
(2014) 09 KAR CK 0215

In the Karnataka High Court

Case No : Criminal Revision Petition No. 238 of 2009

Ramesh Batni

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 12-09-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 239

Citation : (2014) 09 KAR CK 0215

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

Advocate : S. Krishnaswamy, Advocate for the Appellant; P.M. Nawaz, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Anand Byrareddy, J.—Heard the learned counsel for the petitioner.

2. The petitioner is said to be Accused No. 6 in Special C.C. No. 163/2001. In the course of hearing, an application was filed by Accused No. 5 u/s 239 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Cr.P.C." for brevity). The court below while dismissing the said application, has made the following observation:

"24. Therefore, what is now to be seen is what is the procedure to be followed with regard to disposal of the present case and Spl. C.C. 111/2000. So far as these two cases are concerned, it may be mentioned that while Spl. C.C. 111/2000 is the result of registration of FIR as well as investigation by CBI, the charge sheet in Spl. C.C. 163/2001, is the result, in furtherance of registration of FIR as well as investigation by SHO of Cubbon Park Police Station of Karnataka State. It is not in dispute that though the Spl. C.C. 163/2001 charge sheet was filed before Magistrate, the same has been transferred to this court by the order of Sessions Court for disposal in accordance with law on account of the fact that Spl. C.C. 111/2000 on the file of this court relates to the incident of Spl. C.C.

163/2001. But what is also important to note is the fact that Spl. C.C. 111/2000, is a case having wider range involving of several transaction of 420 IPC, which includes the incident relating to the cheque pertaining to Spl. C.C. 163/2001, as one of such many transaction giving rise for commission of several offences. On reading the charges framed in Spl. C.C. 111/2000, it can be made out that as many as 12 heads of charges have been framed relating to several transaction constituting several offences and one of such transaction relates to the cheque, which is the subject matter of Spl. C.C. 163/2001, forming 11th head of charges of Spl. C.C. 111/2000.

25. Thereby it can be said without any hesitation that though these two separate charge sheets have been filed by State Police and CBI, in the first place, they are not exclusively based on the same facts and it has to be said that subject matter of Spl. C.C. 163/2001 instituted on the investigation done by State Police is one of the many charges framed in Spl. C.C. 111/2000, wherein several other transactions constituting offences is the subject matter and secondly the said two charge sheets are the result of investigation done by two investigating agencies, having concurrent jurisdiction of investigation. While according to the charge sheet filed by the Cubbon Park Police relating to the incident of cheating pertaining to the said cheque presented before State Bank of India, 10 persons are involved, according to the CBI police, involvement of the persons accused with regard to the very same charge is only 4 accused persons. But since investigation has been done by two Investigating Agencies, the evidence collected by Cubbon Park Police wherein involvement is of more than 4 persons referred in the CBI charge sheet case, the evidence available with regard to the said charge cannot be ignored. With regard to the said charge relating to the said cheque, evidence led in the Cubbon Park Police Station case as well as CBI case will have to be appreciated properly and thereby that evidence in both the cases will have to be appreciated and common finding given. It is in this context, I say that though evidence will have to be recorded separately, arguments in both the cases will have to be heard one after the another and common judgment has to be passed.

26. In such circumstances, in my view, the procedure to be followed is similar to as that of a case instituted by the police on the one hand and the private complaint instituted in respect of the same incident by the complainant. Therefore in such circumstances, what is to be done is that evidence will have to be recorded separately in both the cases and thereafter common judgment will have to be passed. Even if evidence recorded is completed in one case, judgment should not be passed in the said case and disposal has to be awaited till evidence and defence evidence in the other case is completed and common arguments will have to be heard in both the cases one after the other and common judgment has to be passed relating to facts constituting the said each case."

3. The learned counsel for the petitioner would submit that the procedure proposed to be adopted by the Court below would cause serious prejudice to the

petitioner, especially in the light of the court having formed an opinion that a common judgment would be passed in the two cases which are to be decided in the manner as set out above. Admittedly, the petitioner is not an accused in the case, Special C.C. No. 111/2001. Therefore, the question of passing a common judgment in such a situation is unheard of in criminal jurisprudence and therefore, on the face of it, the procedure that is now adopted by the court below is opposed to law and justice and would have to be quashed.

4. The learned counsel appearing for the respondent-CBI would however point out that the court has proposed that evidence would have to be recorded independently in both the cases and that arguments would have to be heard again separately in each case one after the other and it is thereafter that judgment would be pronounced. However, he would not subscribe to the view that a common judgment could be passed and hence would submit that otherwise, there is no prejudice that would be caused to the petitioner, except that if a common judgment is passed, it may result in prejudice to the petitioner. The contention that the proposal to pass a common judgment in both the cases therefore, cannot be permitted. It is impermissible in law as rightly contended by both the counsel. For otherwise there is no palpable prejudice that is caused to the petitioner for separate evidence would be tendered in each case and separate arguments will be heard. This is to enable the court to appreciate the evidence in a better fashion to arrive at its findings. However, the proposal to pass a common judgment is inexplicable while the court may adopt the procedure as proposed and shall not pass a common judgment but it may pass a separate judgment in each case after adopting the procedure as proposed. With that observation, the petition stands disposed of.