In Re: M.S. Ganesan

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Court : Chennai

Decided On : Aug-13-1954

Reported in : 1956CriLJ536

Judge : Balakrishna Aiyar, J.

Appellant : In Re: M.S. Ganesan

Advocate for Pet/Ap. : Mr. Narayanaswaml Mudaliar

Judgement :
ORDER

Balakrishna Aiyar, J.

1. Between 10-2-1950 and 25-10-1950 the petitioner was the executive officer of Smt Valeeswaraswami temple, Arlyalur. The case against him was that between these two dates he committed criminal breach of trust in respect of sums amounting to Rs. 1072-2-0 belonging to the temple. The learned Sub-Divisional Magistrate, Musiri, convicted the petitioner under Section 409, I, P.C. and sentenced him to undergo rigorous imprisonment for one year and to pay a fine of Us. 1,000. However in the charge which he framed the Sub-Divisional Magistrate did not, set out the total amount of the money which the petitioner is said to have misappropriated.

It was argued in appeal before the learned Sessions Judge of Tiruchirapalli that the petitioner was prejudiced by reason of this omission; of the Magistrate and that the conviction must therefore be set aside. The learned Sessions Judge found that the omission had not in any manner prejudiced the petitioner and in that view he confirmed the conviction and sentence. The petitioner has therefore come to this Court.

2. Mr. Narayanaswaml Mudaliar the learned Counsel for the petitioner rested his principal contention on Section 222(2) Cr. P.C. which enacts:

(2) When the accused is charged with criminal breach of trust or dishonest misappropriation of money, it shall be sufficient to specify the gross sum in respect of which the offence is alleged to have been committed, and the dates; between which the offence is alleged to have been committed, without specifying particular items or exact dates, and the charge so framed shall be deemed to be a charge of one offence within the meaning of Section 234.

3. This sub-section, he argued, requires the court to specify not merely the dates between which the misappropriation or breach of trust is said to have been committed but also the aggregate amount in respect of which the offence is said to have been committed and that therefore the omission to specify the amount is fatal to the prosecution. But along with Section 222(2), Cr. P.C. one must read Section 225 which runs thus:

No error in stating either the offence or the particulars required to be stated in the charge and NO OMISSION TO STATE THE OFFENCE OR THOSE PARTICULARS, SHALL BE REGARDED AT ANY STAGE OP THE CASE AS MATERIAL, UNLESS THE ACCUSED WAS IN FACT MISLED BY SUCH ERROR OR OMISSION AND IT HAS OCCASIONED A FAILURE OF JUSTICE.

These words make it plain that an accused must have been misled by the error in the charge or the omission to mention particulars in the charge and such error or omission must have occasioned a failure of justice. Otherwise the conviction cannot be interfered with. I certainly agree that in this case the learned Magistrate should have specified the total amount the accused is said to have

misappropriated. But at the same time I am very clear in my mind that the petitioner has not been misled in any manner by this omission and that there has been no failure of justice.

I asked counsel for the petitioner repeatedly, if he could suggest even generally what evidence it was that he had and which he failed to produce by reason of the omission of the figures Rs. 1072-2-0 in the charge. I also asked him what explanation it was that he had and which he failed to offer by reason of the omission of these figures. To these questions no answers were forthcoming. Learned counsel wanted me to presume that by reason of the omission, the petitioner had been prejudiced; according to him when the particulars are omitted it must be deemed that the petitioner has suffered prejudice.

This contention runs counter to the terms of the statute and I cannot accept it Whether an accused has been misled or not and whether there has been a failure of justice depends upon the facts of each case. In the present case. I notice that when the petitioner was examined under Section 342, Cr. P.C. before a charge was framed against him, the Magistrate put it to him that the sums which he is said to have misappropriated amounted to Rs. 1072-2-0.

That is to say, even before the charge was framed, the petitioner was notified what the aggregate amount was which he is said to have misappropriated. It must also be remarked that the petitioner is not an ignorant ryot. He is a man presumably of some degree of education and also familiar with accounts. Otherwise he would not have been appointed as the Executive Officer of the temple. He also examined defence witnesses to rebut such of the particular items las were included in the aggregate amount of RS. 1072-2-0 and which he probably hoped he could satisfactorily meet.

4. On this point I may refer to, the decision in - 'Baburao Tatyarao v. Emperor' AIR 1936 Bom 379 (A). Broornfield J. observed:

As I have several times had occasion to point out recently, in view of - 'Abdul Rahman v. Emperor' and - 'Ramaraju Tevan v. Emperor AIR 1930 Mad 857 (C) - 'Subramania Aiyar v. Emperor' 25 Mad 61 (D) can no longer be regarded as an

authority for the proposition that any mis-joinder of charges necessarily vitiates the trial, irrespective of the question whether the accused has been defined thereby.

I respectfully agree.

5. The decision in - 'Damodaram v. State of Travancore-Cochin' : AIR 1953 SC462 (E) was given in a case of cheating and the point taken there was that the charge did not specify the manner and the mode in which the cheating had been committed. On that, the court observed at page 465, column 1, paragraph (9):

There can be no doubt that the charges as framed were vague in that they did not specify the manner and mode in which the cheating had been done. The charges undoubtedly should have been more explicit and should have set out the particulars of his acts or conduct which were Deing relied on as having induced P. W. I to part with the two cheques (Exs. N and T)

Learned Attorney General appearing for the State does not seek to justify the vagueness of the charges but supports the decision of the High Court that the defect in the charges amounts to an irregularity which has not materially prejudiced the appellant. We find ourselves in agreement with the High Court.

And be it noted that this decision was given fit-spite of illustration (b) to Section 223, Cr. P.C. which is as follows:

(b) A is accused of cheating B at a given time and place. The charge must set out the manner in which A cheated B.

As explained already, in the present Case the petitioner could not have been misled and there has been no failure of justice. The revision petition is therefore dismissed. The petitioner will be recommitted to Jail to undergo the rest of his sentence.