

Subedar Ahir Vs. Emperor

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Court : Kolkata

Decided On : Feb-05-1915

Reported in : AIR1915Cal866,28Ind.Cas.668

Judge : Fletcher and; Beachcroft, JJ.

Appellant : Subedar Ahir;chhatradhari Misser

Respondent : Emperor;emperor on the Complainy of Ganesh Lohar and Barka Manjhi

Judgement :

Fletcher, J.

1. The only question raised in the hearing of these two Rules is whether Section 234 of the Code of Criminal Procedure authorises one trial of not more than three offences of the same kind committed within the space of 12 months when the offences have been committed against different persons. The judicial decisions on this (Question are not uniform. In the case of *Empress of India, v. Murari* 4 A. 147 it was laid down by the Court that 'the combination of three offences of the same kind for the purpose of one trial can only be where they have been committed in respect of one and the same person, and not against different prosecutors.' A different view was taken by this Court in the case of *Manu Miya v. Empress* 9 C. 371 : 11 C.L.R. 52. The case of *Queen-Empress v. Juala Prasad* 7 A. 174 : A.W.N. (1884) 321 the next authority in order of date, is not opposed to the

decision in *Empress of India v. Murari* 4 A. 147 for in the case of *Queen-Empress v. Juala Prasad* 7 A. 174 : A.W.N. (1884) 321 the several sums that had been embezzled had become the property of the Government and there was, therefore, only one complainant. The next case is *Nanda Kumar Sircar v. Emperor* 11 C.W.N. 1128 : 6 Cr. L.J. 321 to which decision I was a party. In that case a similar view was taken to that expressed in the case of *Empress of India v. Murari* 4 A. 147. That decision was followed in the case of *Ali Mahomed v. Emperor* 1 Ind. Cas. 335 : 13 C.W.N. 418 : 9 Cr. L.J. 277 but dissented from in the case of *Sri Bhagwan Singh v. Emperor* 3 Ind. Cas. 319 : 13 C.W.N. 507 : 10 Cr. L.J. 272 : 9 C.L.J. 149 : 5 M.L.T. 349.

2. On a further consideration I am of opinion that the decision in the case of *Nanda Kumar Sircar v. Emperor* 11 C.W.N. 1128 : 6 Cr. L.J. 321 cannot be supported, No doubt Section 234 of the Code of Criminal Procedure is taken from Section 5 of the Statute 24 and 25 Vict., Clause 96. The words 'against the same person' which appear in Section 5 of 24 and 25 Vict., Clause 96, do not appear in Section 234 of the Code of Criminal Procedure.

3. Section 234 of the Code of Criminal Procedure, I think, is not limited to cases where the offences have been committed against the same person.

4. At the same time I think that the power given by Section 234 is one that requires to be used with great care and caution where there are different complainants.

5. In the result, I think, these two Rules ought to be discharged.

Beachcroft, J.

6. The only question which arises in these two rules is whether Section 234, Criminal Procedure Code, is limited to a case where there is one complainant in respect of all the offences charged or whether it applies where the complainants are different persons.

7. Looking to the plain words of Section 234, I should hardly have thought the matter open to argument. Section 234 is one of the exceptions to the general rule

contained in Section 233, viz., that every charge is to be tried separately. It provides that three charges of the same offence committed in the course of 12 months may be tried together, and the second part of the section explains what is meant by the same offence. Had the Legislature thought fit to impose such a limitation as that contended for on behalf of the petitioner it would presumably have done so expressly, whereas the section is framed in the widest terms, and when the Legislature has imposed no limitation, it is not for us to do so.

8. But there are cases in the Courts in which the view has been taken that the limitation contended for applies, it is not necessary to discuss the case of *Empress of India v. Murari* 4 A. 147 to which reference was made in the Full Bench case of *Queen-Empress v. Juala Prasad* 7 A. 174 : A.W.N. (1884) 321 from the report of which there is reason to suppose that one of the Judges who decided the earlier case had changed his views. But in the case of *Nanda Kumar Sircar v. Emperor* 11 C.W.N. 1128 : 6 Cr. L.J. 321 the opinion was expressed that Section 234 'evidently refers to different acts done by the same individuals or same sets of individuals against the same complainant.' In that case the earlier case of *Manu Miya v. Empress* 9 C. 371 : 11 C.L.R. 52 does not seem to have been brought to the notice of the learned Judges. The decision in that case was directly contrary to the view contended for on behalf of the petitioner. The Legislature in the Code of 1882 endorsed the view taken by the learned Judges by introducing an explanation of what is to be understood by the phrase 'offences of the same kind' and that explanation is repeated in the present Code.

9. Three classes of cases constantly occur in the mufassil in which an accused is charged with offences of the same kind against different complainants. In one a man breaks into several houses in one night; in another a man whose house is searched for stolen property is found to have received property stolen from different persons on different occasions; in the third a man cheats several persons in pursuance of a system e.g. by pretending to have the power of doubling money. In the last-mentioned case the joint trial might perhaps be defended on the ground that the offences were committed in the course of one transaction, without having recourse to Section 284, but in the other cases the offences are not committed in the course of the same transaction. In these cases where there is no

fear of the accused being prejudiced the charges are always tried together. In the whole of my experience as Magistrate and Sessions Judge I do not remember objection ever having been raised to the accused being tried at one trial for three offences in such cases. Such an objection would have struck me with surprise as I am sure it would almost all judicial officers in the mufassil, who have constantly to try cases in which the provisions of this section are applicable, especially when the view, described in that judgment as evident, had been definitely rejected by two Judges of this Court so far back as 1882.

10. It may be that the decision arrived at in *Nanda Kumar Sircar v. Emperor* 11 C.W.N. 1128 : 6 Cr. L.J. 321 was correct in that there were three charges of rioting and three of hurt, find that such a case would not be covered by Section 234 But so far as that case decided that Section 284 applies only to offences against the same complainant, I must express my dissent from it.

11. It is argued that unless the section is limited in the way suggested, an accused might be much embarrassed by the joinder of charges, e. g., a man might be tried at one trial on three charges of murder committed on different occasions. Such an argument entirely loses sight of the fact that it must be presumed that those who are selected for the administration of the Criminal Law are fit for their duties, and will not use their powers in an arbitrary and oppressive manner. The Criminal Court must be credited with the possession of a little common sense.

12. Finally it was argued that other sections of the Code would be found difficult to work if the unrestricted interpretation were placed on Section 234. The only section referred to was Section 217. It was suggested that if one of three complainants were absent, the accused would be acquitted of all three charges. Leaving out of consideration for the moment the fact that charges are not drawn up in summons cases, the obvious answer is that he would not be acquitted of all three offences, but only of the offence in respect of which the complainant was absent.

13. I think the Rules should be discharged and the petitioner in Revision Case No. 1863 remanded to jail to serve out the remainder of his sentence.

