

State of Karnataka

Vs

Muniyalla

Criminal Appeal No. 620 of 1984

(P. N. Bhagwati, V. Khalid JJ)

12.11.1984

JUDGMENT

BHAGWATI, J. -

1. Leave granted.

2. On the basis of a complaint lodged by one Muniyamma the police registered a case being Crime No. 90 of 1979 under Sections 302 and 307 of the Indian Penal Code and on the completion of the investigation, filed a charge sheet against the respondent for the offences under Sections 302 and 307, IPC. The Chief Judicial Magistrate took cognizance of the offences and committed the case to the Court of Session, Bangalore. The Sessions Judge registered the case as Sessions Case No. 15 of 1979. It appears that the jurisdiction of the Sessions Court was transferred to the Court of City and Sessions Judge, Bangalore and the High Court therefore by an order dated December 30, 1980 made in exercise of the powers conferred under Section 407 of the Code of Criminal Procedure withdrew Sessions Case No. 15 of 1979 from the Sessions Judge, Bangalore and transferred it to the Principal City Civil and Sessions Judge, Metropolitan Area, Bangalore City for disposal in accordance with law. The Principal City Civil and Sessions Judge registered the case as Sessions Case No. 17 of 1981 and by an Order dated January 30, 1981, purporting to be in exercise of the power vested under Section 409(1) of the Code of Criminal Procedure transferred the case to the Sixth Additional City Civil and Sessions Judge, Bangalore. The Sixth Additional City Civil and Sessions Judge tried Sessions Case No. 17 of 1981 and at the end of the trial the respondent was convicted of the offences under Section 302 and Section 307, IPC and sentenced to suffer imprisonment for life. The respondent thereupon preferred an appeal to the High Court.

3. The High Court took the view that the Sixth Additional City Civil and Sessions Judge, Bangalore had no jurisdiction to try Sessions Case No. 17 of 1981, since that case had not been made over to him by the Principal City Civil and Sessions Judge, under Section 194 of the Code of Criminal Procedure and the order of conviction and sentence passed by the Sixth Additional City Civil and Sessions Judge against the respondent was therefore vitiated. The High Court accordingly set aside the conviction and sentence recorded against the respondent and directed the Principal City Civil and Session Judge to see "that on receipt of the records, the trial of the said Sessions Case is held in accordance with law bearing in mind the aforementioned observations made in the Judgment". The State of Karnataka being aggrieved by this Order passed by the High Court preferred the present appeal after obtaining special leave from this Court.

4. Now it is obvious that the Judgment of the High Court is patently wrong and cannot be sustained and in fact Mr Kapil Sibal appearing on behalf of the respondent, with his usual candour and

frankness, stated that it was difficult for him to support the Judgment. We may proceed on the basis that the Sixth Additional City Civil and Sessions Judge could try only such Sessions Cases as were made over to him by the Principal City Civil and Sessions Judge in exercise of the powers conferred under Section 194 of the Criminal Procedure Code, though we are not at all sure that, even if the Sixth Additional City Civil and Sessions Judge tried a Sessions Case which was not formally made over to him, the trial would be invalid, because in any event the Sixth Additional City Civil and Sessions Judge would have inherent jurisdiction to try the Sessions Case. We need not however, go into that question because we find that there was an order made by the Principal City Civil and Sessions Judge on January 30, 1981 making over Sessions Case No. 17 of 1979 to the Sixth Additional City Civil and Sessions Judge, Bangalore. Undoubtedly this order was purported to be made by the Principal City Civil and Sessions Judge in exercise of the powers conferred under Section 409 of the Code of Criminal Procedure and this section did not confer power on the Principal City Civil and Sessions Judge to make over Sessions Case No. 17 of 1979 to the Sixth Additional City Civil and Sessions Judge. But it is now well-settled that merely because an order is purported to be made under a wrong provision of law, it does not become invalid so long as there is some other provision of law under which the order could be validly made. Mere recital of a wrong provision of law does not have the effect of invalidating an order which is otherwise within the power of the authority making it. Here the Principal City Civil and Sessions Judge had power under Section 194 of the Code of Criminal Procedure to make over Sessions Case No. 17 of 1979 to the Sixth Additional City Civil and Sessions Judge and the order made by him on January 30, 1981 was clearly within his authority and the only error was that he recited a wrong section of the Code of Criminal Procedure. The order dated January 30, 1981 made by Principal City Civil and Sessions Judge must be read as an order made under Section 194 of the Code of Criminal Procedure insofar as the direction making over Sessions Case No. 17 of 1979 to the Sixth Additional City Civil and Sessions Judge is concerned. We are therefore of the view that Session Case No. 17 of 1979 was validly made over to the Sixth Additional City Civil and Sessions Judge and he had jurisdiction to try that Sessions Case. The judgment of the High Court setting aside the conviction and sentence recorded against the respondent on the ground that the Sixth Additional City Civil and Sessions Judge has no jurisdiction to try Sessions Case No. 17 of 1979, must consequently be held to be erroneous.

5. We accordingly allow the appeal, set aside the Judgment of the High Court and direct that the appeal preferred by the respondent shall be heard by the High Court on merits and it shall be disposed of in accordance with law.

6. Since the respondent had addressed a communication to this Court requesting that a lawyer may be appointed to represent him in the appeal before us, we requested Miss Kamini Jaiswal and Mr Kapil Sibal, senior advocate, to appear on behalf of the respondent and to assist the Court. We are grateful to Miss Kamini Jaiswal and Mr Kapil Sibal for the assistance which they have been good enough to render to us at the hearing of the appeal.

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