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(1957) 01 MP CK 0007

Madhya Pradesh High Court (Gwalior Bench)

Case No: Criminal A. No. 77 of 1953

State		APPELLANT
	Vs	
Ramchandra		RESPONDENT

Date of Decision: Jan. 28, 1957

Acts Referred:

- Penal Code, 1860 (IPC) - Section 109, 406

Citation: (1957) JLJ 706

Hon'ble Judges: Nevaskar, J; Khan, J

Bench: Division Bench

Advocate: Mungre, Govt, for the Appellant; A.N. Kak, for the Respondent

Final Decision: Dismissed

Judgement

Nevaskar, J.
Accused Ramchandra and Ramprasad were prosecuted, the former under Sec. 406, I.P.C. and the latter under Sec. 406 read with Sec. 109, I.P.C. before the Addl. District Magistrate Rajgarh who found both of them guilty and acquitted them.

The State appeals--

2. Facts material for the purpose of present appeal are as follows. In the town of Rajgarh during the period when cloth control order was in force there was an Association of dealers in cloth known as Cloth Association Rajgarh, The Association used to obtain cloth from the Government at Control prices and used to distribute the same amongst its members in accordance with their respective quotas. Money needed for the purchase of cloth by the Association used to be contributed by the members proportionate to their quotas fixed by the Association. One Bhawanilal was the President of this Association and the money contributed by the members used to be placed under his charge for being used for the aforesaid purpose. It is said that Bhawanilal''s son Ramchandra and his brother Ramprasad also worked in this connection on his behalf.

3. Between 1-2-1952 and 3-2-1953 the members of the aforesaid Association made contributions in respect of the quota of cloth for the current month to the tune of Rs. 13,420/-. This was deposited in the shop of Bhawanilal and at the instance of Bhawanilal his son Ramchandra issued receipts to the contributing members for and on behalf of Bhawanilal. On the 4th of February 1953 Ramchandra lodged a report with the police Rajgarh to the effect that on the previous night while he was asleep in the shop three persons entered into the shop premises by breaking open the door, attacked him, gagged him and tied down to the door his hands and feet and carried away cash amounting to Rs. 15,520/-

4. While the matter was being investigated the members of the Association lodged a report on 29-2-1952 alleging that the President Bhawanilal at whose instance they had entrusted Rs. 13,420/- to his son Ramchandra for purchase of cloth on behalf of the Association, did neither purchase the same nor returned their money and that on their demanding one of the two had falsely alleged that the money was carried away by thieves.

5. It was further alleged in the complaint that the investigation by the police had brought out the fact that the story of theft was untrue and that their intention was to misappropriate the same.

6. On 12-3-1952 one Ishakmohammad is said to have produced Rs. 1,000/- stating that the same had been given to him by Ramchandra and Ramprasad as hush-money, According to the prosecution when he produced this sum of Rs. 1,000 he had stated that one night he had heard a sound near his door and on getting up he found Ramchandra and Ramprasad with a (?) containing Government pro-notes and on his chasing them they had, given this sum as hush-money.

7. The following day i.e. on the 13th, it is said, the police succeeded in recovering Rs. 11,370 on the information given by Ramchandra from an open place in a field near the village Narsinghpur which is at a distance of 9 or 10 miles from Rajgarh.

8. On 17-3-1952 the police submitted a report Ex. P. 17 stating that their investigation bad disclosed that the complaint of Ramchandra regarding the theft was untrue.

9. Thereafter on 31-7-1952 a Challan was submitted against Ramchandra under Sec. 182, I.P.C. This case, on trial, resulted in his acquittal. The Additional District Magistrate who tried the case held that the prosecution had failed to establish the falsity of the complaint, on the other hand the evidence adduced on behalf of the prosecution and that of the defence fully made out that the report was true. This decision was given on 25-3-1953. No appeal is proved to have been filed to affect this decision.

10. The present prosecution was commenced on 4-4-1952 but was decided subsequently on 12-5-1953. This too resulted in the acquittal of both the accused.

Charges in this latter case were as stated at the commencement.

11. Principal questions which were raised in this case on behalf of the appellant are that the finding of the learned Magistrate on the questions of entrustment and misappropriation are erroneous.

12. In order to appreciate these contentions it is necessary to state briefly and succinctly the findings of the lower court on these points.

(I) The evidence on behalf of the prosecution fully established the fact that the money was given to Ramchandra at the instance of Bhawanilal. Ramchandra was neither a member nor a servant of the Association. The payment thus made was on account of confidence reposed by them upon Bhawanilal. There was therefore no entrustment to accused No. 1,

(II) (a) The falsity of the report lodged by Ramchandra on 4-2-1952 is not established. The case in respect of this alleged false complaint under Sec. 182, I.P.C. had resulted in the acquittal of the accused. No independent evidence was adduced to support this fact.

(b) The accused did not deny the receipt of money.

(c) The alleged recovery of Rs. 13,370 at the instance of Ramchandra is not trustworthy as said recovery was made from an open place accessible to all. No independent witness regarding this recovery was examined.

13. The identity of the notes recovered with those which were lost is also not established. The accused claimed this money as theirs. Ishak Mohammad from whom Rs. 1,000 are said to have been recovered did not support the prosecution case. The identity of those notes with those which were lost too has not been established.

Thus the learned Magistrate found that neither entrustment nor dishonest misappropriation was established.

14. In this case although it is difficult to agree with the oral court on the question of entrustment it is absolutely clear that its finding on the question of dishonest misappropriation is unassailable.

15. The lower court seems to think that since Bhawanilal was the president and money was given on account of confidence reposed in him there was entrustment to him and not to the accused Ramchandra. But the oral evidence of the persons making the payment corroborated by the receipts Ex. P/1, P/4 and P/5 clearly establish the fact that money was actually handed over to Ramchandra who issued receipts in the name of his father. Besides this there was evidence to indicate that Ramchandra used to work on behalf of his father in making purchases of cloth for, ''the Association. He was in actual charge of the money when the alleged theft took place.

16. It is therefore clear that the accused was entrusted with money. The fact that the entrustment was on behalf of his father did not alter the character of this handing over.

17. But as regards the dishonest misappropriation, the alleged denial of receipt of money by accused Ramchandra is clearly an after-thought. It is impossible to believe that accused Ramchandra after receiving the money, issuing receipts, crediting the amount in the cash-book of his shop and admitting the deposit in his complaint on 4th would deny the receipt at any subsequent time. The Magistrate''s finding that this was clearly an after-thought introduced at a subsequent stage of the case is clearly correct. The recoveries said to have been made at the instance of accused Ramchandra and from Ishak Mohammad too are worthless pieces of evidence owing to absence of evidence to indicate the identity of the notes recovered with those which had been lost and the nature of the evidence regarding these recoveries.

18. Thus two most important facts which were relied upon to prove dishonest misappropriation are not established.

19. The third fact too is equally conclusive in favour of the accused.

20. No independent evidence is adduced to prove the falsity of the complaint. Witnesses Shambhu and Gaurishankar who were said to be material for the purpose and had been examined in the other case were not produced. Besides this a separate complaint was filed on the basis of this alleged falsity of Ramchandra''s complaint under Sec. 182, I.P.C. which resulted in his acquittal.

21. Apart from the conclusiveness of such a decision it is beyond controversy that after such a decision the weight of the circumstances regarding the alleged falsity is considerably diminished. If we take into account the further fact that the present is an appeal from an order of acquittal and the Initial presumption regarding the innocence of the accused is considerably reinforced by his acquittal, there is hardly anything left for the prosecution to catch at.

22. As regards accused Ramprasad there Is practically no evidence either on the question of entrustment or dishonest misappropriation, Nor is there material to hold that he abetted Ramchandra, in the commission of an offence. It is also clear that if accused Ramchandra cannot be said to be guilty of an offence under Sec. 406, I.P.C. Ramprasad cannot be held guilty of having abetted the same.

23. This should be enough to dismiss the appeal, But since the learned Advocates for the parties have discussed the question regarding the effect of former decision on a point material for the present case, I shall briefly consider the same In view of the cases cited at the Bar.

24. Reliance is placed on either side on one Privy Council case each. The learned Government Advocate relied upon the decision in Malak Khan vs. Emperor AIR 1946

P.C. 17, in support of his contention that evidence regarding falsity of report made by accused Ramchandra could be independently examined and relied upon in the present case in spite of the decision in the former case under Sec. 182, I.P.C. to the contrary. Offence of Criminal breach of trust, it is said, is a different kind of offence than one of making a false complaint and although the evidence given in this case may be some what common as regards the question of falsity of report, the conclusions in the former case are not binding in the present case. There is, it is contended, no principle of res judicata as such applicable to criminal proceedings and the principle of autrefois acquit has no application in the present case.

25. On the other hand the learned counsel for the respondent relied upon the decision in Sambasivan vs. Public Prosecutor, Federation of Malaya 54 C.W.N. 693, which is also a Privy Council decision. In that case accused Sambasivan was tried for two charges in succession, The first charge was for possession of 10 rounds of ammunition. He was tried for this and acquitted. At the second trial he was charged with possession of a revolver. Evidence was sought to be given that the revolver was loaded with six rounds and four were in the bag. The ammunition and the revolver were found in the same circumstances and fitted each other.

26. It was under these circumstances held that such a use of evidence in the second trial amounted to taking steps by the prosecution to challenge the verdict at the first trial.

27. This was held to be against principles ''res judicata pro veritate accipitur&#65533; which according to their Lordships'' view applied no less to criminal than to civil proceedings.

28. Lord Mec Dermott while dealing with this aspect observed as follows:--

But there is one feature of the present case which must now be mentioned and which thong it bears directly on the weight to be accorded to the statement under discussion, involves an Important principle of the criminal law to such an extent, that in the opinion of the Board, the conviction appealed from ought not to be allowed to stand.

The effect of a verdict of acquittal pronounced by a competent court'' on a lawful charge and after a lawful trial is not completely stated by saying that the person acquitted cannot be tried again for the same offence. To that it must be added that the verdict is binding and conclusive in all subsequent proceedings between the parties to the adjudication. The maxim ''res judicata pro veritate accipitur is no less applicable to criminal than to civil proceedings. Here, the appellant having been acquitted at the first trial on the charge of having ammunition in his possession, the prosecution was bound to accept the correctness of that verdict and was precluded from taking any step to challenge it at the second trial And the appellant was no less entitled to rely on his acquittal in so far as it might be relevant in his defence. That it was not conclusive of his innocence on the firearm charge is plain, but it

undoubtedly reduced in some degree the weight of the case against him, for at the first trial the facts proved in support of one charge were clearly relevant to the other having regard to the circumstances in which the ammunition and revolver were found and the fact that they fitted each other.

29. It is clear from the observations of their Lordships'' of the Privy Council in the latter case that an accused person is ''no less entitled to rely on his acquittal in so far as it might be relevant in his defence''.

30. In the other Privy Council case relied upon by the learned counsel for the appellant facts were as follows:--

31. The accused in that case was tried at the same trial both for robbery and for murder. The accused was acquitted for robbery charge but was convicted for murder. On appeal by the accused against his conviction for murder evidence pertaining to robbery charge was relied upon by the respondent as corroborative evidence of murder. This use was permitted by the High Court and the conviction was upheld. On appeal to the Privy Council exception was taken to such a use. Their Lordships stated the reasoning on behalf of the appellant and their opinion was thus:--

The Sessions Judge, it was said, bad acquitted the appellant of robbery, he was therefore, not guilty of that offence, no appeal had been taken against that acquittal and therefore no court was entitled to take into consideration the allegation upon which the accusation of robbery was found even as corroborative evidence in another case. Their Lordships cannot accept this contention. The learned Sessions Judge did not in fact find the accusation baseless, he only found the crime not proved. But even if he had disbelieved the whole story of the recovery of the stolen property from the appellant, his hading would not prevent the High Court from weighing its value and if they accepted its substantial truth from taking it into consideration in determining whether another crime bad been committed or not. The acquittal no doubt would have entitled the accused man to plead autrefois acquit if again charged with the same crime, but it would not prevent a civil action being brought against him for the return of the things stolen or for their value upon the same evidence.

It could not, in their Lordship''s opinion, be objected to as evidence in another case, criminal or civil, though no doubt its weight would be diminished. Before the Sessions Judge it was given for two purposes

(1) as corroboration of the testimony given in the charge of murder and

(2) as direct evidence of robbery. Before the High Court its use for the first purpose was in no way precluded even though no appeal was taken against the dismissal of the charge of robbery. In such circumstances to appeal from the acquittal would be mere idle when the question at issue was whether the accused was guilty of murder

or not.

32. The observations of their Lordships have got to be read in the entire context. In the first place that finding of the Sessions Judge was not that the accusation regarding robbery was baseless. He found that the crime was not proved. He convicted the accused for murder. The matter was being examined in appeal and the evidence could not be viewed in watertight compartments, the entire evidence being in the same case. The superior court reviewing the evidence was, it was held, not precluded from examining the evidence regarding commission of robbery as corroborative evidence of murder though it was recognised that the weight of such evidence would be considerably diminished.

33. The facts of the present case fall more within the ambit of the principle laid down by Lord Mac. Dermott in the later Privy Council case 1950 A.C. 458 (478) than that of AIR 1946 16 (Privy Council)

34. In the present case the accused Ramchandra was acquitted of having made false complaint regarding the loss of money of the Association, The Magistrate found as a fact that the prosecution had failed to establish the alleged falsity and the accused had given evidence regarding its genuineness which was not unreliable.

35. The second trial no doubt was for criminal breach of trust, But to prove one of the ingredients of this offence viz. dishonest misappropriation it was very relevant to show that the complaint filed by him, which was the subject-matter of the former charge, was false, For if the complaint was true there would be no dishonesty or misappropriation and the latter charge would fall to the ground. It was under these circumstances clearly within the right of the accused to plead former acquittal regarding ''false complaint'' charge as a bar to challenge the correctness of that finding. For to hold otherwise would be tantamount to setting aside the former decision in fact though not in law. It is here that the principle enunciated by the Privy Council in the later case comes into play. The position in law discussed above in no way has the effect of modifying the scope of Sec. 403, Cr. P.C.

36. The principle of the Privy Council case in 1950 A.C. 458 was followed by the Calcutta High Court in Manick Chand Agarwalla Vs. The State, Similar view was taken in some of the earlier Indian decisions notably Emperor vs. Noni Gopal Gupta 11 Indian cases 580 and AIR 1933 470 (Oudh)

37. I am therefore, of the view that the result of the acquittal of accused Ramchandra in the former case precludes the prosecution from taking steps to establish the validity of the false complaint charge. But even on the view taken in AIR 1946 16 (Privy Council) the weight of evidence regarding falsity of charge would be considerably diminished. Even this is enough for the purpose of this appeal.

As discussed above the prosecution has failed to establish as against Ramchandra that there was dishonest misappropriation of the amount in question and as against

Ramchandra that there was entrustment and dishonest misappropriation or abetment of the same.

38. The appeal therefore has no force. It is therefore dismissed.

Khan, J.

39. I agree.