

Sambandham and anr. Vs. State

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Court : Chennai

Decided On : Mar-16-2000

Reported in : 2000CriLJ3141

Judge : V. Bakthavatsalu, J.

Acts : Prevention of Corruption Act - Sections 13(1) and 13(2); Indian Penal Code (IPC) - Sections 120B and 409; Code of Criminal Procedure (CrPC) , 1974 - Sections 218, 219 and 223

Appeal No. : Criminal Revn. Petn. No. 327 of 1998

Appellant : Sambandham and anr.

Respondent : State

Advocate for Def. : V.R. Balasubramaniam, Govt. Adv.

Advocate for Pet/Ap. : V. Karthick, Adv. for T.S. Gopalan & Co.

Disposition : Revision dismissed

Judgement :

ORDER

V. Bakthavatsalu, J.

1. The Special Judge-cum-Chief Judicial Magistrate, Tiruvannamalai framed three charges against the petitioner/accused. The first charge is that they entered into a conspiracy to cheat the Government and that they are liable to be punished under Section 120-B, I.P.C. The second charge is that the first petitioner misappropriated a sum of Rs. 4,43,827/- and that the second petitioner misappropriated Rs. 46,136/- and that they are liable to be punished under Section 409, I.P.C. For the said Act, they were also charged under Sections 13(2) and 13(1)(d) and 13(1)(d) of the Prevention of Corruption Act. After framing the above charges, the accused filed a petition under Section 218, Cr. P.C. stating that there are misjoinder of charges and that different transactions are said to have taken place at different periods and that, therefore, they cannot be tried jointly. For the above memo, the respondent-State has filed a counter stating that there is no misjoinder of charges.

2. The trial Court on a consideration of the materials has held that the question of misjoinder of charges does not arise in this case and that both the accused can be tried jointly. Aggrieved by the said order, this revision is filed.

3. Learned counsel for the revision petitioners contended that the transactions alleged against the petitioners are distinct and separate and that, therefore, separate trial ought to have been ordered and that the trial would be vitiated by Sections 219 and 223, Cr. P.C. and that there are no materials to show that there was any conspiracy to commit the offence as described in the charge-sheet.

4. On the other hand, learned Government Advocate contended that the witnesses have stated in their statements about the circumstances under which the goods were taken from the godown and that though the petitioners are employed at different places, there are prima facie materials to show that they entered into a conspiracy and that as the first charge relates to conspiracy entered into between the two accused, there is nothing wrong in trying both the accused jointly for other offences with which they are charged.

5. The question whether the materials contained in the statement of witnesses recorded during investigation are sufficient to establish the offence of conspiracy beyond doubt cannot be decided at this stage. The 161 statement of witnesses would disclose that both the accused took the goods i.e., groundnut seedlings

from the common godown. It is alleged that both the accused took goods from the godown on 11-4-1989 to 13-4-1989. It is the case of the prosecution that the accused entered into a conspiracy to sell groundnut seedlings contrary to the rules, and that in pursuance of the said conspiracy they sold the same and misappropriated the amount. It is not disputed that both accused are employed in the Co-operative Society. The offences relating to charges framed under Section 409 and provisions of Prevention of Corruption Act are said to be in pursuance of the conspiracy entered into between the accused. It is no doubt true that both the accused are employed at different places. It is stated that the first accused was employed at Than darampet and second accused was employed at Sengam. It is alleged by the prosecution that they were working under the same Controlling Authority. It is alleged by the prosecution that the groundnut seedlings which were alleged to have been sold by the accused were stored in a common godown and that both the accused produced the bills and received the groundnut seeds which were intended for supply to the farmers. It is, further, alleged that the accused disposed of the goods to ineligible persons and private traders. The materials on record would prima facie show that both the accused received groundnut seeds from the common godown and sold the same to ineligible persons. It is not possible to prove the offence of conspiracy by direct evidence. The Court, at the conclusion of the evidence, can draw inference from the proved facts whether the offences of conspiracy was established or not. Therefore, when the prosecution proceeds on the basis of conspiracy, the charges relating to offences under Section 409, I.P.C. and provisions of Prevention of Corruption Act though alleged to have been committed by the accused separately, cannot be a ground for holding that the trial would be vitiated by misjoinder of charges.

6. As the charge of conspiracy is common to both the accused, the other joint charges which are said to be in pursuance of the conspiracy, cannot be said to be misjoinder of charges. Learned counsel for the petitioners relies upon a decision reported in *Perumal Reddy v. State by Sub-Inspector of Police* (1980) MLW (Cri) 51. It is held in the above decision that the Court cannot try all the instances of criminal breach of trust and falsification of accounts at one trial and that it can try three of such instances by virtue of the provisions contained in Section 219, Cr.P.C. The above decision will not apply to the facts of this case, since the main

charge relates to conspiracy.

7. In *Tulsi Ram v. State of Uttar Pradesh* : AIR 1963 SC666 , it is held thus :-

What was meant by the charge was apparently fully understood by the appellants because they never complained at the appropriate stage that they were confused or bewildered by the charge. In the circumstances, therefore, we overrule this objection also of learned counsel.

The question whether there is misjoinder of charges or not would depend upon the facts and circumstances of each case. In this case, as already stated, the prosecution proceeds on the basis that the accused entered into a conspiracy to commit the main offence. It is open to both the accused to enter into a conspiracy, though employed at different places. But, the materials on record would prima facie show that they received the goods on one and the same date. It is, further, seen from Section 223, Cr.P.C. that persons accused of the same offence committed in the course of the same transaction may be tried together. Section 223(d), Cr.P.C. states that persons accused of different offences committed in the course of same transaction may be tried jointly. In view of the above facts, I am unable to accept the contention of the revision petitioners at this stage that the proceedings are vitiated by misjoinder of charges. As already stated, there can be no bar to try both the accused under Section 120-B, I.P.C. It is open to the prosecution to place the evidence to prove the offence of conspiracy. If the prosecution is able to establish that the accused entered into a conspiracy to commit the main offence, then they can be convicted for the separate offences committed by them, which are referred to in charges Nos. 2 and 3. The findings of this Court on this question will not influence the trial Court in giving finding on the same question after the conclusion of the trial. I hold that there is no error or infirmity in the order passed by the trial Court and as such, the revision is liable to be dismissed.

8. In the result, the criminal revision case is dismissed. The order of the trial Court is confirmed. Consequently, Cri. M.P. No. 2461 of 1997 is closed.

