

In Re: R.T. Arasu and anr.

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Court : Chennai

Decided On : Nov-01-1955

Reported in : AIR1956Mad407; 1956CriLJ1003

Judge : Somasundaram and ;Ramaswami Gounder, JJ.

Appellant : In Re: R.T. Arasu and anr.

Judgement :

Somasundaram, J.

1. These are appeals by accused 1 and 2 against their convictions and sentences by Ramaswami J. on the Jury's unanimous verdict of guilty on the first and second charges against both the two accused, and on the third and fifth charges against the second accused. The jury returned a verdict of not guilty against the first accused with regard to the fourth and sixth charges and so he has been acquitted of those two charges.

2. The first charge against the second accused is for an offence under Section 472, I.P.C. in that he was in possession of a counterfeit seal of the Madras Ration Sub-Treasury for the purpose of committing forgery in respect of the Ration Sub-treasury chalans. The first accused is charged with abetment of the said offence.

The third charge states that the second accused during the said period, namely, January 1954 fraudulently and dishonestly used as genuine certain documents

purporting to be receipts acknowledging the payment of money, namely, 13 Madras Ration Sub-Treasury chalans, Exs, P 1, P 2, P 3, P 5, P 6, P 8, P 9, P 10, P 11, P 19, P 20, P 21 and P 22, and thereby committed an offence punishable under Section 471 read with Section 467, I.P.C.

The fourth charge against the first accused is that he abetted the second accused in respect of the above offences, in the course of the same transaction and thereby committed an offence punishable under Section 471 read with Sections 467 and 109, I.P.C.

The fifth charge against the second accused is for the offence of cheating in that during that period on the voucher of the forged sub-treasury chalans he induced the State of Madras represented by the godown keeper, to part with 98 bags of Wheat valued at about Rs. 4500 and thereby committed an offence punishable under Section 420, I.P.C. The sixth charge is against the first accused and that is for abetment of the above offence punishable under Section 420 read with Section 109, I.P.C.

3. The case for the prosecution is that P. W. 9 who is running a flour mill was out to purchase wheat in the black-market. The second accused who was employed in a private ration shop on 7-1-1954 received Rs. 800 from P. W. 9 and gave him Exs. P 1 and P 2 purporting to be the sub-treasury chalans for payment of the amount of the sub-treasury by the concerned dealer for twenty bags of wheat'. On the same day later he is said to have received another sum of Rs. 400 and delivered Ex. P 3 to the same P. W. 9 for ten bags.

Similarly on 8-1-1954 the second accused gave to P. W. 9 Exs. P 5 and P 6 purported to be sub-treasury chalans and obtained from him Rs. 800. On 9-1-1954 he gave on two occasions once Exs. P 10 and P 11 and on another occasion Exs. P 8 and P 9 and received Rs. 1056 for 24 bags of wheat. On 22-1-1954 similarly the second accused gave Exs. P 19 and P 20 and obtained from P. W. 9 a sum of Rs. 800 and when the chalans were presented at the go-downs the fraud was discovered and after investigation the accused were charge-sheeted for the offences set out above.

It is clear from the facts stated above that Exs. P 1 to P 3 were used on the 7th of January and Exs. P 5 and P 6 on the 8th and Exs, P 8 P 9, P 10 and P 11 on the 9th and P 19 and P 20 on 22-1-1954. On the allegations that these were forged chalans and that they were used as genuine documents on the four different dates it is clear that four offences had been committed on the four different dates.

Even assuming that Exs. P 1 to P 3 can be clubbed together as they were used on the date and similarly Exs. P 8, P 9 and P 10 were used on one and the same day still four offences have been committed on four different dates.

Under Section 234, Cr.P.C. when a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences whether in respect of the same person or not he can be tried at one trial only in respect of three offences of the same kind but under Section 235 if in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person he may be charged with and tried at one trial for every such offence.

But in the present case the four offences committed on four different dates cannot be said to have been committed in the course of the same transaction. The trial of the accused for four different offences committed under Sections 471 and 467, I.P.C. on four different dates is vitiated by mis-joinder of charges. So far as the fifth charge is concerned, it is a distinct offence of cheating and that offence has also been committed on three different dates, namely, on the 7th, 8th and 9-1-1954 and on 22-1-1954 it was an attempt to cheat. So the three offences of cheating and the offence of attempting to cheat on 22-1-1954 cannot be tried together at one trial, as it would amount to four offences on four different dates even if attempt to cheat is assumed to be of the same kind as cheating. That also offends the provisions of Sections 234 and 235, Cr. P.C.

So far as the first and second charges are concerned, the two accused can be tried together for the offences under Section 472 read with Section 109, I.P.C. as both of them can be said to have committed the offence in the course of the same transaction since the accused in the main charge can be tried along with the abettor. But the charges Nos. 3 and 4 will amount to another transaction and

similarly charges Nos. 5 and 3 will form the subject matter of a third transaction. The trial was, therefore, for offences committed in respect of three transactions.

According to the decision in *Kasi Viswanathan v. Emperor* 30 Mad 328 (A) they cannot be tried together. The trial, is, therefore, vitiated by mis-joinder of charges and persons. As pointed out in the Pull Bench decision in *Narayana Bhatta, in re*, Air 1949 Mad 9 (B) misjoinder of charges is an illegality and therefore a joint trial is vitiated by it.

4. We, therefore, set aside the convictions and sentences of the second accused of all the offences and order retrial. As regards the first accused his acquittal under charges 4 and 6 stands. His conviction and sentence on the second charge is set aside and there will be a retrial in respect of that charge. Both the accused will be tried at the new trial on appropriate charges, after splitting up the charges in the light of the observations made above, without giving rise to any misjoinder. Both the accused will continue to be on bail on the same terms on which they are now on bail, till the new trial is over.

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