

Public Prosecutor Vs. Sampath Kumar

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Court : Chennai

Decided On : Nov-10-1959

Reported in : AIR1960Mad256; 1960CriLJ922

Judge : Somasundaram, J.

Acts : District Municipalities Act - Sections 345; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 249

Appeal No. : Criminal Appeal No. 489 of 1959

Appellant : Public Prosecutor

Respondent : Sampath Kumar

Judgement :

(1) This is an appeal by the State against the acquittal of the respondent in C. C. No. 946 of 1959 on the file of the Sub Magistrate No. 1(J), Tiruchirapalli.

(2) The Municipal Commissioner, Srirangam Municipality, filed a complaint against the respondent herein for non-payment of house-tax for the years 1951-52, 1952-53 and 1953-54. The complaint was first laid before the court of Bench Magistrates, Srirangam, who took the case on file and issued summons for appearance of the accused. In spite of several summonses and even bailable warrants the appearance of the accused could not be secured. Finally, it is stated, the proceedings were stopped under S. 249 Cri P. C. by the District Magistrate, Tiruchirapalli, in his order, L. Dis. 10667/54 dated 30-11-1954.

(3) While the case was thus pending, on 16-10-1958, the Municipal Commissioner applied to the court of Bench of Magistrates to reopen the case, apparently because the accused was available. Summons was issued to the accused who, after service, appeared in court. He then raised objections to the trial of the case, the objections involving questions of law. The District Magistrate transferred the case to the file of the Sub Magistrate for the reason that the questions of law involved in the case were such that it should be heard and disposed of by a Stipendiary magistrate.

(4) It is alleged by the State that in the court of the Sub Magistrate when objections were raised by the accused, notice was not sent to the Commissioner, and that he was not heard regarding these objections. The records are not quite clear on the subject i.e., as to whether notice was sent to the Commissioner or not. It is pointed out by the learned Public Prosecutor that the order itself furnishes internal evidence that the Commissioner could not have been present because there appears to be no reference to any answer of the Commissioner to the argument of the accused; and, if the Commissioner was present, certainly, he would have replied to the objections and the reply would have been referred to. But this, by itself, seems to be a slender ground on which we can say that no notice was sent. However, I am not prepared to reverse this acquittal on that ground.

(5) The main ground on which the magistrate has acquitted the accused is that the prosecution is barred under S. 345 of the District Municipalities Act. Sec. 345 of this Act is in these terms:

"No distraint shall be made, no suit shall be instituted and no prosecution shall be commenced in respect of any sum due to the municipal council under this Act after the expiration of a period of three years from the date on which distraint might first have been made, a suit might first have been instituted, or prosecution might first have been commenced as the case may be, in respect of such sum."

Now, this complaint by the Municipality was filed on 22-2-1954. This is well within three years when the tax will be due for 1951-52, because the tax for the first half of the year 1951-52 will have to be paid before the end of that first half year, i.e., before 30-9-1952. The prosecution having been launched on 22-2-1954, it is well

within three years of the time when the amount of the tax will become due, or when the prosecution should have been launched. In respect of the other years, the prosecution is therefore not barred, it being for sums due for later periods. The Magistrate has gone under the impression that the proceedings were wrongly stayed by the District Magistrate under S. 249, Cri. P. C. and the case having been reopened on 16-10-1958, the proceedings are barred by limitation.

The learned Magistrate has certainly committed an error in thinking that the prosecution must be considered to have originated only on 16-10-1958. What the section requires is that no prosecution shall be commenced after the expiration of a period of three years. Here, the prosecution has already commenced on 22-2-1954. This is well within three years, and the proceedings were pending and they were stopped. When the prosecution is reopened, it is not as if the prosecution was commenced only after the reopening; it only continued. The magistrate was clearly in error in holding that the present proceedings were barred under S. 345 of the Act. On this ground the acquittal has got to be set aside.

(6) One other ground also on which the learned Magistrate relies is the misjoinder of charges. It was open to the magistrate to split the case into three cases, i.e., one for 1951-52, the other for 1952-53 and the third for 1953-54. There was no need even to wait for the Commissioner to amend the complaint. The magistrate himself can split up the case and try the cases if he is satisfied that there is misjoinder of charges. Instead of adopting that procedure the magistrate was clearly wrong in acquitting the accused on the ground of misjoinder of charges.

(7) The main grounds on which the learned Magistrate has acquitted the accused are unsustainable and as the cases related to taxes due to the Municipality, it seem necessary that not only should the acquittal be set aside but there should be a retrial of this case.

(8) The acquittal is, therefore, set aside and the case is remanded to the court of the Sub Magistrate other than the one who tried the case. The District Magistrate will effect the necessary transfer and due notice will be given to the Commissioner and the accused will have his usual right to raise such objections as he can have to the case but the case will be split up into three and will be tried as three

separate cases. The appeal is allowed.

(9) Appeal allowed.

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