
(1993) 11 KAR CK 0016

In the Karnataka High Court

Case No : Criminal R.P. No's. 187 and 538 of 1993

Narayanasa Bhimasa Pawar

APPELLANT

Vs

Jawaharlal Shanomiksa Arisiddi

RESPONDENT

Date of Decision : 09-11-1993

Acts Referred:

Citation : (1995) 1 ALT(Cri) 601 : (1994) 2 ALT(Cri) 67 : (1994) ILR (Kar) 549 : (1994) 1 KarLJ 351

Hon'ble Judges : B.N. Krishnan, J

Bench : Single Bench

Advocate : P.H. Gotkhindi, for the Appellant; I.G. Gachchinamath, for R-1 to R-4 and L. Krishnamurthy, HCGP for R-5, for the Respondent

Final Decision : Allowed

Judgement

Krishnan, J

1. The complainants in C.C. 452 and 598 of 1990 on the file of the Addl. Chief Judicial Magistrate, Dharwad have preferred these Revision Petitions challenging the common order of acquittal recorded in both the Cases. The State has not preferred any Appeal against these orders.

2. The two Cases are Case and Counter Case arising from the same incident stated to have taken place on 30.1.1990 is the undisputed case of both the parties. The common grievance ventilated by both the learned Advocates who appear for the petitioners is, that the learned Chief Judicial Magistrate was wholly in error in passing a common judgment in both the Cases and that he has freely made use of the evidence in one Case for appreciating the Case of the prosecution in the other and the same is impermissible in law and on this ground itself the order of acquittal recorded in two Cases is liable to be set aside.

3. That the learned Chief Judicial Magistrate has passed a common judgment is not in dispute. The very copy of the order produced in the Case shows that the learned Magistrate has passed a common judgment. That he has made use of

the evidence adduced in one Case for the purpose of appreciating the other Case is also not in dispute. In paragraph-10 of his judgment, while referring to the Case put forward in C.C.No. 452/1990 this is what the learned Magistrate has observed:

"Therefore, in the light of the above said statement of PW-1 and his witness PW-5 and so also taking into consideration the oral and documentary evidence brought on record in C.C.No. 598/90 to which I am going to deal, a little later, it becomes manifest that some dispute with regard to the shop in question is going in between the accused on one hand and the complainant and his father on the other."

Again while referring to the Case put forward in C.C.No.598 of 1990 in paragraph 12 of his judgment the learned Magistrate has observed as hereunder:

"The fact that he came to the shop of the accused in a drunken condition is very much spoken to by various alleged eye witnesses to the incident in CC.No. 452/90..... In this context the evidence of P.C. 1202 recorded in C.C.No. 452/1990 appears to be very much important and relevant for the purpose."

Therefore, there could be absolutely no doubt that the learned Magistrate has relied upon the evidence adduced in one Case for purpose of arriving at his conclusion in the other. This aspect of the matter is not disputed by either of the two Advocates or the learned High Court Govt. Pleader.

4. That the procedure adopted by the learned Magistrate in proceeding to pass a common judgment in the two Cases is highly illegal and that he cannot make use of the evidence adduced in one case for purpose of appreciating the points arising in the other is also beyond dispute as it is a fairly well settled proposition. In *Mitthulal and Another Vs. The State of Madhya Pradesh*, , it has been observed as hereunder:

"It is difficult to comprehend as to how the High Court could decide the appeal before it by taking into account evidence recorded in another case, even though it might be what is loosely called a cross-case. It is elementary that such case must be decided on the evidence recorded in it and evidence in another case cannot be taken into account in arriving at the decision."

In *Emperor Vs. Banappa Kallappa Ajawan*, in relation to the trial of such cases it has been pointed out that normally the proper procedure to be followed in such cases is, that both the Cases should be tried by the same Judge and the first Case should be tried to the conclusion, but the judgment should be postponed till he has heard the second Case to the conclusion and he should then pronounce judgment separately in each Case. The Supreme Court has again pointed out in *Kewal Krishan Vs. Suraj Bhan and Another*, with reference to two Courts dealing with two Cases arising from the same transaction, as follows:

"There was thus a risk of two courts coming to conflicting findings. To obviate such a risk, it is ordinarily desirable that the two cases should be tried separately

but by the same Court."

5. Therefore, it is clear that the judgment of acquittal recorded by the learned Magistrate in the two Cases is liable to be set aside and the matter should go back to the learned Chief Judicial Magistrate with a direction to proceed to record evidence in each of the Cases separately, having regard to the guidelines indicated above and then proceed to pronounce the judgment being guided only by the evidence that is adduced in each of the Case without in any way being influenced by the evidence adduced in the Counter Case.

6. In the result, the order of acquittal recorded in the two Cases are set aside, and the Cases are remitted to the file of the Addl. Chief Judicial Magistrate, Dharwad for fresh disposal according to law in the light of the observations made above. The Revision Petitions are allowed only to the extent indicated above.