for Def. : State Prosecutor

Advocate for Pet/Ap. : V. Rajagopalachari, Adv. for R.V. Raghavan, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

Ramaswami, J.

1. This is a criminal revision petition filed against the order made by the learned Sixth Presidency Magistrate, Egmore, Madras in C. C. No. 8583 of 1950.

2. The facts are: The petitioner was employed as a Food Inspector in the service of the Corporation of Madras. He was charged by the Special Branch Police for an offence under Section 161, I. P. C. in that he received a sum of Rs. 50 from K. Sarangapani Naicker, a milkman as illegal gratification. The case was tried before the Fifth Presidency Magistrate in C. C. No. 1137 of 1949. The petitioner was convicted and sentenced to six months rigorous imprisonment and to pay a fine of Rs. 300 or in default to suffer rigorous imprisonment for three months. The petitioner preferred an appeal to the High Court in Crl. Ap. No. 728 of 1949 and this was disposed of by Panchapagesa Sastry J.

3. The relevant portion of the judgment of Panchapagesa Sastry J. is as follows: 'It is conceded by the State Prosecutor that if the sanction granted is illegal then, the conviction cannot stand. The ground of objection urged against the validity of the sanction is that the facts relating to the alleged offence were not placed before the sanctioning authority or rather that there is no evidence on behalf of the prosecution that the facts were so placed. Reliance was placed on the decision of the Judicial Committee reported in 'GOKULCHAND DWARKADAS v. EMPEROR', 1948 1 M.L.J. 243 .' The learned Judge accepted this contention and concluded:

'It follows that it is not proved that the sanction accorded is legal. If so, the conviction cannot stand. In this view it is unnecessary to deal with the question as to whether the offence is brought home to the appellant; nor is it necessary to refer to the other contentions raised by the learned advocate for the appellant. In the result the conviction and sentence are set aside and the appellant is acquitted. Fine, if paid, will be refunded.'

Subsequently, the Special Branch Police after rectifying the defect mentioned above has charge-sheeted the petitioner and it has been taken on file and numbered as C. C. No. 8583 of 1950 on the file of the Sixth Presidency Magistrate, Egmore.

4. The preliminary objection taken by the petitioner was that he having been acquitted by the High Court a second trial was barred under Section 403, Cr. P. C. and that in any case Article 20(2) of the [Constitution of India](#) prohibited a second trial.

5. The learned Sixth Presidency Magistrate went into the question thoroughly and overruled this objection and hence this criminal revision petition.

6. In my opinion, the two points taken relating to Section 403, Cr. P. C. & Article 20(2) of the [Constitution of India](#) are without any substance.

7. POINT 1: It is an elementary proposition that for the bar of a fresh trial under Section 403, Cr. P. C. the court by which the accused was first tried should be competent to try the offence. Therefore where the sanction or complaint by a particular person or authority is necessary under the law for the trial of a person, the question arises whether in the absence of such sanction or complaint a court which tries him is a court of competent jurisdiction. On this question, there was conflict of decisions. The majority of the High Courts have held that the Court could not be deemed to be a Court of competent jurisdiction in such cases because the trial without a proper complaint was void under Section 530 and therefore a Judgment of acquittal which ensued was also void and so there was nothing which the accused could compel a Court to recognise in support of a plea of previous acquittal.

These conflicts have been happily set at rest by a decision of the Privy Council in 'Yusaf-Alli Mulla v. The King', 1950 M.W. N. Cr. 1. Their Lordships of the Privy Council have held that where there was no , valid sanction for the prosecution of the accused the prosecution was a nullity and the order of the Magistrate acquitting the accused (or convicting as the case may be) was without jurisdiction and could only operate as an order of discharge; the accused had not been tried by a Court of competent jurisdiction and accordingly Section 403(1) of the Criminal Procedure Code was no bar to the institution of a fresh prosecution against the accused for the same offence on the same facts as in the former prosecution.

The view of the Federal Court in 'Basdeo Agarwalla v. Emperor', 1945 F C R 93 that a prosecution launched without a valid sanction is a nullity was approved. It was finally held that under the common law, a plea of previous acquittal or previous conviction could only be raised where the first trial was before a court competent to pass a valid order of acquittal or conviction and that unless the earlier trial was a lawful one which might have resulted in a conviction the accused

was never in jeopardy. Leading English cases in 'Rex v. Bowman', (1834) 6 Car & P 337; Rex v. Bates', (1911) 1 K. B. 964 and 'Rex v. Marsham; PATHICK LAWRENCE EXPARTE' (1912) 2 K B 362 were referred to and 'Rex v. Simpson', (1914) 1 K B 66 was distinguished. The Judgment of the Bombay High Court was affirmed. The present case is on all fours with the Privy Council decision which is now cited and there can be no doubt that beyond taking advantage of the term 'acquittal' instead of 'discharge' in the judgment of my learned brother Panchapagesa Sastri J., there are no merits in this contention. Therefore the plea of previous acquittal based upon Section 403, Cr. P. C. has no substance.

8. POINT 2: Turning to the Article 20(2), [Constitution of India](#), the principle underlying this clause is the same as underlies Section 403, Cr. P. C. namely double jeopardy. It runs as follows : 'No person shall be prosecuted and punished for the same offence more than once.' The word 'prosecuted' is said to have been introduced in the present case in order to make it clear that the power relates to punishment by a court of law and not to other kinds of punishment besides a judicial penalty for example, departmental action, in the case of public servants or proceedings under the Legal Practitioners' Act in the case of lawyers. The word 'and' has certainly been used in a conjunctive and not a disjunctive sense because to interpret the word 'and' as 'or' would be reading into the Article something which is not there. The principle that no citizen should be put in jeopardy of his life or liberty more than once is so well known that in almost every Constitution one finds a provision against a person being put to trial in respect of the same offence more than once. Section 403, Cr. P. C. is nothing more than an elaboration of this principle in all its niceties and distinctions.

In this background when we consider Article 20(2) it is seen that it is nothing more than a clause only against a fresh prosecution and punishment for the same offence and which was also the law previously. There is absolutely no scope on the wording of the article to suspect that the framers of the Constitution wanted to unsettle the settled law of the land. What they merely wanted to provide for was a specific thing, namely, the non-prosecution of a person who had already been prosecuted and convicted. One should hesitate long before presuming that the law established for decades was sought to be disturbed by the makers of the

Constitution, especially when there was nothing in the working of that law, which required or justified such disturbance. Above all, whatever the intention of the framers may be, we are guided only by the intention as expressed in the Article, and that intention, as pointed out by N. R. Raghavachari in his [Constitution of India](#) is perfectly clear. (See page 94). The only consequence of Clause (2) not providing for other cases known to the existing law, either with reference to the permissibility of fresh prosecutions or with reference to the non-maintainability thereof is probably this, that the criminal law of the land can hereafter be amended in the ordinary way for the purpose of altering the existing law subject to the provision in Clause (2) of Article 20 which being one of the fundamental rights cannot be taken away or abridged or contravened.

This shows as already premised that clause (2) uses the conjunction 'and' and not the disjunction 'or' between the words 'prosecuted' and 'punished' and this makes it clear that to bar a fresh prosecution for the same offence, the accused should have been both prosecuted and punished. So when an accused is discharged for want of sanction there is no punishment and when a man is punished departmentally, there is no prosecution. Therefore Article 20(2) of the [Constitution of India](#) does not take away the right to institute a second prosecution when the first is found to be a nullity by reason of want of sanction a prerequisite for the maintaining of the prosecution.

9. Both the grounds taken by the learned advocate fail and the final point mentioned by him is that the offence alleged was as early as 1949 and that the petitioner has also been removed from service, and that it will not be expedient that the case should now be prosecuted after obtaining the necessary sanction. This argument drawn from misery is a good argument for being considered at the end of the case and in the event of this petitioner being convicted, and it will then be open to the trial Magistrate to adopt one of many liberal courses open to him under the Code of Criminal Procedure and under the Madras Probation of Offenders Act. This is certainly no ground for not getting along with the trial.

10. The criminal revision petition is dismissed and the learned Sixth Presidency Magistrate is directed to dispose of the case without further delay.

