

(1966) 02 KAR CK 0003

In the Karnataka High Court

Case No : Criminal Revision Petition No. 89 of 1965

N.M. Narayana Setty

APPELLANT

Vs

Court of the Munsiff, Kolar and Others

RESPONDENT

Date of Decision : 04-02-1966

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 233, 239
Penal Code, 1860 (IPC) — Section 109, 193, 467

Citation : AIR 1966 Kar 243 : (1966) CriLJ 1034 : (1965) 1 MysLJ 305

Hon'ble Judges : M. Santhosh, J

Bench : Single Bench

Judgement

(1) The petitioner before this Court is the first accused in the Court of the First Class Magistrate Kolar, in C.C. No. 1151/63. A complaint was filed by the learned Munsiff of Kolar under Ss. 193, 465 and 467 read with Ss. 34 and 109 of the Indian Penal Code against the petitioner and four other accused. The complaint discloses that the petitioner (1st accused in the lower Court) was the judgment-debtor in execution proceedings (Ex Case No. 597/58) for the recovery of Rs. 1,455-7-0 in the Court of the Munsiff Kolar. On 19-12-1958, the petitioner filed an application in the said execution proceedings alleging discharge and produced a forged receipt, Exhibit P-1, in support of the said discharge. Accused 2, 3 and 5 were the attestors to the said receipt. The learned Munsiff came to the conclusion that the receipt and accused 4 was the scribe. The accused gave evidence in Court in support of the said receipt. The learned Munsiff came to the conclusion that the receipt, Exhibit P-1, produced in Court was a forged one and after calling upon the accused to show cause why they should not be prosecuted, the learned Munsiff laid a complaint against the petitioner and the other accused, under Ss. 467 and 193 I.P.C. for having committed the offences of forgery and perjury.

In the course of the hearing, the accused made an application to the learned Magistrate praying that separate trial should be held against them on the ground that the offences under Ss. 193 and 467 I.P.C. are distinct and separate offences.

The learned Magistrate dismissed this application. The petitioner (1st accused) has come up to this Court in revision challenging the correctness of the said order passed by the learned Magistrate.

(2) Sri Chouta, learned counsel for the petitioner, has contended that the offences under Ss. 193 and 467 I.P.C. are distinct and separate offences and cannot be tried in one trial. His argument is that the offences that the accused are alleged to have committed did not arise out of one and the same transaction. He contends that the discharge receipt was produced on 19-12-1958 and the various accused gave evidence in Court on different dates and as such these offences are not committed in the course of the same transaction. Section 233 of the Code of Criminal Procedure is mandatory and it states that for every distinct offence a separate charge should be framed and every such charge shall be tried separately. According to S. 239 Cr.P.C. a number of persons may be charged and tried together if the offences are committed in the course of the same transaction. In the instant case it is submitted as the offences are not committed in the course of the same transaction, joint trial of the accused is illegal and the order passed by the learned Magistrate should therefore, be set aside.

(3) The question for consideration is, what is meant by the term "same transaction". Though the word "transaction" has not been defined in the Code. Courts have laid down various tests to find out whether the different acts committed are part of the same transaction or not. The principal test laid down is unity of purpose or design and the continuity of action. The series of acts committed must be connected together in one way for the other.

(4) In support of his contention that in the instant case, the offences committed are not in the course of the same transaction, Sri Chouta has relied on (1) Agha Ali Ahmed v. Emperor AIR 1944 Lah 54; (2) In Re: Osaman Ali, : (3) Ghumand Singh v. The State AIR 1955 Pepsu 43 and (4) some passages in Sohoni's Code of Criminal Procedure. In AIR 1944 Lah 54, a number of witnesses gave false evidence in order to have the accused acquitted and the Court held, merely because their object was to get the accused acquitted, it was not sufficient to sustain a charge of conspiracy against them and they cannot be tried jointly for perjury. In In Re: Osaman Ali, the Court held that even though the law permitted the joint trial of the accused, it would still be open to the prosecution to have the charges tried separately and as such, is of no assistance to the petitioner.

Similarly, the passages quoted from Sohoni's Code of Criminal Procedure are not helpful as the observations made therein refer to the particular facts of the case mentioned therein. All 1953 Pepsu 43 is useful as it considers what exactly is the connotation of the words "same transaction". In paragraph 9 of the judgment, referring to the word "transaction" their Lordships observed as follows:

"The word carries a very wide connotation and covers a series of acts connected together in one way or the other. There are various tests to judge whether different acts are part of the same transaction, such as (1) proximity of time (2)

unity of purpose or design, and (4) continuity of action. The last one of these is generally taken to be the main test. As to what is the same transaction must depend on the facts and circumstances of each particular case. No hard and fast rule of universal application or one that may be applicable to every set of circumstances can be laid down in this connection. It is more a question of fact than of law and each case has to be decided on its own merits."

As observed by their Lordships what is "same transaction" must depend on the facts and circumstances of each particular case. It is more a question of fact than of law and each case has to be decided on its own merits. Bearing these principles in mind, I will now examine whether the acts mentioned in this particular case arise out of the same transaction or not. Exhibit P-1, the alleged frigid receipt produced in the case is dated 17-11-1958. It refer to the execution proceedings pending against the petitioner which had been posted for hearing to 21-11-1958. It states that the decree-holder has accepted a sum of Rs. 1000 in full satisfaction of the decree amount in the presence of the witnesses mentioned thereunder, who are accused 2 to 5. It further states that the decree-holder undertakes to file an application in the Court stating that full amount had been received. It is signed by all the accused. Accused 2 to 5 have attested the same as witnesses. Accused-4, in addition, is also the scribe of the said receipt.

(5) There can be no doubt that this receipt was specifically got up and produced in Court in support of the plea that the decree amount has been fully paid. The object undoubtedly was to set up a false claim of discharge in Court and in support of the same, the accused also gave evidence in Court. There is considerable force in the instant case. The community of purpose was to support the false claim of discharge. The purpose of the accused in forgoing the receipt and also in giving evidence was to support the case of false discharge set up by the petitioner. The argument of Sri Chouta that while writing the receipt the accused in forging the receipt and also in giving the evidence was to support the case of false discharge set up by the petitioner. The arguments of Sri. Chouta that while writing the receipt the accused might not have had the intention of using it or producing it in Court or they might not have known that they would have to give evidence in Court has no force. As stated earlier, the receipt itself shows that it was give up only a few days before the date of hearing to which the execution application was posted with the sole object of producing the receipt in Court and thereafter supporting the plea of satisfaction and full discharge of the decree by giving oral evidence as witnesses. The learned High Court Government Pleader has also relied on Damodar Sahu and Another Vs. The State, . In the said decision, their Lordships have held that where two accused committed the offence of giving false evidence in the same judicial proceeding to support the false case set up by one of them, the offences are committed in the course of the same transaction and their joint trial is perfectly legal.

(6) I am therefore, of opinion that the learned Magistrate was right in coming to the conclusion that these offences were committed by the accused in the course

of the same transaction of pleading discharge and satisfaction of the decree debt in Execution proceedings. No. 597 of 1958.

(7) In the result this revision petition fails and the same is dismissed.

(8) Revision dismissed.