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Court : Chennai

Decided On : Sep-06-1923

Reported in : 76Ind.Cas.708

Judge : Krishnan, J.

Appellant : Chinnappa Naidu

Judgement :
ORDER

Krishnan, J.

1. This is an application against an order passed by the Second Class Magistrate of Villupuram rejecting an application by the 2nd accused that he should not be tried for the offence of rioting under Section 147, because he had been already acquitted on a former occasion in C.C No. 237 of 1922 by the Sub-Magistrate of Tindivanam on the same facts although on that occasion he was charged only with the offence of miss. chief. The two prosecutions seem to be based to a great extent upon the same facts. They arise from the alleged facts that the 2nd accused went with a number of others to a Palmyra tope and some of the persons in that assembly climbed up the trees and cut down the spathes of the trees and also threw down the pots attached to them in which toddy was being collected. The Magistrate has held that Section 403, Criminal Procedure Code, is not applicable to this case because he holds that the trial of the previous case referred

to an offence under a section which has nothing in common with Section 147, that being a trial under Section 427, Indian Penal Code, for committing mischief.

2. Section 403, Criminal Precedure Code, is not a section easy of construction; but the general principle underlying it is to be borne in mind, namely, that a man should not be put upon his trial twice over on the same facts and it is a great hardship for a man to stand more than one trial for any one offence. Though the first part of Clause 1 of Section 403 is clear enough, that a man is not to be charged for the same offence once again after he has been convicted or acquitted of the offence, the second part of it which says 'nor on the same facts for any other offence for which a different charge from the one made against him might have been made under Section 236, or for which he might have been convicted under Section 237,' is not always easy of application. Clause (2) says: 'A person acquitted or convicted of any offence may be afterwards tried for any distinct offence for which a separate charge might have been made against him on the former trial under Section 235, Sub-section (1).

3. It is argued by the Public Prosecutor that it is the second clause that applies in this case; but I am unable to accept his argument. I think that this is not a case where there are a series of acts so connected together as to form the same transaction in which more than one offence was committed. Evidently, the second accused and the members of his party came to the tope and some of the party broke the pots. In the first case it was alleged that the person who did the mischief did so at the instigation of the others who were standing on the ground. The second accused was one of those charged in that case. He was acquitted on the ground that he was not present at all at the scene of occurrence. Now it is alleged that the 2nd accused along with the same body of people as on the former occasion went to the tope and some of them destroyed the spathes in pursuance of the common object which the party entertained, namely, of committing mischief by destroying the spathes and breaking the pots. Though the offences in the two cases are under two different Sections 147 and 427, still the facts of the two cases here seem to overlap so considerably that I feel inclined to apply the principle underlying Section 403 to this case. I think that it is possible to bring it under the words of Section 236; though under Section 403 it would have been open to the

prosecution in the previous trial to have framed alternative charges under mischief and rioting, somehow or other the charge of rioting was hot put forward. We have not got here series of acts and if the prosecution felt it doubtful as to whether they would be able to prove the facts constituting the offence of mischief or the offence of rioting, they could easily' have charged the accused in the former trial in the alternative with the two offences. That being so, I am inclined to think, though with some hesitation, that Section 403 will apply to this case.

4. Some authorities have been cited before me by the Vakil for the petitioner. The case in Ganapatki Bhatta v. Emperor 19 Ind. Cas 310 : 36 M. 308 : 24 M.L.J. 463 : 13 M.L.T. 360 : 14 CrI. L.J. 214 a decision of a Bench of this Court, is distinctly in his favour. It was there held that the trial of a person under Section 211, Indian Penal Code, was a bar to his trial subsequently under Section 182, Indian Penal Code. The learned Judges considered the scope of the language of Section 403 and applied that language to it. There is also a ease in Emperor v. Jhabbar Mull Lakkar 72 Ind. Cas. 973 : 49 C. 924 : A.I.R. (1923) (C) 179 : 24 CrI. L.J. 509 somewhat to the same effect, where, however, unfortunately the learned Chief Justice does not consider the language of the section in question. All the authorities that have been cited, before me are in favour of a liberal view being taken of Section 403.

5. I, therefore, allow this petition and direct that the trial of the second accused only under Section 147, Indian Penal Code, be finally stayed.