

(1943) 12 MAD CK 0016
In the Madras High Court

K.B. Prabhu

APPELLANT

Vs

Emperor

RESPONDENT

Date of Decision : 03-12-1943

Acts Referred:

Citation : AIR 1944 Mad 369

Hon'ble Judges : Kuppuswami Ayyar, J;Kuppuswami Aiyar, J

Bench : Division Bench

Judgement

Kuppuswami Ayyar, J.—This is a petition to revise the order of the Sessions Judge of South Malabar in Cri. App. No. 24 of 1943 confirming the conviction and sentence awarded by the Additional First Class Magistrate of Malabar on the petitioner in C.C. No. 44 of 1942 on his file for an offence punishable u/s 232A, Companies Act, the sentence was a fine of Rs. 51. The petitioner happened to be Managing Director of K. B. Prabhu & Co. He drew three sums of money on three different dates for paying instalments due for a motor car purchased by him and he was prosecuted for it as the payment of the money was not one of the purposes mentioned in the articles of association and he was convicted. Prior to then, he was prosecuted in respect of these very items of payments and also in respect of other items for the offence of criminal breach of trust, but was acquitted. It is contended for the petitioner that the acquittal in the previous case which was in respect of these very items of payment is a bar to this prosecution and that consequently the conviction and sentence should be set aside.

2. In the previous case he was prosecuted not only for the offence of criminal breach of trust, but also for an offence punishable u/s 282A, Companies Act. But then the prosecution split up the case into two and the accused was tried only with regard to the charge for criminal breach of trust reserving the other charge for a separate trial and he having been acquitted, there was a trial in respect of this charge and he has been convicted. It is not disputed that the facts on which this charge is laid form part of the facts in respect of. which there was the

previous charge for criminal breach of trust. But then the prior charge was in respect of an offence punishable under the Penal Code whereas this charge is in respect of an offence punishable under the Companies Act. u/s 403, Criminal P.C., "A person who has been once 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 u/s 236, or for which he might have been convicted u/s 237." It is true that there was an additional element required namely mens rea with regard to the charge for criminal breach of trust, which is not necessary for the charge u/s 282A, Companies Act. But even if it be construed as being a subsequent prosecution on the same set of facts, still there is Section 403 (5) of the Code, which runs thus, "Nothing in this section shall affect the provisions of Section 26, General Clauses Act, 1897 or of Section 188 of this Code." u/s 26, General Clauses Act, "Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence." This section therefore clearly contemplates the possibility of two separate prosecutions in respect of two different offences, though the accused can be punished only once. Since in Section 403 there is this saving clause in respect of prosecutions which come within the purview of Section 26, General Clauses Act, it will have to be held in this case that by reason of that saving clause, the provisions of Section 403, Criminal P. C, cannot apply. Consequently the conviction and sentence have to be upheld. The petition is dismissed.