

Sambasivan and ors. Vs. Inspector of Railway Protection Force

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Court : Chennai

Decided On : Apr-17-1974

Reported in : 1976CriLJ36

Judge : K.N. Mudaliar, J.

Appellant : Sambasivan and ors.

Respondent : inspector of Railway Protection Force

Judgement :

ORDER

K.N. Mudaliar, J.

1. The four petitioners seek to revise the order of the Sub-Divisional Magistrate, Tirupathur, holding that the complaint filed by the Inspector of Railway Protection Force, Katpadi, for an offence under Section 3 (a) of the Railway Property (Unlawful Possession) Act, 1966, against them is legally competent. In order to appreciate the legal position involved in this revision petition, it is pertinent to recapitulate a few facts.

2. The four petitioners were convicted by the Sub-Magistrate, II, Tirupattur, and were sentenced to suffer rigorous imprisonment for four months for an offence under Section 379, Indian Penal Code. The petitioners appealed against the judgment of the Sub-Magistrate and the learned District Magistrate (Judicial)

Vellore, acquitted the petitioners of the offence punishable under Section 379, Indian Penal Code, in CrI. Appeal No. 84 of 1972 on his file. But the learned District Magistrate suggested the advisability of filing a complaint against the petitioners for an offence punishable under Section 3 (a) of the Railway Property (Unlawful Possession) Act, 1966.

3. The said offence is a first class offence. Therefore, the Sub-Magistrate of Tirupathur has no jurisdiction to try the case. The respondent filed a complaint against the petitioners for an offence punishable under Section 3 (a) of the Railway Property (Unlawful Possession) Act, 1966, before the Sub-Divisional Magistrate Tirupathur. The petitioners questioned the legality of the complaint filed by the respondent before the Sub-Divisional Magistrate, Tirupathur. The learned Sub-Divisional Magistrate held that the complaint filed by the respondent was legally competent.

4. The learned Counsel for the petitioners argued that in view of Section 403 (1) of the Code of the Criminal Procedure, the petitioners cannot be tried again for another offence based on the same facts. I am afraid : his argument is not tenable. A reading of Sub-section (4) of Section 203, Code of Criminal Procedure, 1898, would convince that the complaint is legally valid. Sub-section (4) of Section 203. Code of Criminal Procedure is extracted here below :

403 (4) A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence constituted by the same acts which, he may have committed if the court by which he was first tried was not competent to try the offence with which he is subsequently charged.

Illustrations (f) and (g) given under Section 403, Code of Criminal Procedure, are illuminating and they are :

(f) A is charged by a Magistrate of the second class with, and convicted by him of, theft of property from the person of B. A may be subsequently charged with, and tried for, robbery on the same facts.

(g) A, B and C are charged by a Magistrate of the first class with, and convicted by him of robbing D. A, B and C may afterwards be charged with, and tried for dacoity on the same facts.

5. The learned Public Prosecutor relied on the rationale found in the decision of the Supreme Court in *Ramekbal Tiway V. Madan Mohan Tiway* : 1967 CriLJ1076 and also in *State v. Birda* and contended that the complaint filed by the respondent herein is legal, valid and competent. The separate complaint now filed before the Sub-Divisional Magistrate, Tirupathur by the respondent, is, in my view, legal, valid and competent.

6. The Sub-Divisional Judicial Magistrate, Tirupathur, is directed to proceed expeditiously with the enquiry and trial of the petitioners for an offence punishable under Section 3 (a) of the Railway Property (Unlawful Possession) Act, 1966.

7. The revision petition is dismissed.

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