

State Vs. Anant Ram

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Court : Jammu and Kashmir

Decided On : Nov-30-1956

Reported in : 1957CriLJ506

Judge : Wazir, C.J.

Appellant : State

Respondent : Anant Ram

Judgement :

ORDER

Wazir, C.J.

1. This is a reference made by the Sessions Judge recommending that the order passed by the Munsiff Magistrate Reasi on 27-1-1955 be set aside and the Sub-Judge Magistrate Reasi be directed to hold further proceedings in this case according to law. The facts which gave rise to this reference briefly are these. During the investigation of Illat No. 35 of the police Station Reasi Anant Ram's house was searched on the 28th Magh 2009. A rifle and a sword were recovered from that house.

Anant Ram had no licence for those weapons and he was prosecuted under Rule 48 of the Defence Rules. The Magistrate dismissed the complaint and acquitted the accused on the ground that the Indian Arms Act had come into force in the State of Jammu and Kashmir and the prosecution was lodged without obtaining

the necessary sanction from the District Magistrate as required under Section 29 of the Indian Arms Act. It appears that sanction was subsequently obtained from the District Magistrate Udhampur on 4-4-2011 and a fresh complaint was filed against the accused. The Munsiff Magistrate dismissed the complaint and discharged the accused on the ground that a fresh prosecution could not be launched against the accused when he had already been acquitted of the same offence. The Government filed a revision application against the order of the Magistrate in the Court of the Sessions Judge who has made this reference.

2. The question for consideration is whether or not Section 403 of the Criminal Procedure Code is applicable to this case. Section 403(1) reads as under:

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 235, or for which he might have been convicted under Section 237.

3. It is argued by the Advocate General that the prosecution was started in the court of Munsiff Magistrate Reasi without obtaining the necessary sanction of the District Magistrate. The Magistrate trying the case had no jurisdiction and therefore it was not a court of competent jurisdiction. In support of this view reliance is placed on *Yusofalli Mulla v. The King* AIR 1949 PC 264(A) and *In re, C, Devanugraham.* : AIR1952 Mad725

In the Privy Council case it was held that the whole basis of Section 403(1) is that the first trial should have been before a Court competent to hear and determine the case and to record a verdict of conviction or acquittal. If the Court was not so competent as for example where the required sanction for the prosecution was not obtained it is irrelevant that it was competent to try other cases of the same class, or indeed the case against the particular accused in different circumstances, for example if a sanction had been obtained. Under the common law also a plea of *autre fois acquit* or *autre fois convict* can only be raised where the first trial was before a Court competent to pass a valid order of acquittal or conviction.

4. The Court of Munsiff Magistrate was not competent to hear and determine a prosecution the institution of which, in the absence of a proper sanction, was prohibited by law. The Sessions Judge, therefore, was right in holding that the fresh trial under Section 403 Cr. P. C. was not barred inasmuch as the Munsiff Magistrate was not competent to try the case without the previous sanction of the District Magistrate which had not been obtained in the case.

5. I, therefore, allow this reference, set aside the order of the Munsiff Magistrate dated 27-1-1955 acquitting the accused and direct the Sub-Judge Magistrate Reasi to hold further proceedings and dispose of the case according to law.

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