GOVINDA PANIKKER v. NANI.

BENSON AND SUNDARA AYYAR, JJ.

acquisition, and any other facts that may throw light on the source of the money used for the acquisition. In this case the lower Court has found on a consideration of the evidence on record that the property in question belonged to the deceased Sankunni. On this view it is unnecessary to consider the second question argued by Mr. Rosario whether the finding against his clients that their title to particular items of property is *res judicata* is correct or not. The third point urged is that with respect to the title of Sankunni to the properties bequeathed by him to the defendants it is *res judicata* in their favour in consequence of the decision in Original Suit No. 6 of 1894, on the file of the Subordinate Court, Calicut. The appellate judgment, however, decided the case without adjudicating on that question, and the matter cannot therefore be regarded as *res judicata*. This Second Appeal must be dismissed with costs.

APPELLATE CRIMINAL.

Before Mr. Justice Sundara Ayyar and Mr. Justice Ayling.

1911. August 29 and September 6.

In re K. GANAPATHI BHATTA (ACCUSED), PETITIONER.*

Criminal Procedure Code (Act V of 1898), sec. 403 (1), — Autrefois acquit— sec. 340 (4), scope of—Sanction to prosecute, sec. 195 — Indian Penal Code (Act XLV of 1860), secs. 182 and 211.

Sanction was obtained by the complainant to prosecute the accused for an offence under section 211, Indian Penal Code. Accused was tried and convicted but the conviction was quashed by the High Court in revision on the ground that the accused had not committed an offence under that section but under section 182, Indian Penal Code, for which no sanction had been granted. Complainant thereupon obtained sanction to prosecute the accused under section 182, Indian Penal Code. On accused pleading in bar of prosecution section 403 (1), Criminal Procedure Code, the Magistrate overruled the objection and his order was confirmed by the Court of Session. Accused petitioned the High Court.

Held, that the prosecution was barred by section 403 (1), Criminal Procedure Code.

Held further that section 403 (4) refers to the character and status of the tribunal when it refers to competency to try an offence and that a sanction under section 195, Criminal Procedure Code, is not a condition of the competency of the tribunal but only a condition precedent for the institution of proceedings.

---

* Criminal Revision Case No. 502 of 1910 (Criminal Revision Petition No. 413 of 1910).

In re GANAPATHI BHATTA.

PETITIONS under sections 435 and 439 of the Criminal Procedure Code (Act V of 1898), praying the High Court to revise the order of P. A. BOOTY, the Sessions Judge of the South Canara Division, dated the 24th August 1910, in Criminal Miscellaneous Petition No. 18 of 1910, confirming the order of B. KRISHNAYA the Stationary Second-class Magistrate of Puttur in Calendar Case No. 190 of 1910 on his file.

The facts necessary for the report of this case are set out in the following Order.

J. L. Rozario, K. P. Madhava Row and *K. P. Lakshman Row* for the petitioner.

Dr. *S. Swaminathan* for the Public Prosecutor on behalf of the Crown.

SUNDARA AYYAR AND AYLING, JJ.

ORDER.—This is an application asking this Court to revise an order of the Second-class Magistrate of Puttur disallowing a preliminary objection of the accused to his prosecution for an offence under section 182 of the Indian Penal Code and the order of the Sessions Judge of South Canara refusing to recommend to this Court the quashing of that order.

The facts necessary for the disposal of this petition are briefly as follows :—

On the 5th February 1907 the accused made a complaint to the Police that certain articles had been stolen from his house. On the 11th February the Police made an enquiry in consequence and at that enquiry the accused repeated his complaint and said that he suspected the complainant as the person who committed the theft. It was found that no theft took place at all in the accused's house and that his complaint was false. The complainant then made a complaint in which he alleged that the information laid by the accused on the 5th February and on the 11th February 1907 was false. The case was tried by the Deputy Magistrate of Puttur and a charge was framed against the accused under section 211 of the Indian Penal Code in that he instituted a false charge of theft against the complainant on the 11th February 1907. He was convicted of the offence and the conviction was affirmed by the Sessions Court but it was set aside by this Court in Criminal Revision Case No. 405 of 1909. This Court observed "Both Courts have found that there was no theft and we assume that that finding is correct and that the information given to the Police was false to the knowledge of

In re GANAPATHI BHATTA. — SUNDARA AYYAR AND AYLING, JJ.

the accused, that is to say, that he knowing that no theft had been committed stated that he suspected two men who were his enemies. This would clearly amount to an offence under section 182, Indian Penal Code, but in our opinion the accused has made no charge against the complainant within the meaning of section 211, Indian Penal Code."

It should be stated that before the presentation of the present complaint the complainant had applied to the Superintendent of Police for sanction to prosecute the accused for an offence under section 182, Indian Penal Code, but it was refused. After the acquittal of the accused by the High Court the complainant applied again to the Police Superintendent for sanction and obtained it.

In the present proceedings the accused is charged with an offence under section 182, Indian Penal Code, of which offence the accused was clearly guilty according to the opinion of this Court in Criminal Revision Case No. 405 of 1909. The preliminary objection to the prosecution with which we are concerned in this petition is that the acquittal of the accused by this Court in Criminal Revision Case No. 405 of 1909 constitutes a bar to the present proceedings under section 403 of the Criminal Procedure Code. The Second-class Magistrate disallowed this objection on the ground that "the offence contemplated by section 182 is not the same as that contemplated by section 211, Indian Penal Code." The two offences may not be the same as observed by him because under section 182 it is necessary that the person who gives information to a public servant must know or believe it to be false. Under section 211, on the other hand, the person who institutes a criminal proceeding against another need not know it to be false; it is sufficient that he should know that there is no just or lawful ground for such proceeding or charge against that person. But this finding is not sufficient for disposing of the objection. A bar under section 403, Criminal Procedure Code, operates, not only where a person has been tried for an offence and convicted or acquitted of it and is sought to be tried again for the same offence, but also where he sought to be tried. "On the same facts for any other offence for which a different charge from the one made against him might have been made on the same facts under section 236 or for which he might have been convicted under section 237." Now,

in this case, the facts on which the accused was charged in the previous case were that he gave false information on the 5th February 1907 and that on the 11th February he repeated this information and stated that he suspected the complainant of the offence disclosed by the information. The prosecution case was that there was no theft committed at all as alleged by the accused. On that footing it was open to the Deputy Magistrate who tried the previous case to frame a charge against him under section 182 as well as a charge under section 211, Indian Penal Code. Section 236 of the Criminal Procedure Code enacts that "if a single act or a series of acts is of such a nature that it is doubtful which of several offences the facts which can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may be tried at once; or he may be charged in the alternative with having committed some one of the said offences." Now, on the facts alleged it was doubtful whether the accused was guilty of making a false charge under section 211, Indian Penal Code, because it was not clear that his information would amount to the making of a charge against the complainant so as to bring it under that section. But those facts as pointed out by the High Court in Criminal Revision Case No. 405, would clearly bring the act of the accused under section 182, Indian Penal Code.

We are inclined to think that section 236 would be applicable to a case where on the same facts it is doubtful whether the accused committed one offence only or both that offence and another. Dr. Swaminathan appearing for the Crown contends that the case is one falling under section 235, clause (1) and not under section 236. The former section runs in these terms. "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." Section 403, clause 2, provides that "A person acquitted or convicted of any offence may be afterwards tried for any distinct offence for which a separate charge might have been made against him on the former trial under section 235, sub-section (1)." It seems to us that section 235 (1) applies to cases where on some of the facts so connected together as to

In re GANAPATHI BHATTA. — SUNDARA AYYAR AND AYLING, JJ.

form the same transaction one offence may be charged against an accused person, and on other facts forming part of the series of acts another offence may be charged against him. Illustration (*b*) to section 403 is an instance of this :—"A is tried upon a charge of murder and acquitted . . . ; but it appears from the facts that A committed robbery at the time when the murder was committed ; he may afterwards be charged with, and tried for, robbery." Section 235 (1) seems to us to be inapplicable when the accused is sought to be charged with another offence on the identical facts on which he was charged before with one offence. Clause (4) of section 403 supports this construction. In *Suresh Chandra Sinha* v. *Banku Sadhukhan*(1), the accused was first charged with an offence under section 447, Indian Penal Code, and after he was acquitted of it owing to the non-appearance of the complainant he was again charged with offences under sections 447, 504 and 506, Indian Penal Code. On the same facts MOOKERJEA and CASPERZ, JJ., in *Suresh Chandra Sinha* v. *Banku Sadhukhan*(1), held that section 403 (1) barred the second trial. The learned judges say "The record shows that the second trial is being held in respect of all the offences alleged on the previous occasion, including the offence under section 447, Indian Penal Code. The cases relied on by the Magistrate are distinguishable. . . . The order of the Magistrate directing the issue of processes under sections 447, 504 and 506, Indian Penal Code, is, therefore, set aside." In *Queen Empress* v. *Erramreddi*(2), BRANDT, J., held the same view. There the accused was first charged with committing mischief by cutting certain branches from a tree claimed by the complainant and acquitted. He was again charged with the offence of theft on the same facts. The learned judge held that the second trial was not maintainable. He observed that a charge of theft might also have been made under section 236 and that "clause 2 of section 403 does not apply to this case because the imputed offences of mischief and theft were not distinct offences, nor was there a series of acts, but one act or transaction only; the cutting of the tree and removal of the branches cut." In *Sharbekhan Gohain* v. *The Emperor*(3) PARGITER and WOODROFFE, JJ., held that a person who was tried for offences under sections 201 and 202, Indian Penal Code, and

(1) (1905) 2 C.L.J., 622. (2) (1885) I.L.R., 8 Mad., 296.
(3) (1906) 10 C.W.N., 518 at p. 519.

acquitted could not be tried again for an offence under section 176 on the same facts. They say "now this case does not appear to us to come under section 235, sub-section (1); because the offence of which he has now been convicted is based on the very same facts on which the previous charge under section 202 was based. The case comes rather under section 235, sub-section (2) which lays down that if the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences. Thus a charge under section 176, Indian Penal Code, might have been made at the former trial on the very same facts. It does not therefore come within sub-section (2) of section 403, Criminal Procedure Code, and is not therefore excluded from the operation of sub-section (1) of that section." Now in this case the falsity of the statement that there was a theft was a part of the charge with respect to the institution of false proceedings under section 211, Indian Penal Code, and if there was no theft at all he must have necessarily known that his information that it took place was false. The present complaint under section 182, Indian Penal Code, is therefore on the same facts as were necessarily involved in the previous charge. Dr. Swaminathan contends that although the false statement of the 11th February 1907 of the occurrence of a theft might be a part of the facts included in the charge in the previous case, the accused's information of the 5th February might be made the subject of a separate charge under section 235 (1). But as already observed the information of the 5th was also complained of in the previous case though the charge framed after the evidence for the prosecution was recorded referred only to the repetition of the information on the 11th. The present complaint therefore is based on a part of the facts which were the foundation of the previous proceedings. Besides the information given by the accused on the two days the 5th and 11th February must in reality be regarded as the same. The repetition of an information given to a public servant may be said to constitute a distinct act of libel but could hardly be said to be a different information.

Dr. Swaminathan has urged another contention in support of his argument that section 403 (1) cannot be a bar to the

In re GANAPATHI BHATTA. — SUNDARA AYYAR AND AYLING, JJ.

present proceedings. He urges that clause 4, section 403 is applicable to this case. That clause provides "a person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed if the Court by which he was first tried, was not competent to try the offence with which he is subsequently charged." The learned counsel's argument is that inasmuch as at the time of the previous trial the complainant had not obtained the sanction of the Superintendent of Police which was necessary for a complaint of an offence under section 182, Indian Penal Code. The Court which held the previous trial was not competent to try the offence with which the accused is now charged. We are of opinion that the clause refers to the character and status of the tribunal when it refers to competency to try the offence, as shown by the illustrations (*f*) and (*g*) to the section. The Deputy Magistrate was perfectly competent to try a charge under section 182, Indian Penal Code. A sanction under section 195, Criminal Procedure Code, is not a condition of the competency of the tribunal; it is only a condition precedent for the institution of proceedings before the tribunal. No authority has been cited to us by Dr. Swaminathan in support of his argument. In *King Emperor* v. *Krishna Ayyar*(1) the learned CHIEF JUSTICE and DAVIES, J., held that the circumstance that the previous case was tried by a Judge with assessors while the offence sought to be enquired into in the subsequent case was triable by a jury would not exclude the applicability of section 403 (1). The learned Judges point out that illustrations (*f*) and (*g*) show that the words 'was not competent to try' mean 'had not jurisdiction to try.' It was the duty of the prosecution in the present case to obtain the required sanction for the trial of an offence under section 182, Indian Penal Code. We are of opinion that section 403 (4) is not applicable to this case.

The result is that in our opinion section 403 (1) constitutes a bar to the proceedings now taken against the accused and we therefore direct the Second Class Magistrate to discharge the accused.

---

(1) (1901) I.L.R., 24 Mad., 641.