

# SUPREME COURT OF INDIA

C. T. Muniappan

Vs.

State of Madras

Crl.A.No.142 of 1958

(K. C. Das Gupta and J. C. Shah, JJ.)

11.03.1960

## JUDGEMENT

### **DAS GUPTA, J.:**

1. The appellant, formerly a senior Inspector of Co-operative Societies in Madras was tried along with one K. M. Kumaraswami on a charge under S. 120B read with S. 409 I. P. C. and S. 477- A I. P. C., and for a specific offence under S. 409 I. P. C. The appellant was convicted by the Magistrate of the offence of conspiracy under S. 120B read with S. 409 and S. 477- A I. P. C. and acquitted of all the other charges. Kumaraswami was convicted on the conspiracy charge and also for an offence under S. 409 I. P. C. On appeal the Sessions Judge, Chingleput set aside the conviction of Kumaraswami under S. 409 I. P. C., but confirmed the conviction of both the accused on the conspiracy charge i.e., under S. 120B read with S. 409 and S. 477 - A I. P. C. The Sessions Judge also confirmed the conviction and sentence on both the accused on the conspiracy charge. The two accused persons then moved the High Court of Judicature at Madras under S. 439 Cr. P. C. The High Court having refused to interfere with the Sessions Judge's orders, Muniappan has preferred this appeal against the order of the High Court after obtaining special leave from this Court.

2. The appellant who as already stated was a senior Inspector of Co-operative Societies was appointed by the Registrar of the Cooperative Societies as Special Officer to manage the affairs of the Thirunagewaram Weavers' Cooperative Society which had been superseded under his order. The appellant took charge of his office on May 8, 1950, after the appeal against the order of supersession was dismissed. When the appellant took charge of the Society the outstanding dues of the Society from the different merchants to whom goods had been sold on credit was Rs. 9326-13-3. One of the main tasks of the appellant was therefore to arrange about the speedy collection of as much of these dues as was practicable. Soon after the appellant took charge as Special Officer he appointed the other accused Kumaraswami who had formerly been employed under the Society but whose services had been dispensed with as designer and appraiser.

3. Some time thereafter Kumaraswami was asked to collect the Society's dues and was later appointed as Cashier of the Society. The prosecution case stated briefly is that the appellant and Kumaraswami entered into a conspiracy to misappropriate amounts that would be collected by Kumaraswami and to falsify the accounts. The modus operandi agreed upon was that Kumaraswami would not bring into the books a part of the money collected, that the appellant would refrain from taking any action in the matter and that the amount thus kept out of the books would be divided between them.

4. That large sums of money collected by Kumaraswami were not brought into account and were not credited to the Society's fund is not disputed. Kumaraswami's defence at the trial was that all monies collected by him were handed over by him to this appellant. The appellant's defence was that the amounts collected by Kumaraswami and not brought into the books were misappropriated by the latter and he, the appellant, was never informed of these collections.

5. The principal question is controversy therefore was whether the appellant was aware of these collections by the second accused and of the fact that these were not being entered into the books or otherwise credited to the Society's accounts and with such knowledge he refrained from taking any action in the matter. The Trial Court as also the Sessions Judge came to the conclusion that the appellant had such knowledge and in spite of that knowledge he refrained from taking any action. It was on these conclusions on facts that they based the conviction of both the accused on the conspiracy charge-S. 120B read with S. 477 - A I. P.C. and S. 409 I. P. C. In dealing with the revision application the High Court considered these questions of fact again and held that the conclusion reached by the Magistrate and affirmed by the Sessions Judge was correct.

6. The only question of law raised before the High Court was that evidence of the witnesses brought out in cross-examination on behalf of Kumaraswami could not in law be relied upon as against this appellant as the appellant had no opportunity to cross-examine these witnesses again. The High Court rejected this contention. Before us it has been urged that the view taken by the High Court in this matter was wrong. It is urged that S. 137 and 138 of the Indian Evidence Act do not contemplate any such further cross-examination of a prosecution witness. There can be no doubt that each accused is entitled in law to test the evidence given against him by a prosecution witness by cross-examination. Section 137 does not say that such cross-examination has to be limited only to what has been stated by the prosecution witness in examination-in-chief. Indeed S. 138 mentions categorically that "the cross-examination need not be confined to the facts to which the witness testified on his examination-in-chief" nor is there anything to justify the conclusion that once the right of cross-examination has been exercised after charge it cannot be exercised again. While it is true that S. 137 and S. 138 do not in words speak of a further round of cross-examination there is neither in these sections nor anywhere else in the Evidence Act anything to bar the accused from exercising his right of cross-examination afresh if and when the prosecution witness makes a further statement of facts prejudicial to him.

7. In our opinion the High Court was right in its view that the accused was in law entitled to put further questions to this prosecution witness by way of cross-examination in respect of what he had stated in reply to Kumaraswami's Counsel. As the High Court has pointed out, the appellant had another opportunity of applying to the Magistrate under S. 257 Cr. P. C., for compelling the attendance of these witnesses for further cross-examination. No such application was however made.

8. The appellant's counsel next urged that in the examination under S. 342 Cr. P. C., the Magistrate did not draw the attention of the accused to the several statements made by prosecution witness that the appellant was informed about payments made to Kumaraswami and so the Courts below were not entitled to take the evidence on this point into account. It is interesting to notice that no such complaint was made either in the Court of Session or before the High Court. We have examined the record of examination of this appellant under S. 342 and find that detailed questions asked by the Magistrate gave the accused ample opportunity to explain all the circumstances against him disclosed by the evidence, including the evidence about the collections made by Kumaraswami having been brought to his knowledge. We do not think that the omission to question the appellant

specifically about what the witnesses said about informing him of such collection has caused any prejudice to him. Even if there was any defect in his examination under S. 342 Cr. P. C., the defect amounts merely to an irregularity and is not such as to call for our interference with the orders passed by the Courts below - especially when no complaint on this ground was raised before the High Court.

9. The appeal is accordingly dismissed.

Appeal dismissed.

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