

(1989) 02 KL CK 0063

High Court Of Kerala

Case No: Criminal Appeal No. 335 of 1985 and Criminal R.C. No. 66/85

S. Nagarajan

APPELLANT

Vs

Kolappurathu Khader

RESPONDENT

Date of Decision: Feb. 28, 1989

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 11, 11(1)
- Customs Act, 1962 - Section 132, 135A

Citation: (1989) 22 ECR 526 : (1989) 41 ELT 380

Hon'ble Judges: K.T. Thomas, J

Bench: Single Bench

Advocate: K. Prabhakaran, Addl. C.G.S.C, for the Appellant; P. Sukumaran Nayar, for the Respondent

Judgement

K.T. Thomas, J.

This appeal is by the Assistant Collector of Central Excise who was the complainant in the lower court (court of Additional Judicial Magistrate of First Class, Trivandrum). The said case was originally against two persons for the offences under Sections 132 and 135A of the Customs Act. But the second accused was absconding and hence the trial proceeded against the first accused alone. On 5-12-1984, the lower court pronounced judgment acquitting the first accused (he will be referred to as the respondent). This appeal is in challenge of the said acquittal. This Court has, in the meanwhile, called for the records from the lower court in exercise of the revisional powers of this court since the jurisdiction of the lower court was seriously doubted.

2. Learned counsel for the complainant (appellant) contended that the court below had no jurisdiction to try the case from 29-11-1984 onwards in view of Notification dated 21-11-1984 [G.O. (MS) 158/84/Home issued by the Government of Kerala]. As per the said notification the Government of Kerala, after consultation with the High Court, established a special court of Judicial Magistrate of the First Class with

headquarters at Ernakulam with effect from 29-11-1984 and with jurisdiction over the whole State of Kerala to try cases relating to offences under certain Central Acts. One of the Central Acts enumerated in the notification is the Customs Act, 1962. As per proviso to Section 11(1) of the Code of Criminal Procedure (for short "the Code") on the establishment of such special court "no other court of magistrate in the local area shall have jurisdiction to try any case or class of cases for the trial of which such special court of Judicial Magistrate has been established". The contention of the Learned Counsel for the appellant is mainly based on the said notification.

3. On 29-11-1984 (to which day the case was posted in the lower court on one occasion) the learned Magistrate heard arguments and posted the case for judgment. On 5-12-1984 judgment was pronounced by the lower court. In other words, the additional Judicial Magistrate of First Class, Trivandrum, continued with the case even after 29-11-1984 and pronounced the Judgment. Hence it is contended that the proceedings in the lower court on and after the said date are liable to be quashed. Learned Counsel for the respondent in his eagerness to protect those proceedings which ended in acquittal of the respondent, contended that hearing arguments in a case is not part of trial and hence the lower court has not acted without jurisdiction. By the proviso to Section 11(1) of the Code, Jurisdiction of ordinary Magistrate courts to try such cases has been taken away. Any step other than trial can be adopted by the ordinary Magistrate's Court in such cases, according to the Counsel.

4. The word "trial" is not defined in the Code. But the word "enquiry" is defined. The Code of 1872 contained definition for the word "trial". But the Code of 1882 omitted the definition. The 1898 Code defined "enquiry" as including every enquiry other than trial, but the latter was not defined. The present Code, while retaining the definition of the word "enquiry" without substantial change, has again omitted to define "trial". In the Bihta Co-operative Development Cane Marketing Union Ltd., and Another Vs. The Bank of Bihar and Others, the Supreme Court has observed that the words "tried" and "trial" appear to have no fixed or universal meaning and hence those words must be given the meaning in accordance with the context in which they are used. In State v. Achutha Panicker 1975 KLT 703) this court has held that the word "trial" is used in Chapter XXI of the Code in a very general and wide sense. After referring to different provisions of the Code the Supreme Court has held in V.C. Shukla Vs. State through C.B.I., that there is no question of starting the trial until charge is framed. What is the terminal point of trial, if its starting point is the framing of (Charge? All steps which a Criminal Court adopt subsequent to the framing of charge and until the pronouncement of judgment can be treated as trial proceedings. The trial envisaged in the proviso to Section 11 of the Code cannot be understood differently. Any other interpretation would be to the detriment of the legislative intent in framing such a proviso. A Single Judge of the Allahabad High Court has held in Joti Prasad Vs. State, that "a trial must be deemed to have concluded on the date on which judgment is pronounced." If the context permits,

there is nothing legally objectionable in treating even an appeal as part of the trial [vide Madhub Chunder Mozumdar v. Novodeep Chunder Pundit ILR 1989 Cal 121].

5. For the aforesaid reasons I cannot accept the contention that hearing arguments in the case would not form part of the trial. Hence the lower court noted without jurisdiction in hearing arguments and pronouncing the judgment. Accordingly, I quash all the steps taken by the lower court from 29-11-1984 onwards in this case.

The case is remitted to the special court (Additional Chief Judicial Magistrate's Court, Ernakulam) for Economic Offences where the case will proceed from the stage when it ended on 22-11-1984 (the previous posting date immediately prior to 29-11-1984). I direct the Additional Chief Judicial Magistrate's Court, Ernakulam (for Economic Offences) to dispose of the case in accordance with law and subject to the above observations. As this is an old case, expeditious disposal is also expected.

The appeal and the Crl. R.C. are disposed of accordingly.