

In Re: Thangavelu Mudali

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Court : Chennai

Decided On : Feb-08-1955

Reported in : 1956CriLJ245

Judge : Balakrishna Ayyar, J.

Appellant : In Re: Thangavelu Mudali

Judgement :

ORDER

Balakrishna Ayyar, J.

1. Thangavelu Mudali, the petitioner before me, was the employee of one Padhmanabhan. It was part of his duties to sell cloth belonging to his employer in various places and collect the money due from the customers. On receipt of a complaint from one of his customers, Padhmanabhan looked into the account maintained by the petitioner and then noticed facts, which led him to conclude that the petitioner had falsified the accounts and appropriated different sums of money, He, therefore, laid a complaint before the police on 20-2-1953.

The police investigated the case and laid two charge-sheets, one before the Sub-Divisional Magistrate, Tirupattur, for falsification of accounts and the other before the Sub-Magistrate, Tirupattur, for breach of trust under Section 408, I.P.C. The charge sheet for falsification of accounts was registered by the Magistrate as C. C No. 80 of 1953. The learned Magistrate framed charges against the accused

under Section 477-A, I.P.C. but eventually and at the end of a full trial acquitted him. That was on 7-9-1953.

The charge-sheet filed before the Sub-Magistrate, was withdrawn by the Sub-Divisional Magistrate to his own file. Padhmanabhan, the employer of the petitioner, was examined in chief as P. W. 1. At that stage the petitioner filed an application under Section 403, Cr. P.C., in which the point was taken that the trial in respect of offences under Section 409, I.P.C. was barred by reason of the prior acquittal in respect of the charges framed under Section 477-A, I, P.C. The learned Sub-divisional Magistrate accepted the objection and purported to acquit the accused.

2. It may be remarked at once that since no charge had been framed by the Magistrate, his order, even if his view of Section 403, Cr. P.C. were right, should have been one of discharge. The State preferred a revision petition before the District Magistrate at Vellore, He set aside the order passed by the Sub-Divisional Magistrate and directed a further inquiry. The petitioner has come to this Court seeking to canvass the correctness of the order passed by the District Magistrate.

3. I am clear in my mind that the order is correct. Section 403, Cr. P.C. prohibits a second prosecution in respect of an offence, which has ended either in a conviction or an acquittal. It also prohibits a second prosecution in respect of facts on which a different charge from the one actually framed against the accused might have been framed under Section 236, or on which the accused might have been convicted under Section 237. But it does not bar a trial in respect of a distinct offence for which a separate charge might have been framed under Section 235 (1), Cr. P.C.

The effect of these provisions is made clear from the illustrations appended to the relevant sections. The facts alleged against a person might amount to theft, or receiving stolen property or criminal breach of trust or cheating. If he has been tried and either acquitted or convicted on a charge of theft, then he cannot be subsequently prosecuted for receiving stolen property or breach of trust or cheating. But, if a person commits murder and robbery, the fact that he has been acquitted of the charge of murder does not bar his prosecution for robbery.

In like manner, the circumstance that the petitioner in the present case has been acquitted in respect of offences under Section 477-A, I.P.C. does not bar his prosecution under Section 409, I.P.C. Mr. Narayanaswami Mudaliar the learned advocate for the accused argued that the evidence in the second case is bound to be substantially the same as in the first case. But that is not the material test.

The material test is that laid down by Section 236, Cr. P.C. namely, whether the facts are of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, It is only in such circumstances that Section 236 is attracted. And it goes without saying that Section 237 cannot be attracted unless Section 236 actually applies to the case.

4. Mr. Narayanaswami Mudaliar cited a number of decisions in support of his contentions. But none of them really helps him. In - 'Emperor v. Jhabbar Mull Lakkar' : AIR1923 Cal179 (A) the accused was tried under Section 408 I.P.C. for criminal breach of trust of three sums of money alleged to have been dishonestly misappropriated on three dates, and it was part of the prosecution case at the trial that he had made three false entries to conceal the acts of misappropriation.

He was acquitted by the jury, but was subsequently charged on the same evidence under Section 477-A, Penal Code in respect of the said three entries. The learned Judge held that on the facts of the case (emphasis supplied) the accused should not be tried again. He observed:

It is conceded by the learned Counsel for the prosecution that the evidence, which would be given in respect of the present charges, would be identical with the evidence given against the accused at the last sessions, and the learned Counsel further informed me that the matter of the alleged false entries was investigated at the trial before my learned brother Walmsley. J. and the jury...

Since the case was argued last Friday I have considered the matter and I have come to the conclusion that, on the facts of this case, the accused ought not to be put on his trial in respect of these charges. If he were so tried, in my judgment, it would in effect amount to trying him again for the same offences as those upon which he has already been tried and acquitted by the jury, although the charges

now before the Court are framed in a different manner.

This decision rests on the particular facts of the case and on the finding that the second trial would be substantially a repetition of the first. The decision in - 'Rex v. John McIver : AIR1936 Mad353 falls clearly within the scope of Section 236 Cr. P.C. The first trial was for cheating and the second for breach of trust. The decision in - 'Emperor v. Anant Narayan : AIR1945 Bom413 (C) like that in the Calcutta case turns on the particular facts of that case, This is made clear by the observations appearing on p. 417:

But the material considerations in this case are: That the jury have unanimously held the accused not guilty in the earlier trial and the accused has once been acquitted; that the accused has in fact paid the whole amount involved in the two trials; that he has already suffered one lengthy trial; and that it is undesirable that in the second trial there should be any risk of the jury's taking view different from that taken by the jury in the first trial.

Mr. Narayanaswami Mudaliar finally referred me to certain observations of Subramania Aiyar, J. in - 'Emperor v. Chinna Kaliappa Goundan 29 Mad 126 (D) which read:

Nor is authority wanting for the view that even where the plea of 'autrefois acquit' is not technically available the principle of it is available for the accused when the interests of justice require its extension in his favour.

As authority for this view the learned Judge cited Bishop's Commentaries on the law of Criminal Procedure, Now the volume referred to by the

5. In my opinion, the order of the District Magistrate is correct.

6. The revision petition is therefore dismissed.

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