The State of Madhya Pradesh

Vs

Veereshwar Rao Agnihotry

Criminal Appeals Nos. 130 and 131 of 1954

(CJI S. R. Dass, S. K. Das, Syed Jafar Imam, A. K. Sarkar, P. Govinda Menon, JJ)

05.04.1957

JUDGMENT

GOVINDA MENON J. -

The State of Madhya Bharat, which after November 1, 1956, had become merged in the present State of Madhya Pradesh, had obtained special leave from this court on April 11, 1954, to appeal against the judgment and order of acquittal passed in favour of the respondent herein, by the High Court of Judicature of Madhya Bharat on September 11, 1953, in two consolidated Criminal Appeals Nos. 42 and 43 of 1953, by the identical appellant before that court. The question for decision in these two appeals in how far the High Court was justified in ordering the acquittal.

The respondent herein was a Tax-Collector in the Municipal Committee of Lashkar, Gwalior, and was prosecuted in the court of the City Magistrate and Additional District Magistrate, Lashkar, firstly by means of a challan dated October 23, 1951, for offences under ss. 468, 477-A and 409 of the Indian Penal Code and s. 5(2) of the Prevention of Corruption Act II of 1947, in that he misappropriated a sum of more than Rs. 7,000, entrusted to him in the capacity of Tax-Collector, and during the course of the said transaction committed various offences. On July 4, 1952, a second complaint was filed against him in the same court under the identical sections for having misappropriated in 1950 a sum of Rs. 3,500 in all under similar circumstances. While these two complaints were pending in the trial court, on July 28, 1952, the Criminal Law Amendment Act (Act No. 46 of 1952) came into force and by s. 6 of that statute, the State Government was authorised to appoint a Special Judge for the trial of an offence under sub-s. (2) of s. 5 of the Prevention of Corruption Act II of 1947. Section 7 of the same statute laid down that notwithstanding anything contained in the Criminal Procedure Code, or any other law for the time being in force, an offence under s. 5(2) of the Prevention of Corruption Act could be tried only by a Special Judge, appointed under s. 6 of the Criminal Law Amendment Act. Sub-cl. (b) of s. 7 laid down that when trying a case, triable exclusively by a Special Judge under this statute, he may also try any other offence with which the accused may under the Code of Criminal Procedure, be charged at the same trial. The last section of the Criminal Law Amendment Act aforesaid provided that all cases triable by a Special Judge under s. 7, which immediately before the commencement of the Act were pending before any Magistrate, shall on such commencement be forwarded for trial to the Special Judge having jurisdiction over such cases. In accordance with the above-mentioned provisions of the statute, the cases pending before the City Magistrate and Additional District Magistrate, Lashkar, were transferred to a Special Judge constituted for the purpose before whom they were numbered as Cash No. 3 of 1953 and No. 6 of 1953. After the prosecution evidence was over, on March 10, 1953, the Special Judge framed charges under all the sections complained against. By separate judgments dated June 5, 1953, the Special Judge found the respondent guilty of

an offence under s. 409 of the Indian Penal Code and sentenced him to rigorous imprisonment for three years. He, however, passed an order of acquittal under ss. 468 and 477-A, of the Indian Penal Code. As regards the charge under s. 5(2) of Act II of 1947, the learned Special Judge was of the view that since the provisions of sub-s. (4) of s. 5 of the Prevention on Corruption Act to the effect that no police officer below the rank of Deputy Superintendent of Police shall investigate any offence punishable under sub-s. (2) of s. 5 of the Prevention of Corruption Act without an order of a 1st Class Magistrate, had not been complied with, the foundation for preferring a complaint had not been established and, therefore, there was an illegality which affected the jurisdiction of the court to try the case, the result being that the accused could not be tried for that offence. Such being the case, no formal order of acquittal was passed by the trial court.

Aggrieved by the convictions under s. 409 of the Indian Penal Code, the respondent preferred two appeals to the High Court of Madhya Bharat which were consolidated by that court, and by a common judgment that court applying the doctrine of autrefois acquit held that when once on the same facts the trial Judge found that the respondent could not be found guilty of an offence under s. 5(2) of the Prevention of Corruption Act, it was tantamount to an acquittal for that offence in which case no conviction could be had under s. 409 of the Indian Penal Code. The respondent was, therefore, acquitted. As mentioned already, the State has been granted special leave to appeal against the orders of acquittal.

The correctness of the conclusion of the High Court has been challenged in more ways than one by the appellant's counsel. Firstly, it is argued that the offence under s. 5(2) of the Prevention of Corruption Act and that under s. 409 of the Indian Penal Code, are not the same, and such being the case, granting that the order of the Special Judge amounted to an acquittal under s. 5(2) of the Prevention of Corruption Act, still that would not bar the conviction of the respondent under s. 409 of the Indian Penal Code. Secondly, it is pointed out that when at the same trial there are two alternative charges like those with which we are now concerned, acquittal of the accused under one charge is no impediment to his conviction on the other; and lastly it is contended that any defect in the investigation would not amount to an illegality which would invalidate the trial and conviction if the proceedings culminate that way.

This court has recently held in Om Prakash Gupta v. The State of U.P. [[1957] S.C.R. 423], that the offence of criminal misconduct punishable under s. 5(2) of the Prevention of Corruption Act II of 1947 is not identical in essence, import and content with an offence under s. 409 of the Indian Penal Code. The offence of criminal misconduct is a new offence created by that enactment and it does not repeal by implication or abrogate s. 409 of the Indian Penal Code. In the common judgment in those appeals the conclusion has been expressed in the following words:-

> "Our conclusion, therefore, is that the offence created under s. 5(1)(c) of the Prevention of Corruption Act is distinct and separate from the one under s. 405 I.P.C. and, therefore, there can be no question of s. 5(1)(c) repealing s. 405 I.P.C."

In view of the above pronouncement, the view taken by the learned Judge of the High Court that the two offences are one and the same, is wrong, and if that is so, there can be no objection to a trial and conviction under s. 409 of the Indian Penal Code, even if the respondent has been acquitted of an offence under s. 5(2) of the Prevention of Corruption Act II of 1947. Section 403(1) of the Criminal Procedure Code only prohibits a subsequent trial for the same offence, or on the same facts for any other offence for which a different charge from the one made against an accused person might have been made under s. 236 of the Criminal Procedure Code, or for which he might have been convicted

under s. 237 when the earlier conviction or acquittal for such an offence remains in force. It is obvious that s. 403(1) has no application to the facts of the present case, where there was only one trial for several offences, of some of which the accused person was acquitted while being convicted of one. On this ground alone the order of the High Court is liable to be set aside. The High Court also relied on Art. 20 of the Constitution for the order of acquittal but that Article cannot apply because the respondent was not prosecuted after he had already been tried and acquitted for the same offence in an earlier trial and, therefore, the well-known maxim "Nemo debet bis vexari, si constat curice quod sit pro una et eadem causa" (No man shall be twice punished, if it appears to the court that it is for one and the same cause)" embodied in Art. 20 cannot apply.

The next argument on behalf of the appellant is that where there are two alternate charges in the same trial, the fact that the accused is acquitted of one of them, will not prevent the conviction on the other, is also well-founded. Section 26 of the General Clauses Act can be called in aid in support of this proposition. There is no question of double jeopardy. Section 26 runs as follows :-

> "Provisions as to offences punishable under two or more enactments : Where an act or omission constitutes an offence under two or more enactments then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same."

We are, therefore, of the opinion that the learned Judge's view on this aspect of the case is also unsound.

In view of what has been stated above, it is unnecessary to deal with the last contention of the learned counsel for the appellant except merely to state that the Special Judge had jurisdiction to try the accused person under s. 7 of the Prevention of Corruption Act, 1947.

The result is that the appeals succeed, the order of the High Court acquitting the respondent of an offence under s. 409 of the Indian Penal Code is set aside and the appeals are remanded to the High Court of Madhya Pradesh for re-hearing on the merits.

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