In Re: U.R. Ramaswami

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SooperKanoon Citation : sooperkanoon.com/813020

Court : Chennai

Decided On : Feb-05-1954

Reported in : AIR1954Mad1020

Judge : Somasundaram, J.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 271 and 412

Appeal No. : Criminal Revn. case No. 52 of 1954 and Case Refd. No. 1 of 1954

Appellant : In Re: U.R. Ramaswami

Advocate for Pet/Ap. : Public Prosecutor

Judgement :
ORDER

Somasundaram, J.

1. This is a reference by the District Magistrate of Madurai under the following circumstances.

2. In C. C. N. 14 of 1953 on the file of the Honorary Special 1st Class Magistrate, Madurai, the accused was convicted on a pica of guilty of the offence of criminal breach of trust in respect, of a sum of Rs. 300. The case of the complainant was that the accused represented himself to be a merchant dealing in broken glass pieces, and obtained an advance of Rs. 300 from the complainant in two

instalments, one of Rs. 200 on 22-1-1953 and another Rs. 100 on 13-2-1953, agreeing to supply certain, quantity of glass pieces to him within a fixed period. The glass pieces were not supplied within the stipulated time and when he Was pressed by the complainant regarding the same, the accused gave a cheque on 18-3-1953 to the complainant, which cheque was dishonoured as there was no balance to the credit of the accused at that time.

3. On these facts, the Magistrate framed a charge under Section 409, I. P. C. and when the accused was asked to plead, he pleaded guilty to that charge. In accepting the plea of guilty, and before passing sentence, the Magistrate said that there is no intention on the part of the accused to cheat or defraud at the outset. It was apparently due to circumstances beyond his control that the accused could not act according to the terms of the contract with the complainant. The Magistrate also found that the issue of a cheque is not act of fraud, but that is a proof of good faith, and that from the mere fact that there is no balance in the bank to his credit, it cannot be said that the issue itself was fratidulent. But the Magistrate seemed to take the view that it amounts to an offence under Section 17 as he did not use the money for the purpose for which it was intended by him in his capacity as merchant, and so accepting the plea of guilty, the Magistrate convicted him of the offence and sentenced him to two months' imprisonment and a fine of Rs. 300. The Magistrate also directed that the amount of fine if collected should be paid to the complainant.

4. The District Magistrate, in his reference, observed that the amount paid to the accused wasnot in the nature of an entrustment but was in the nature of advance for a business transaction. The money became the property of the accused as soon as he received it from the complainant and it was open to him to do what he liked with the money. The liability was to secure broken glass pieces for the complainant and it is a civil liability for the non-performance of which the remedy of the complainant was to seek redress for breach of contract in a civil Court. He also in his reference states that the fact that the accused pleaded guilty to the charge framed against him does not in any way make his act a criminal offence, if in fact legally it was not one.

5. It seems to me that the District Magistrate was perfectly justified in making this reference, and I entirely endorse his view that when the facts alleged by the prosecution do not amount to an offence, the plea of guilty should not stand in the way of his being acquitted. If authority were. necessary to support the proposition, it is found in -- 'Emperor v. Murarji Raghunath', AIR 1919 Bom 160); -- 'Emperor v. Sat Narain' : AIR1931 All265 . In -- 'AIR 1919 Bom 160 (A)', the learned Judges state that when the accused pleaded guilty, he never intended by his plea of guilty to admit more than that the facts alleged against him were true. Whether on those facts he ought to be held to have committed the offence of cheating is really a question of law, to which the plea of the accused must be considered immaterial. They held on the facts in that case that no offence was made out and, therefore, they set aside the conviction and acquitted the accused.

Similarly in : AIR1931 All265 the learned Judge observed that where an accused person pleads guilty on a charge under Section 380 I. P. C., but the said plea is founded upon an erroneous conception of one's right in the property, Section 412 Cr. P. C., is inapplicable to the case and cannot shut out one's right of appeal.

-- 'In re Gurrapa Marigadu 2 Weir Crl. 336 (C)'the accused was convicted of culpable homicidenot amounting to murder on his own plea ofguilty. It appeared that he had admitted throughout that he beat the deceased (his wife) and thatshe died (but it appeared open to question whetherhe admitted the existence of any connection between the beating and the death or of any intention to cause such bodily injury as was likely to cause death). This court held that the conviction on the plea of guilty could not be sustained and that the accused must be retried. It was observed.

'It may well be that he intended to admit simplythe facts (i) that he beat his wife; (ii) that shedied after that beating; but that is not at allthe same thing as admitting that he by suchbeating caused his wife's death or that he hadthe intention of causing such bodily injury aswas likely .... to cause death.'

It is clear further that unless the accused distinctly admits each and every fact necessary to constitute an offence, he cannot be convicted merelyon his plea.

6. In -- 'In re Manikkam Pillai', 19 Mad LJ 271 (D), the accused attempted to get himself reinstated in the post of karnam by the production of a certificate of having passed certain examination representing that the certificate referred to him, while in fact it referred to another man bearing the same name' and it was held that the conviction and sentence for the offence under Ss. 419 and 511 must be set aside, and the fact that the accused pleaded guilty to the charge makes no difference. On the facts Abdur Rahim J. held that the elements for the offence under Section 419 have notbeen made out. This shows that unless the facts disclosed amount to an. offence, the plea of guilty is no bar to an appeal. The above decisions are clear authority for the position that though ordinarily on a plea of guilty there is a bar under Section 412 for an appeal except as to the legality or extent of sentence, still if the facts do not amount to an offence, the plea of guilty is no bar for an appeal on merits and it does not stand in the way of the accused being acquitted.

7. The reference of the District Magistrate is accepted. The conviction and sentence passed on the accused are set aside, and the accused is acquitted. If the accused has paid the fine, it will be refunded to him.