In Re: Gnanamuthu

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SooperKanoon Citation : sooperkanoon.com/807119

Court : Chennai

Decided On : Dec-31-1963

Reported in : 1964CriLJ435

Judge : Kunhamed Kutti, J.

Appellant : In Re: Gnanamuthu

Judgement :
ORDER

Kunhamed Kutti, J.

1. The petitioner was a Sub Inspector of Police in Veerapandi in about 1959. There was a robbery in his house and gold jewels of his wife had been snatched away. One Mookan Servai suspected of this crime, was tried for the offence but he was acquitted. During the investigation of the case by the petitioner, he had recovered two gold ingots from Guruswami Asari (P. W. 1) and Ponnukamakahi Asari. They had claimed the ingots as belonging to them. But when the petitioner produced them in Court after seizure on 6-1O-1959, he was allowed to keep them on his undertaking to produce them in Court when called upon to do so. After the acquittal of Mookan Servai, the trial Court ordered the jewels to be retained by the petitioner. But, on appeal, the learned Sessions Judge reversed the said order and directed the trial Court to hold a fresh enquiry as to the ownership of the ingots. The Magistrate then. directed the petitioner to produce the ingots in Court and he

produced them after taking time twice. An order was ultimately passed by the learned Magistrate directing return of the ingots to P. W. 1 and Ponnukamakshi. P. W. 1 took back M.O. 1 from Court on 15-3-1961. M.O. 2 was kept in Court custody as Ponnukamakshi had died. On getting back M.O. 1, P. W. 1 got it tested in the Court verandah when it was discovered that the ingot was of brass and not of gold. P. W. 1 then. made a report about it to the learned Magistrate who subsequently got M.O.2 also tested and found the same to be of brass.

2. The cases now before us arise out of a complaint filed by the Court under Section 193, I.P.C. and a police charge under Section 420, I.P.C. against the petitioner. In the course of the enquiry before the learned Magistrate, the petitioner had given evidence that the ingots M.Os. 1 and 2 were of gold and his defence against the charges under Sections 193 and 420, I.P.C. was that the ingots produced by him in Court were the same as seized by and allowed to be retained with him. Both the trial Court and the appellate Court have found this case to be untenable. If, as found by the Courts below M. Os. 1 and 2 were not the ingots seized and allowed to be retained by the petitioner [there can be little doubt about the sustain ability of his conviction either under Section 417 or under Section 193, I.P.C. for the reason that he had stated on oath that M. Os. 1 and 2 were the ingots he received from Court on 6-10-1959. The substantial question therefore is whether M. Os. 1 and 2 were the ingots received by him. One notable circumstance in this regard is that until the investigation of these cases, there was no whisper by the petitioner that the ingots seized and allowed to be retained by him were not gold ingots.

M. Os. 1 and 2 weighed 7-1/ 8 and 4 1/2 hovelling respectively. The petitioner took delivery of them after executing a bond for Rs. 1000 which would indicate that at the time he had satisfied himself that the ingots received by him were of gold. Another clinching circumstance is that after the case against Mookan Servai was disposed of and the bond was cancelled allowing the petitioner to retain the ingots, he had sold gold ingots of almost the same weight to P. W. 6 at Madurai and with the sale price had purchased other jewels from the shop of P. W. 6. At no stage in the proceedings commencing from the seizure of the ingots from P. W. 1 and Ponnukamakshi Asari had any attempt been made to test the quality of the metal.

The fact that the ingots were of gold appears to have been taken for granted even when the learned magistrate considered the question as to whom they were to be restored, pursuant to the order of the sessions judge. After orders were passed for their return, P. W. 1 appears to have suspected that M. Os. 1 and 2 were not gold. He got M. O. 1 tested on this suspicion and found the same to be gold guilted brass. Subsequently, the Court on its motion, tested M. O. 2 with the same result.

The non-examination of the metal at the intermediate stages does not in the circumstances justify the Conclusion that the ingots seized and allowed to be retained by the petitioner had been produced by him in Court on 25-10-1960. The delay in the production of the M. Os. and the fact that the ingots of the same weight had been sold by him (the difference in weight in the case of one being negligible) are in my opinion circumstances suggestive of the fact that the M. Os. produced by him on 25-10-1960 were not the M.Os. received by him from Court. I am satisfied that M. Os. 1 and 2 were not the ingots received by him and that in producing M. Os. 1 and 2 in Court, he bad committed an offence under Section 417, I.P.C. and that when he swore that M. Os. 1 and 2 were the ingots he received from Court when he knew or must have known that they were not such ingots but ingots made of brass, he had also committed an offence punishable under Section 193, I. P. C.

3. The learned Counsel for the petitioner however urged before me that having regard to the provisions of Section 479-A, Crl. P. C. the petitioner could not have been prosecuted under Section 476, Crl. P. C. This contention has been effectively answered by Somasundaram, J. in Kasi Thevar v. Chinnaiah Konar, : AIR1960 Mad77 . The present was a case where for the reasons already set out by me, the enquiring magistrate was not in a position to ascertain that the petitioner had produced spurious ingots or given false evidence, when he passed orders directing delivery of M. Os. 1 and 2 to P. W. 1 and Ponnukamakshi Asari. The bar to proceedings under Sections 476 to 479, Crl. P. C. comes in only when proceedings could be initiated under the provisions of Section 479-A, Crl. P. C. If proceedings could not be taken under the said section, then Clause 6 therein does not operate as a bar for proceedings under Sections 476 to 479, Crl. P. C. As pointed out by Somasundaram, J. in the above case, Section 479-A, Crl. P. C.

itself clearly states 'When the Court is of opinion that any person appearing before it as a witness has intentionally given false evidence the Court shall at the time of judgment of final order record a finding to that effect.' The conditions necessary for the application of Section 479-A therefore are that the Court before it delivers its judgment or at any rate at the time of delivering the judgment must form an opinion that a particular witness or witnesses is or are giving false evidence; if the Court could not form any opinion about the falsity of the evidence of the witness appearing before it, then certainly the Court cannot at the time of delivering the judgment record any finding about the same. A Court can come to a conclusion that a witness is false only when there are materials placed before it to justify that opinion. If no materials were placed before the Court to enable the Court to form an opinion that a witness is giving false evidence, then certainly it could not form that opinion. From a mere suggestion and denial, no Court will ever come to the conclusion that a witness by his denial is giving false evidence. On the other hand, an essential prerequisite for proceedings under Section 479-A, Crl. P. C. is that at the time of delivery of judgment, the Court should have formed an opinion about the falsity of the evidence of the witness and Section 479-A can apply only to such cases and not to cases where it could not form such an opinion.

4. The Supreme Court has no doubt held in Shabir Hussain Bholu v. State of Maharashtra, : AIR 1963 SC816 , that Section 476, Crl. P. C. is excluded by Section 479-A and that only the provisions of Sub-Section (1) of Section 479-A must be resorted to by the Court for the purpose of making a complain against a person for intentionally giving false evidence or for intentionally fabricating false evidence at any stage of the proceedings before it. In this case, their Lordships of the Supreme Court have also approved the decisions of the Punjab High Court in Parshottam Lal v. Madanlal Bishambhar Das, , which followed the Allahabad ruling in Jaibir Singh v. Malkhan Singh, : AIR1958 All364 , and of the Rajasthan High Court in Amolakh v. State, which have laid down that provisions of Sections 476 to 479 are excluded where an offence is of the kind specified in Section 479-A.

5. In all these cases, however, there was nothing to preclude the Court from invoking Section 479-A at the time of the disposal of the case unlike in the present case, wherein the facts that M. Os. 1 and 2 were spurious metals and the

petitioner had given false evidence were known to the Court only after the case was disposed of by the learned magistrate. None of these cases is thus, on facts similar to the present one wherein the perjury had been detected subsequent to the disposal of the case. On the peculiar facts of this case, therefore, it seems to me that the view taken by Somasundaram, J. in : AIR1960 Mad77 , still applies, so that I am of opinion that the conviction of the petitioner under Section 193 Part I, I.P.C. is not vitiated.

6. The convictions of the petitioner both under Section 193, Part I and Section 417, I.P.C. are accordingly confirmed.

7. The sentence imposed upon the petitioner under each of the above sections are R. I. for one year. It is urged for him that he has already lost his job and that one year's R.I, on each count is too severe a sentence. The offences committed by him are undoubtedly serious, but taking into consideration that he has already lost his job. I am inclined to take a lenient view of the sentence. I would, therefore, reduce the sentence to six months R.I. in both these cases and make them run concurrently with each other. Subject to this modification, these petitions are dismissed.