
(2010) 04 MAD CK 0193

In the Madras High Court

Case No : Criminal A. No"s. 436 and 766 of 2008

C.S. Balaji and Abdul Karim Telgi alias Lala alias Big Boss

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 08-04-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 221(1), 221(2), 300(1), 374, 375
Penal Code, 1860 (IPC) — Section 255, 258, 420

Citation : (2011) 8 RCR(Criminal) 69

Hon'ble Judges : T. Sudanthiram, J

Bench : Single Bench

Advocate : Shanmughavelayutham for C.S. Pillai, for the Appellant; N. Chandrasekar, Special Public Prosecutor, for the Respondent

Judgement

T. Sudanthiram, J.—The learned Counsel for the appellant in CrI.A. No. 766 of 2008 and the appellant in CrI.A. No. 436 of 2008 are the accused 1 and 3 respectively in C.C. No. 1 of 2008, on the file of the Additional Special Judge for CBI Cases, Chennai. Both the accused have pleaded guilty before the trial Court and on the basis of that plea of guilt, the trial Court convicted and sentenced them as follows:

I) The first accused Abdul Karim Telgi alias Lala alias Karim Lala alias Big boss is convicted u/s 255 IPC and sentenced to undergo rigorous imprisonment for a period of Ten years and imposed a fine amount of Rs. 1 Crore and in default of payment of fine to undergo imprisonment for a period of one year.

Also Convicted u/s 258 IPC and sentenced to undergo imprisonment for a period of two years and imposed a fine amount of Rs. 1 Crore and in default of payment of fine to undergo imprisonment for a period of one year.

Also Convicted u/s 420 IPC and sentenced to undergo imprisonment for a period of two years and imposed a fine amount of Rs. 1 Crore in default to undergo imprisonment for a period of one year.

All the above sentence of imprisonment to run concurrently. The total period of imprisonment in default of payment of fine is 3 years.

II) The third accused, C.S. Balaji is convicted u/s 255 IPC and sentenced to undergo imprisonment for a period of two years and imposed a fine amount of Rs. 75,00,000/- and in default of payment of fine to undergo imprisonment for a period of nine months.

Also Convicted u/s 258 IPC and sentenced to undergo rigorous imprisonment for a period of five years and imposed a fine amount of Rs. 75,00,000/- and in default of payment of fine to undergo imprisonment for a period of nine months.

Also Convicted u/s 420 IPC and sentenced to undergo imprisonment for a period of two years and imposed a fine amount of Rs. 50,00,000/- and in default of payment of fine to undergo imprisonment for a period of six months.

All the above sentence of imprisonment to run concurrently. Total imprisonment in default of payment of fine is two years.

2. Mr. Shanmughavelayutham, learned Senior Counsel appearing for the appellants in both cases submitted that though the appellants pleaded guilty, with regard to the several charges, as far as the charge u/s 255 IPC is concerned, there is no material to frame such charge and the trial Court has erroneously framed charge. The first charge against the accused was counterfeiting adhesive and non-adhesive stamps. But according to the prosecution counterfeiting was carried only at Pune and thereafter only the stamp papers were distributed, sold and offered for sale at various places.

3. The learned Senior Counsel further submitted that with regard to the counterfeiting of adhesive and non-adhesive stamps, a case was filed against the first accused Telgi by CBI in Special Case No. 2 of 2003 before the Special Judge, Pune. In the said case, the first accused has already pleaded guilty and on that basis judgment was also delivered on 26.08.2007, convicting him for various offences including for the offence u/s 255 IPC. For the offence u/s 255 IPC he was sentenced to undergo ten years rigorous imprisonment and to pay a fine of Rs. 50 lakhs. Having been convicted already u/s 255 IPC, for counterfeiting the stamp papers which were prepared at Pun, once again convicting the accused for the same offence would amount to autrefois convict. Even otherwise as per the materials placed before the Court in this case, there is no material to show that counterfeit of stamp papers was carried out in Chennai. Even as per the statement of the approver, Sairabanu that the first accused Abdul kareem used to send the fake stamp papers through courier or through messenger from Mumbai. There is no witness to the effect or there is no material to show that counterfeiting fake stamp papers were prepared at Chennai.

4. The learned Senior Counsel relied on the decision of this Honourable High Court reported in a) In Re: U.R. Ramaswami, and c) Puspa Kumar Rai Vs. State of Sikkim,

5. Relying on these decisions, learned Senior Counsel submitted that even if the accused pleaded guilty if the charges framed against him are not maintainable, then there is no bar to challenge such conviction in the appeal.

6. The learned Special Public Prosecutor was also heard.

7. The learned Special Public Prosecutor submitted that the first accused is the main accused and he has got cases in several places in India and he indulged in preparing fake stamp papers and they were distributed in several places in India and huge quantity of stamp papers were also recovered in this case and other cases.

8. This Court considered the submissions made by both parties and perused the records. On the facts available in this case, the first accused Telgi monitored the activities regarding the setting up of office at Delhi to Mumbai with the associates and indulged in illegal business of fake counterfeiting stamps. At the instance of the first accused, a firm in the name of Mrs. Sagayam Enterprises was established at Chennai for dealing in exclusive preparation of counterfeit stamps. The co accused Abdul Kareem and the third accused who are the appellants herein shifted the office to Purasaiwalkam High Road, Kellis, and they indulged in the illegal business of selling counterfeit stamps. Both the appellants are convicted u/s 255, 258 and 420 IPC. With regard to the conviction and sentence u/s 258 and 420 IPC, the appellants are not challenging them. As far as the conviction and sentence u/s 255 IPC, the process of counterfeiting the stamp papers was not carried out in Chennai. The prosecution is also unable to show that the process of counterfeiting the stamp papers was carried out by the accused at Chennai. The charge framed by the Court against the appellants is that "the accused in pursuance of the criminal conspiracy in the course of same transaction between 1994 - 2002 engaged in counterfeiting at Mumbai, Chennai and other places and taking part in the process of adhesive and non-adhesive stamps of various denominations, non judicial stamps and stamp papers, Insurance Policy stamps issued by the Government of India to collect/obtain revenue under the law and thereby committed an offence punishable u/s 255 IPC." To substantiate this charge, according to the prosecution, the process of counterfeiting was carried out at Pune in Mumbai. There is no material to show the counterfeit was carried out in Chennai. The point for consideration is that "as there is no material to show that the process of counterfeiting was carried out at Chennai, whether the conviction on the appellants u/s 255 IPC could be sustained even though they pleaded guilty for the charges u/s 255 IPC."

9. In the decision of this High Court reported in AIR 1954 Madras 1020 (In Re U.R. Ramaswamy), it is held as follows:

This shows that unless the facts disclosed amount to an offence, the plea of guilty is no bar to an appeal. The above decisions are clear authority for the position that though ordinarily on a plea of guilty there is a bar under S.412 for an appeal except as to the facts do not amount to an offence, the plea of guilty is

no bar for an appeal on merits and it does not stand in the way of the accused being acquitted.

10. In the decision reported in *State of M.P. Vs. Mustaq Hussain Azad and Others*, it has been held as follows:

We are, therefore, of the opinion that on the facts stated in the Challan, and in the particulars of offence put to the accused, the offence u/s 19(5) of the Madhya Pradesh Public Security Act was not constituted and, therefore, in spite of their plea of guilty, the accused could not be convicted of the said offence.

11. In the decision reported in *Puspa Kumar Rai Vs. State of Sikkim*, it has been held as follows:

Under Section 412 of the Cr.P.C. 1898, where an accused person has pleaded guilty and has been convicted on such plea by any Court or Magistrate, other than a Magistrate of the Second Class or the Third Class, there shall be no appeal except as to the extent or legality of the sentence. But it is by now well-settled that though ordinarily in the case of a conviction on a plea of guilty there is a bar u/s 412 of the Cr.P.C. 1898, for an appeal except as to the extent or legality of the sentence, still if the facts alleged or disclosed do not amount to the offence for which a charge has been framed, a plea of guilty to such a charge is no bar for an appeal on merits and will not stand in the way of the accused being acquitted. Reference in this connection may be made to the decision of the Madras High Court in *In Re: U.R. Ramaswami*, and also to the Division Bench decision of the Madhya Pradesh High Court in *State of M.P. Vs. Mustaq Hussain Azad and Others*, where the said Madras decision has been relied on. Therefore, the question as to whether there were sufficient materials on record to justify the framing of the charge to which the accused-appellant appears to have pleaded guilty, is of great importance in this case.

12. Section 375 Cr.P.C is as follows:

375. No appeal in certain cases when accused pleads guilty.

Notwithstanding anything maintained in section 374, where an accused person has pleaded guilty and has been convicted on such plea, there shall be no appeal.

(a) If the conviction is by a High Court; or (b) If the conviction is by a Court of Session, Metropolitan Magistrate or Magistrate of the first or second class, except as to the extent or legality of the sentence.

13. In view of the ratio laid down in the cases cited supra, this Court is of the considered view that if the facts do not constitute an offence, but the charge is framed, the accused pleads guilty and convicted on such plea, such conviction is challengeable in appeal and Section 375 Cr.P.C. does not stand as a bar, on the other hand it permits an appeal when the legality of the sentence is challenged.

14. The first accused had already been convicted and sentenced for an offence u/s 255 IPC by a Special Court, Pune for counterfeiting stamp papers at Pune. For the same offence conviction once again by another court is not permissible and it is illegal as per Section 300(1) Cr.P.C.

300. Person once convicted or acquitted not to be tried for same offence.

(1) A person who has once been tried by a court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under Sub-section (1) of Section 221, or for which he might have been convicted under Sub-section (2) thereof.

15. In the result, the conviction and sentence imposed for the offence u/s 255 IPC on the accused 1 and 3, who are appellants in CrI.A. No. 436 of 2008 and CrI.A. No. 766 of 2008 are set aside. The conviction and sentence imposed by the trial Court on the appellants with regard to other charges remain intact. Both the appeals are partly allowed.