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Radhakrishnan Vs State of Kerala

Court: High Court Of Kerala

Date of Decision: Nov. 23, 2011

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€" Section 200, 249, 256(1), 300, 300(1)
Penal Code, 1860 (IPC) â€" Section 34, 465, 468

Citation: (2012) 3 KLJ 88 : (2012) 3 KLJ 377

Hon'ble Judges: C.T. Ravikumar, J

Bench: Single Bench

Advocate: B.H. Mansoor, for the Appellant; T.A. Shaji and K.K. Saidalavi Public Prosecutor, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

C.T. Ravikumar

1. The petitioners are the accused in C.C.No.473 of 2004 on the file of the Judicial First Class Magistrate Court, North Paravur. They are

indicted for offences punishable under sections 465, 468 read with S. 34 of the Indian Penal Code. This criminal miscellaneous case has been filed

with a prayer to quash Annexure-A1 complaint and all proceedings in C.C.No.473 of 2004 on the file of the Judicial First Class Magistrate Court,

North Paravur. The de facto complainant viz., the second respondent filed Annexure-A1 private complaint on 3.10.2003. It is alleged that while

the petitioners were acting respectively as the President and Secretary of Paravur unit of the Nair Service Society they had recorded in the minutes

that on 13.6.1999 a resolution was passed in the General Body to take loan for an amount of Rs. 15 lakhs to clear the liabilities of a shopping

complex owned by NSS. It is further alleged that the General Body, had, in fact, dissolved without taking any such decision and they had falsely

recorded passing of such a resolution in the minutes for the purpose of cheating. The learned Magistrate took cognizance on Annexure-A1

complaint and issued summons to the petitioners. It is in the said circumstances that this criminal miscellaneous case has been filed with the

aforementioned prayers.

2. Evidently, the allegation in Annexure-A1 complaint is that the petitioners herein viz., accused Nos. 1 and 2 have committed offences punishable

under sections 465, 468 read with S. 34 I.P.C. Bi-fold contentions have been raised by the petitioners. Firstly, it is contended that in relation to the

very same incident that is alleged to have occured on 13.6.1999, Annexure A3 complaint was filed by one K.A. Jayan with same set of

allegations. Sworn statements of the said Jayan and two witnesses were taken by the learned Magistrate under S. 200 of the Code of Criminal

Procedure. Thereupon, cognizance was taken on Annexure-A3 complaint and processes were issued to the accused/petitioners. Later, the

petitioners herein appeared before the Judicial First Class Magistrate Court, North Paravur. Ultimately, Annexure-A3 complaint was dismissed for

non-prosecution under S. 256(1) of the Criminal Procedure Code. It is submitted that the second respondent herein was cited as one of the

prosecution witnesses in the said case and his statement was taken on oath before taking cognizance. Essentially, the contention is that since

Annexure-A3 complaint was dismissed under S. 256(1) of the Criminal Procedure Code in the circumstances expatiated above, filing of a second

complaint viz., Annexure-A1 is barred under S. 300 of the Criminal Procedure Code. Secondly, it is contended that Annexure-A1 complaint was

filed on 3.10.2003 with a delay of 1543 days. The learned counsel for the petitioners submitted that in the said circumstances, the delay of 1543

days ought not to have been condoned by the learned Magistrate and cognizance ought not to have been taken on Annexure-A1 complaint.

3. I have heard the learned counsel for the petitioners, learned counsel for the second respondent and also the learned Public Prosecutor.

4. The learned counsel for the second respondent and the learned Public Prosecutor contended that the contentions raised by the petitioners are

absolutely bereft of any basis and untenable in law. It is contended that a scanning of the provisions under S. 300 of the Criminal Procedure Code

would reveal that dismissal of Annexure-A3 complaint for non-prosecution under S. 256(1) cannot act as a bar for institution of Annexure-A1

complaint. Secondly, it is contended that the offences alleged against the petitioners are under S. 465 and 468 of the I.P.C. and therefore, the bar

under S. 468 of the Criminal Procedure Code for taking cognizance will not be applicable in this case. In troth, there occurred no delay in filing the

complaint, in the said circumstances.

5. The learned counsel for the petitioners submitted that the second respondent himself admitted in Annexure-A1 that in the matter of institution of

Annexure-A1 complaint, there occurred a delay of 1543 days.

6. A scanning of the provisions under S. 468 of the Criminal Procedure Code is necessary in the context of the rival contentions. Sub-s.3 of S.

468 Cr.P.C. provides that the period of limitation in relation to offences which may be tried together shall be determined with reference to the

offences punishable with more severe punishment or, as the case may be, the most severe punishment. A bare perusal of Sections 465 and 468

I.P.C. would reveal that offence under S. 468 is punishable with more severe punishment. A person who commits an offence under S. 468 I.P.C.

is punishable with imprisonment of either description for a term which may extend up to 7 years and shall also be liable to fine. For commission of

an offence under S. 465, the punishment shall be imprisonment of either description for a term which may extend up to two years, or with fine, or

with both. In the decision State of Himachal Pradesh Vs. Tara Dutt and Another, , the Hon''ble Apex Court held that the period of limitation in

relation to offences which may be tried together shall be determined with reference to the offence which is punishable with more severe

punishment, with reference to the offence charged and not with reference to the offence finally proved at trial. The provisions under S. 468(3)

Cr.P.C. makes it abundantly clear that when cognizance is taken for more than one offence, the plea of limitation has, invariably, to be determined

with reference to the offence punishable with more severe punishment. A scanning of the provisions under S. 468 Cr.P.C. makes it beyond doubt

that the bar of limitation envisaged under S. 468 Cr.P.C. inapplicable to offences punishable with imprisonment of either description for a term

exceeding three years. In the case on hand, the learned Magistrate has taken cognizance of offences under sections 465 and 468 I.P.C. The

cumulative impact of the aforesaid factual position is that the taking of cognizance under S. 468 I.P.C. took the case on hand beyond the purview

of S. 468 Cr.P.C. and as such, lam inclined to accept the contention of the learned counsel for the second respondent that bar of limitation under

S. 468 Cr.P.C. is inapplicable in the case on hand. In that view of the matter, the prayer of the second respondent for condoning the delay of 1543

days and the consequential condonation of the said delay by the learned Magistrate would become inconsequential.

7. Now, I may deal with the first contention of the petitioners that Annexure-A1 complaint is barred by virtue of S. 300 of the Cr.P.C. on account

of the dismissal of Annexure-A3 complaint by the Judicial First Class Magistrate, North Paravur itself under S. 256(1) of the Cr.P.C. As noticed

earlier, Annexure-A3 complaint was filed against the petitioners by one K.A. Jayan in respect of the same alleged offence and the second

respondent who is the complainant in the present case, was cited as one of the prosecution witnesses and was examined on oath before taking

cognizance on the said complaint. Later, it was taken on the file of the Judicial First Class Magistrate Court, North Paravur as C.C.No.415 of

2000. Annexure-A4 is the order passed by the learned Magistrate thereon. It reads thus:-

The case was called on for hearing today to which it had been posted.

The complainant not being present either in person or by pleader, the accused is acquitted under S. 256(1) Criminal Procedure Code.

Section 300 of the Cr.P.C. is essentially founded on the principles of ''autrefois acquit'' (formerly acquitted'' and ''autrefois convict'' (formerly

convicted). In this context, it is to be noted that the principle of estoppel is distinct and different from that of double jeopardy embodied in S. 300

of the Cr.P.C. The rule of issue estoppel prevents re-litigation of the issues which are settled by prior litigation. Toconstitute an issue estoppel the

parties in the two proceedings must be the same and the issue that was decided earlier must be identical with that which is sought to be reagitated.

From Annexure-A4, it is evident that on Annexure-A3 complaint, congnizance was taken only for offence under S. 465 I.P.C. Evidently, the

learned Magistrate proceeded with C.C.No.415 of 2000 as a summons-case lest the learned Magistrate would not have acquitted the petitioners

under S. 256(1) of the Cr.P.C. as per Annexure-A4. There can be no doubt that S. 256(1) applies in a case of non-appearance in a summons-

case and in a case of non-appearance in a warrant-case what is applicable is S. 249 Cr.P.C. Annexure-A3 complaint was filed by one K.A.

Jayan. Annexure-A2 would reveal that on Annexure-A1 complaint filed by the second respondent herein, the learned Magistrate took cognizance

for the offences under sections 465, 468 r/w 34 I.P.C. and the complaint was taken on file as C.C.473/2004. The fact that the second respondent

was cited as one of the prosecution witnesses in C.C.No.415/2000 cannot be a reason to challenge his locus standi to file Annexure-Al complaint.

In view of the fact that cognizance was taken for offence Under S. 468 I.P.C. as well, C.C.473/2004 cannot be a summons-case. Annexure-A2

would reveal that the charge is also for distinct offence viz., S. 468 of the Cr.P.C. The ingredients for the offence under S. 465 and 468 cannot be

said to be the same. Thus, in the case on hand, besides the fact that the parties are different, cognizance for a distinct and different offence was

taken on Annexure-A1 complaint. Whether the petitioners could set up their earlier acquittal in respect of offence under S. 465 I.P.C. as a

complete defence is a matter to be left open in the circumstances. The plea of autrefois acquit and the prayer for bringing an abrupt termination of

proceedings in C.C.473/2004 on the file of the learned Magistrate make me think aloud in a different angle. Room for employing surreptitious

method cannot be ruled out in cases of the like nature. A clever and cunning person may make a willing person to file a complaint against him and

then make him not to appear and participate in the further proceedings with a view to attempt for an acquittal under S. 256(1) and then to set up

the defence of bar under S. 300(1) Cr.P.C. on account of his earlier acquittal even in case of institution of any further complaint by any other

person. Such surreptitious method would defeat the interest of justice. I may hasten to add that I shall not be understood to have said that such a

surreptitious method had been attempted in this case. The contention that on Annexure-A3 complaint, an offence under S. 468 I.P.C. might have

been made also, in my view, cannot and will not save the situation for the petitioners as in which case, the learned Magistrate would not have

acquitted the petitioners for non-appearance of the complaint under S. 256(1) of the Cr.P.C. and the discretion vested in such circumstances

would have been discharged judiciously in terms of the relevant provision of law, Certainly, it would have resulted at best, only in an order of

discharge. An order of discharge, certainly, would not have created any occasion to take up the plea of bar under S. 300(1) in view of the

Explanation thereunder which reads thus:-

Explanation.- The dismissal of a complaint, or the discharge of the accused, is not an acquittal for the purpose of this section.

In short, the aforesaid contention of the petitioners also fails. No other contentions have been pressed into service.

The long and short of the above discussion is that the case on hand cannot be considered as a fit case inviting invocation of the inherent power

under S. 482 of the Cr.P.C. There is absolutely no ground for interfering with the impugned order. In the circumstances, the case is liable to fail

and accordingly, it is dismissed.