S. P. E. Madras vs K.V.Sundaravelu on 8 March, 1978

Equivalent citations: 1978 AIR 1017, 1978 SCR (3) 460, AIR 1978 SUPREME COURT 1017, (1978) 2 SCC 514, 1978 SC CRI R 288, 1978 SCC(CRI) 211, 1978 CRI APP R (SC)167, (1978) 3 SCR 460

Author: P.N. Shingal

Bench: P.N. Shingal, Syed Murtaza Fazalali

PETITIONER:
S. P. E. MADRAS

Vs.

RESPONDENT:
K.V.SUNDARAVELU

DATE OF JUDGMENT08/03/1978

BENCH:
SHINGAL, P.N.
BENCH:
SHINGAL, P.N.
FAZALALI, SYED MURTAZA

CITATION:
1978 AIR 1017 1978 SCR (3) 460
1978 SCC (2) 514

ACT:
Criminal Procedure Code (Act V), 1898, Section 215-Committal orders can be quashed by the High Court only on a point of law, Limitation for taking cognizance of offence-Evidence Act (Act 1), 1872, Sections 40 to 44, relevancy of previous judgment.

HEADNOTE:
The respondent who was charged of offences under sections 420, 471 read with section 466 Indian Penal Code and Section 132 of Customs Act was committed to the Court of Sessions. The offence related to alleged tampering with seals affixed by the Textile Inspector on the bales containing handloom fabric known as "Bleeding Madras". The Court split the case into two so that Sessions Case No. 34/68 was registered for the trial of the offence relating to 93 bales which were covered by a particular invoice and Sessions Case No. 2/

1970 was registered for the goods relating to 19 bales which were covered by a different invoice. Sessions Case 34 of 1968 ended in conviction of the respondent, but, on an appeal the High Court acquitted him giving him the benefit of doubt. When the second care was taken up for trial, the respondent moved the High Court under section 215 of Criminal Procedure Code, 1898, for quashing the "proceedings". The High Court allowed the application holding (1) that the evidence in both the cases being similar and one case having ended in acquittal, further prosecution in the present case would amount to abuse of the process of the Court; (ii) even otherwise the alleged offences were committed somewhere in 1965 and it would be unfair, if not unjust, to put the petitioner on trial after about ten years and (iii) the charges were "not likely to stand".

Allowing the appeal by special leave, the Court

HELD : The trial of the case had not started and there was no justification for taking the view that evidence in both the cases was similar. Moreover it is not the requirement of law that if one case has ended in acquittal prosecution in another case would be illegal. So also it could not be said that the High Court's opinion that the charge was not likely to stand the trial was on a point of law within the meaning of section 215. The High Court therefore lost sight of its limitation under section 215 and quashed the "Proceedings" for reasons which were extraneous to that section. [463 A-B]

The High Court took its earlier judgment in Sessions Case No. 34 of 1968 into consideration in reaching its conclusion. Here again it lost sight of the provisions of sections 40 to 44 of the Evidence Act which state the circumstances of which previous judgments are relevant in civil and criminal cases.- The judgment in S.C. No. 34 of 1968 was clearly "irrelevant" under those provisions. 463 C, D. F]

In fact it was not in controversy that Sessions Case No. 2 of 1970 concerned the trial of the respondent in respect of 19 bales which formed the subject matter of separate invoices and of which the goods were inspected on different lates. It was also not controverted that a different officer inspected three of those bales and found them to be substandard goods and they were not the subject matter of the trial in case No. 34 of 1968. [464 A-B]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION Criminal Appeal No. 375 of 1976.

(Appeal by Special Leave from the Judgment and Order dt. 4- 12-75 of the Madras High Court in Crl. Misc. Petition No. 1029/ 75).

H. S. Marwah.& R. N. Sachthey for the Appellant. S. Goindswaminadhan, I. Subramanium, Veena Devi Khanna and K. Rajindra Chowdhary for the Respondent. The Judgment of the Court was deliverd by SHINGHAL J.-This appeal by special leave is directed against the judgment of the Madras High Court dated December 4, 1975, quashing the "proceedings pending in S. C. No. 2 of 1970 on the file of the First Assistant Sessions Judge, Madras." The facts giving rise to the appeal have been stated in the petition for special leave and have not been disputed.

Respondent K. V. Sundaravelu carried on business as an exporter in Madras. He had a quota for the export of the handloom fabric known as "Bleeding Madras" for the period April 1, 1965 to March 31, 1966. It was one of the conditions of this export licence that he should produce the goods for pro-shipment inspection by officers ,of the Textile Committee who had the authority to affix the 'date seals, monogram seals and the quality marking seals containing the trade mark of the All India Handloom Board. The seals were affixed by the concerned Textile Inspector after random inspection of the quality of the fabric. Such an inspection was made in July 1965, the fabric was put in bales, and the bales were sealed with lead seal. It was found, on a fresh Inspection of one of the bales before actual loading, that the inside seals had been tampered with and there were forged date seals. The shipment was therefore stopped and all the goods were examined between July 27, 1965 and- July 30, 1965. As the respondent was found to have committed offences under sections 420, 471 read with section 466 of the Indian Penal Code and section 132 of the Customs Act he was charge-sheeted and was committed to the Court of Session after the necessary inquiry. The Court split the case into two, so that Sessions Case No. 34 of 1968 was registered for the trial of the offence relating to 93 bales which were covered by a particular invoice, and Sessions Case No. 2 of 1970 was registered for the goods relating to 19 bales which were covered by a different invoice. The first case (S.C. No. 34 of 1968) proceeded to trial and ended in the conviction of the respondent. He was however given the benefit of doubt on appeal and was acquitted by the judgment of the High Court dated March 9, 1974. The second case (S.C. No. 2 of 1970), which is the subject matter of the present appeal, was then taken up for trial by the First Assistant Sessions Judge, Madras. The respondent applied to the High Court for quashing the "proceedings". As has been stated, his appli- cation was allowed by the High Court and the proceedings have been quashed by the impugned judgment. It was urged before the High Court that Sessions Case No. 2 of 1970 was different from the earlier case (S.C. No. 34 of 1968) and 12-L277SCI/78 should be allowed to proceed to trial, but the High Court thought it proper to go through the record which was received from the court of the committing magistrate and took the view that the present case was "substantially the same as the other case which ended in acquittal." In doing so it made a reference to its finding in the earlier case and held as follows,-

> "I have found in the other case that the substitution could not have been subsequent to the baling of the cloth pieces as contended by the prosecution, and acquitted the petitioner therein. The same point arises in this case as it is found in this case also that the prosecution has come forward with the case that the substitution was. subsequent to the baling. So, on these broad aspects, the evidence in both these cases

> being similar and one case having ended in acquittal, further prosecution of the petitioner in this case will amount to abuse of process. Even otherwise, the alleged offenses were said to have been committed somewhere in 1965, namely, about ten years ago and it would be unfair, if not unjust to put the petitioners on trial on the charge which, in my opinion, is not likely to stand."

It is not disputed that the case was committed to the Court of Session before April 1, 1974, when the Code of Criminal Procedure, 1973, came into force. It is also not in dispute that by virtue of section 484(2) of that Code, the pending trial of the respondent in the Court of the Assistant Sessions Judge had to be disposed of in accordance with the provisions of the Code of Criminal Procedure, 1898 and that the respondent's application to the High Court for quashing the commitment had also to be disposed of in accordance with the provisions of section 215 of that Code. That section provided as follows.-

> "215. A commitment once made under section 213 by a competent Magistrate or by a Civil or Revenue Court under section 478, can be quashed by the High Court only, and only on a point of law."

So, as the case had already been committed by the competent Magistrate, the commitment could be quashed only on a point of law.

A reading of the impugned judgment shows that the High Court has quashed the proceedings in the Court of the Assistant Sessions Judge for three reasons,-

(i) the evidence in both the case being similar and one case having ended in acquittal, further prosecution in the present case would amount to abuse of the process of the Court,

(ii) even otherwise, the alleged offenses were committed somewhere in 1965 and it would be unfair, if not unjust to put the petitioner on trial after about 10 years, and

(iii) the charge was not "likely to stand". It will be recalled that the trial in the case had not started. There was therefore no justification for taking the view that evidence in both the cases was similar. Moreover, it is not the requirement of law that if one case has ended in acquittal, prosecution in another case would be illegal. It cannot also be said that it would be illegal to commence the trial in a case after a period of 10 years or so. So also, it cannot be said that the High Court's opinion that the charge was not "likely to stand" the trial, was on a point of law within the meaning of section 215 of the Code of Criminal Procedure. The High Court therefore lost sight of its limitation under section 215 of the Code Of Criminal Procedure, and quashed the 'proceedings" for reasons which were extraneous to that section. Its order does not conform to the requirement of the law and cannot be sustained.

The High Court has in fact taken its earlier judgment in Sessions Case No. 34 of 1968, which ended in acquittal, into consideration in the present case, and has reached the conclusion that the present appeal is "not likely to stand". Here again, the High Court lost sight of the provisions of sections 40

to 44 of the Evidence Act which state the circumstances in which previous judgments are relevant in civil and criminal cases. Thus section 40 states the circumstances in which a previous judgment may be relevant to bar a second suit or trial, and has no application to the present case for the obvious reason that no judgment, order or decree is said to be in existence in this case which could in law be said to prevent the Sessions Court from holding the trial. Section 41 deals with the relevancy of certain judgments in probate, matrimonial, admiralty or insolvency jurisdiction and is equally inapplicable. Section 42 deals with the relevancy and effect of judgments, orders or decrees other than those mentioned in section 41 in so far as they relate to matters of a public nature, and is again inapplicable to the present case. Then comes section 43 which clearly states that judgments, orders or decrees, other than those mentioned in sections 40, 41 and 42, are irrelevant, unless the existence of such judgment, order or decree is a fact in issue, or is relevant under some other provisions of the Act. As it has not been shown that the judgment in Sessions Case No. 34 of 1968 could be said to be relevant under the other provisions of the Evidence Act, it was clearly "irrelevant" and could not have been taker. into consideration by the High Court for the purpose of making the impugned order. The remaining section 44 deals with fraud or collusion in obtaining a judgment, or incompetency of a court which delivered it, and can possibly have no application in the present case. It would thus appear that the High Court not only lost sight of the above facts, but also ignored the provisions of section 215 of the Code of Criminal Procedure and thus committed an error of law in basing the impugned judgment on a judgment which was clearly irrelevant.

it has been pointed out to us, and has not been controverted, that Sessions Case No. 2 of 1970 concerned the trial of the respondent in respect of 19 bales which formed the subject matter of separate invoices and of which the goods were inspected on different dates. It has also not been controverted that one Chakravarty inspected three of those bales, and found them to be sub-standard goods,. They were not the subject matter of the respondent's criminal trial in Sessions Case No. 34 of 1968. Moreover the trial court has not recorded any evidence in the case, and it was premature for the High Court to reach the conclusion that the charge was "not likely to stand" against the respondent.

In these circumstances we have no hesitation in allowing the appeal and in setting aside the impugned judgment of the High Court. We order accordingly, and in doing so we make it quite clear that the High Court's judgment in Sessions Case No. 34 of 1968, or any observation therein, should not be taken into consideration in deciding Sessions Case No. 2 of 1970 which must stand or fall on its own merits.

S. R. Appeal allowed.