Queen-empress Vs. Croft

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Court : Kolkata

Decided On : Sep-16-1895

Reported in : (1896)ILR23Cal174

Judge : Ghose and ;Hill, JJ.

Appellant : Queen-empress

Respondent : Croft

Judgement :

Ghose and Hill, JJ.

1. This is an application for a rule calling upon the District Magistrate of 24-Pergunnas to show cause why the proceedings instituted before him against the petitioner under the Indian Merchandise Marks Act of 1889 should not be quashed.

2. It appears that the accused had been prosecuted under Sections 53 and 61 of the Excise Act of 1878, that is to say, for manufacturing and selling exciseable articles without a license, and being in possession of such articles without a license. The Deputy Magistrate of Sealdah found that he had committed the offences under both those sections, and accordingly sentenced him to a fine of Rs. 800. On appeal, however, to the Sessions Judge, that officer found that the accused was guilty of the offence under Section 61 only, and accordingly set aside

the conviction under Section 53 of the Excise Act. It appears that, in the course of the evidence that was given upon that occasion on behalf of the prosecution, it was disclosed that the accused had not only committed acts in violation of some of the provisions of the Excise Act, but also acts which it is said constitute offences under the Merchandise Marks Act of 1889, that is to say, he had put false trade marks upon cases containing exciseable articles, and that he had made use of such false trade marks for his own trade; and it appears that, while the appeal was pending in the Court of the Sessions Judge, the complainant, on the basis of these acts, instituted proceedings against the accused under Sections 486 and 487 of the Indian Penal Code and Sections 6 and 7 of the Merchandise Marks Act of 1889. An application was then made by the accused to the District Magistrate of Alipore upon the ground that no fresh proceedings could be instituted against him by reason of the proceedings already taken under the Excise Act, and the result of those proceedings. The Magistrate disallowed the objection, and the application, that is now made before us, is upon the same ground that was taken before the District Magistrate, it being contended that the accused had been, on the previous occasion, put in peril of a conviction under the Merchandise Marks Act, and therefore the previous proceedings operate as a bar to the institution of the present proceedings.

3. The law upon the subject is contained in Section 403 of the Criminal Procedure Code, which runs as follows: 'A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, 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,' and so on. The first question that arises upon this part of the section is, whether a different charge from the one which was made against the accused on the former occasion could have been made under Section 236 on the same facts? Turning to Section 236 it will be found that it provides as follows: 'If a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once;

or he may be charged in the alternative with having committed some one of the said offences.' Now, upon the facts as they were disclosed in the former proceedings, was it at all doubtful which of several offences those facts, if proved,, would constitute? We apprehend not; for the facts disclosed, if they were true, amounted to the., commission of acts which would constitute offences under the Excise Act, and also offences, distinct in their character, under the Merchandise Marks Act. It appears to us that Section 236 of the Code of Criminal Procedure contemplates a state of facts constituting a single offence,, but where it is doubtful whether the act or acts involved may amount to one or another of several cognate offences. Where that is the case, the accused may be simultaneously charged with and tried for the commission of all or any of such offences, and after acquittal or conviction cannot again be tried on the same facts either for the specific offence or offences for which he has already been tried, or for any other offence for which he might then have been tried under the provisions of the section. Then turning back to the second portion of Section 403 of the Code of Criminal Procedure we find it laid down as follows: '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 in the former trial under Section 235, paragraph 1. Section 235, paragraph 1, runs thus: 'If in one series of acts so connected together as to form the same transaction more offences than one are committed by the same person, he may be charged with and tried at one trial for every such offence.' It may be well said that the act or acts that the accused is said to have committed were so connected together as to form one and the same transaction. But at the same time it would appear that those acts disclose more offences than one and distinct in their character, and therefore, although the accused might have been charged with and tried at one and the same trial for every such offence, still under the second part of Section 403 the fact of his. having been charged on the previous occasion with one offence only is no bar to the institution of a separate proceeding in respect of some other offence which was then disclosed.

4. The learned Counsel for the petitioner, however, relied upon the maxim adopted in English Courts that no one ought to be twice tried upon the same facts. We accept that maxim without any hesitation, but we apprehend that that maxim means that a person cannot be tried a second time for an offence which is

involved in the offence with which he was previously charged. Mr. Pugh also relied upon the observations of some of the Judges in the case of Queen v. Bird 2 Den. C.C. 94, where a person was indicted for having assaulted another with intent to wound and with intent by such wounding to do grievous bodily harm, and the plea was then raised that he had been already indicted for murder containing six counts, and the assault was included in the felony (murder) with which he was then charged, but acquitted. It was proved in the former trial that death was caused by one particular blow, but which was not shewn to have been inflicted by the prisoner. Evidence was given on the subsequent trial of various other assaults, but it was not shewn that there were any other assaults than those which had been given in evidence in the' former' trial. The Court was divided in opinion. The majority of the Court held that the plea of previous acquittal could not be sustained. The minority, however, were of a different opinion. The case proceeded upon an examination of Section 2 of William IV and I Victoria, chapter 85. That section enacts as follows: 'That on the trial of any person for any of the offences hereinbefore mentioned, or for any felony whatever, when the crime charged shall include an assault against the person, it shall be lawful for the jury to acquit of the felony and to find a verdict of guilty of assault against the persons indicted, if the evidence shall warrant such finding.' To apply the principle of that section to the facts of this case, could it be said that the offences with which the accused was previously charged included the offence with which he is now charged? We think this contention could not be maintained for one moment. As we have already explained, the offence with which he is now charged is distinct and separate from the offence with which he was then charged, and it seems to us that the provisions of Section 403 of the Code of Criminal Procedure do not operate as a bar to the institution of the present proceeding.

5. Upon all these grounds we reject the application.