

APPELLATE CRIMINAL.

*Before Mr. Justice Pandrang Row.*1934,
August 3.IN RE K. SRIRANGACHARIAR (ACCUSED),
PETITIONER.*

Criminal Procedure Code (Act V of 1898), ss. 235 (1) and 403 (2)—Facts disclosing two distinct offences—Acquittal in respect of one offence no bar to subsequent trial for other offence.

A person was committed to the Sessions Court on two separate charges of two distinct offences, namely, offences under sections 380 and 467, Indian Penal Code (XLV of 1860). The trial in respect of the offence under section 380 ended in an acquittal, and the trial in respect of the second offence under section 467 was taken up. The accused contended that the acquittal in the earlier trial was a bar to the subsequent one. This contention was overruled.

Held, in revision, that, where the facts in a case disclose two distinct offences, section 235 (1), Criminal Procedure Code, applies, and under section 403 (2) of the Code a previous acquittal in respect of one offence is no bar to a subsequent trial for the other offence.

Section 235 (1) and section 236 of the Code are mutually exclusive and a case governed by the one cannot be governed by the other.

PETITION under sections 435 and 439 of the Code of Criminal Procedure, 1898, praying the High Court to revise the judgment of the Court of Session of the Chingleput Division, dated the 20th day of December 1933 and passed in Sessions Case No. 31 (a) of 1933.

K. S. Jayarama Ayyar for *M. E. Rajagopalachariar* for petitioner.

Public Prosecutor (L. H. Bewes) for the Crown.

Cur. adv. vult.

* Criminal Revision Case No. 43 of 1934.

ORDER.

SRIRANGA-
CHARIAR,
In re.

The petitioner was committed to the Chingleput Sessions Court to take his trial on two separate charges accusing him of two distinct offences, viz., the offence of theft of a blank second class railway ticket from the South Indian Railway Company's booking office at Conjeeveram, punishable under section 380 of the Indian Penal Code, and the offence of forgery in respect of certain entries alleged to have been made by him in that ticket with intent that fraud may be committed, punishable under section 467, Indian Penal Code.

The trial of the petitioner was proceeded with at first only in respect of the first offence, i.e., the offence of theft. This trial in respect of the offence of theft which was held by the Assistant Sessions Judge, Chingleput, with the aid of a jury ended in acquittal. Thereupon the trial of the petitioner in respect of the second offence, the offence of forgery, was taken up by the Sessions Judge, Chingleput. The petitioner contended that his acquittal in the earlier trial was a bar to the subsequent trial. This contention was repelled by the Sessions Judge in a reasoned order dated 20th December 1933.

The present revision petition attacks the correctness of this order of the Sessions Judge and seeks to have it reversed. The only argument is that sections 236 and 237, Criminal Procedure Code, apply to the present case and that consequently the previous acquittal is a bar under section 403 (1), Criminal Procedure Code. This argument was considered by the learned Sessions Judge and did not meet with acceptance.

SRIRANGA-
CHARIAR,
In re.

This is not a case in which there can be any doubt as to which of several offences the facts which can be proved will constitute ; on the contrary the facts which can be proved clearly disclose two distinct offences and only two, viz., the offence of theft and the offence of forgery. In other words, the case is one to which section 235 (1), Criminal Procedure Code, applies ; the case for the prosecution being that the petitioner first stole a blank railway ticket from the booking office to which he had access as a relative of the station master, and then committed forgery by making certain entries therein so that a fraud may be committed on the railway company. An analogous case would be one in which a person is charged with theft of a blank cheque form and subsequent forgery thereof. It is clear from section 403 (2), Criminal Procedure Code, that a previous acquittal is no bar to a trial for any distinct offence for which a separate charge might have been made in the former trial under section 235 (1), Criminal Procedure Code. Section 235 (1) and section 236, Criminal Procedure Code, are mutually exclusive, and if a case is governed by one of them it cannot be governed by the other. Section 237, Criminal Procedure Code, obviously applies only to cases governed by section 236, Criminal Procedure Code.

I am of opinion that the order of the Sessions Judge sought to be set aside in revision is right. The petition is therefore dismissed.

K.W.R.
