State Of Bombay vs Umarsaheb Buransaheb Inamda on 23 January, 1962

Equivalent citations: 1962 AIR 1153, 1962 SCR SUPL. (2) 711, AIR 1962 SUPREME COURT 1153, 1962 ALL. L. J. 531, (1962) 2 ANDH L T 246, 1962 ALLCRIR 255, 64 BOM L R 520

Author: Raghubar Dayal

Bench: Raghubar Dayal, S.K. Das

PETITIONER:
STATE OF BOMBAY

Vs.

RESPONDENT:
UMARSAHEB BURANSAHEB INAMDA

DATE OF JUDGMENT:
23/01/1962

BENCH:
DAYAL, RAGHUBAR
BENCH:
DAYAL, RAGHUBAR
DAS, S.K.
SUBBARAO, K.

CITATION:
1962 AIR 1153 1962 SCR Supl. (2) 711
CITATOR INFO :
RF 1982 SC 20 (7)

ACT:
Criminal Procedure Code-Offences committed in pursuance of Criminial conspiracy-One trial, if permissible-Defect in framing the charge, if curable-Code of Criminal Procedure 1898 (Act V of 1898), ss.222 (2), 235, 537.

HEADNOTE:
The respondents were charged and tried at the same trial with the offences of Criminal conspiracy and breach of trust committed in pursuance thereof during a period of more than one

year. The question arising for decision was whether, in the framing of the charge, contravention of the provisions of sub-s.(2) of s.222 which allowed a combined charge with respect to the amount embezzled within a period of one year, vitiated the trial.
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Held, that the defect in the charge did not lead to any prejudice to the accused and therefore did not vitiate the trial in view of the provision of s. 537 of the Code of Criminal Procedure.
When all the offences committed in pursuance of a conspiracy are committed in course of the same transaction this can be tried together at one trial in view of s. 235(1) of the Code of Criminal Procedure which provides that if in one
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series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with and tried at one trial for every such offence.
Kadiri Kanhahammad v. The State of Madrs, A.I. R. 1960 S. C. 661, followed.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 237 of 1959.

Appeal from the judgment and order dated February 10 and 11 of 1959, of the Bombay High Court in Criminal Appeal No. 1023/59 with Crinal Appeals Nos. 1048 and 1048 of 1958.

H. R. Khanna and P. D. Menon, for the appellant.

S. G. Patwardhan. J.B. Dadachanji O.C. Mathur and Ravinder Narain, for the respondent No. 1.

1962. January 23. The Judgment of the Court was delivered by RAGHUAR DAYAL, J.-This appeal, on a certificate granted by the High Court of Bombay, raises the question whether the contravention of the provisions of sub-s. (2) of s. 222 of the Code of Criminal Procedure, hereinafter called the Code, in the framing of the charge against an accused, vitiates the trial.

The facts leading to the appeal, in brief, are as follows. The respondents were charged and tried at the same trial of the offences under s. 120B read with s. 406, I.P.C., and of an offence under s. 406, I.P.C. and committed in pursuance of the criminal conspiracy they had entered into. They were also tried, but acquitted of other offences charged with. They appealed against their conviction of the offence under s. 120-B read with s. 406, I.P.C., and of the offence under s. 406, I.P.C. The charge under s. 406, I.P.C, was with respect to the commission of trust of trust of a sum of Rs. 2,18,369/-

between the period March 6. 1949, and June 30, 1950. It was contended before the High Court that the charge framed contravened the provisions of sub s. (2) of s. 222 of the Code which allowed a combined charge with respect to the amount embezzled within a period of a year. The High Court agreed with this contention and, holding the trial void, set aside the conviction of the respondents and acquitted them of the offences. The High Court, however, maintained the order of acquittal is respect of the other offences. The State of Bombay (now Maharashtra) has filed this appeal against the order setting aside the conviction of the respondents.

It is not necessary for us to determine in this appeal the general question whether the contravention of the provisions of sub-R. (2) of s. 222 of the Code, in the framing of the charge, will always make the trial void, as, in this particular case, the offence under s. 406, I.P.C., charged against the respondents was said to have been committed in pursuance of a criminal conspiracy entered into by them. It will therefore suffice, for the purpose of this case, to consider whether such a defect in the charge vitiates the present trial.

Section 222 of the Code is one of the sections in Chapter XIX, which deals with Form of Charges. Sections 221, 222 and 223 deal with what should be mentioned in the charge. The whole object of the charge is inform both the prosecution, and the accused particularly, of the accusation the prosecution has to establish and the accused has to meet. So long as the accused knows fully what accusation he has to meet any error in the narrative of the charge need not be fatal to the trial. Sections 225, 232, 535 and 537 save the trial from being vitiated unless of course the accused has been prejudiced and failure of justice has taken place.

Sections 233 to 239 deal with the joinder of charger, and they speak not only of an accused being charged with offences, but of such charges being tried separately or jointly. Section 233 states that for every distinct offence of which any person is accused, there shall be a separate charge and every such charge shall be tried separately, except in the cases mentioned in ss. 234, 235, 236 and 239. It is clear that the general rule is theat there should be a separate trial for each distinct offence of which a person is accused. It follows that each item of property of which an accused is alleged to have committed breach of trust, constitutes one distance offence and that, in general, it would be necessary to have as many trials as there be distinct offences of criminal breach of trust committed by the accused. But s. 222(2) provides that when the accused is charged with criminal breach of trust, the charge may be with respect to the gross sum embezzled within a period of one year and that the charged so framed shall be deemed to be a charge of one offence within the meaning of s. 234. The charge framed in the present case was with respect to the gross sum embezzled within a period of more than twelve months, the period being between March 6, 1949 and June 30, 1950. The charge therefore was in contravention of the provisions of s. 222(2). This defect in the charge, however, did not lead to any prejudice to the accused in the trial and therefore did not vitiate the trial, in view of the provisions of s. 537 of the Code.

The charge could have been split up into two charges, one with respect to the offence of criminal breach of trust committed with respect to the amount embezzled between March 6, 1949 and March 5, 1950 and the other with respect to the amount embezzled between March 6, 1950 and June 30, 1950. The two offences of criminal breach of trust could have been tried together in the present case,

as the offences were said to have been committed in pursuance of the criminal conspiracy entered into by the accused, All the offences committed in pursuance of the conspiracy are committed in the course of the same transaction and therefore can be tried together at one trial, in view of sub s. (1) of s. 235 of the Code which provides that if in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with and tried at one trial for every such offence. It is therefore clear that no prejudice was caused to the accused by the defect in the charge.

A similar view has been taken by this Court in Kadiri Kundahammad v. The State of Madras (1).

We may further point out that the High Court should not have expressed its opinion or passed any order with respect to the acquittal of the respondents for the other offences when the order of acquittal was not before it for consideration and when it had held the entire trial to be void, on account of the contravention of the provisions of sub-s. (2) of s. 222.

We therefore hold that the trial of the respondents was legal and therefore allow the appeal and set aside the order of the High Court. Their appeal against their conviction has not been heard on merits and therefore we remand the case to the High Court for further hearing according to law.