STATE OF KARNATAKA

v.

KUPPUSWAMY GOWNDER

FEBRUARY 16, 1987

[G.L. OZA AND M.M. DUTT, JJ.]

Criminal Procedure Code, 1973: ss. 194, 409, 462 & 465: Sentence or order of competent Court—When to be quashed—Prejudice pleaded and proved—Means failure of justice.

The case of the respondent-accused was committed to the Sessions Court, Metropolitan Area, Bangalore City and made over under s. 194 Cr.P.C. by the Principle Sessions Judge for trial to the II Additional Sessions Judge who framed charges on August 21, 1980 and recorded the plea of the accused persons.

In the monthly statement of October, 1980 the case was shown pending on the board of II Additional Sessions Judge and listed for evidence. On November 17, 1980 the Bangalore City Civil Courts Act came into force and powers of Sessions were conferred on all the City Civil Judges under s.9(3) Cr.P.C. In the monthly statement prepared thereafter for November, 1980 the case was shown pending before the IV Additional City Civil and Sessions Judge. However, the evidence in the case was recorded and the respondent accused convicted under s.302 and 332 IPC by the III Additional City Civil and Sessions Judge.

In appeal and reference the High Court looked into the monthly statements of pending cases and observing that there was no order under s.407 Cr.P.C. transferring the case from the file of the IV Additional City Civil and Sessions Judge to the file of III Additional City Civil and Sessions Judge, that as the charge was framed and plea recorded when the case was pending before the II additional Sessions Judge the case could not be withdrawn by the Principle Sessions Judge under s.409(2) after the commencement of the trial and allotted to any other Additional Sesssion Judge that there was no order of the Principal Session Judge under s. 194 transferring the case to the board of III Additional City Civil and Sessions Judge and that the defect could not be remedied under s.465 Cr.P.C., quashed the conviction and directed remand for retrial. The State came in appeal to this Court.

Allowing the appeal, the Court,

A HELD: 1.1 The view taken by the High Court was contrary to the language of ss.462 and 465 of the Code of Criminal Procedure. The judgment of the High Court could not, therefore, be sustained. [304A]

1.2 Reading s.462 alongwith s.465 goes to show that the scheme of the Code of Criminal Procedure is that where there is no inherent B lack of jurisdiction, merely either on the ground of lack of territorial jurisdiction or on the ground of any irregularity of procedure an order of sentence awarded by a competent court could not be set aside unless prejudice is pleaded and proved, which will mean failure of justice. [303F-G]

In the instant case, it is not found by the High Court that the C Sessions Judge who tried the case arising out of the Sessions Division had no jurisdiction. The Metropolitan Area, Bangalore City has a Sessions Division and is presided over by a Principal Sessions Judge and has a number of Additional Sessions Judges. All the Sessions Judges sitting in this Division are notified as Sessions Judges for the Division and, therefore, all of them have jurisdiction to try a case arising out of D the Sessions Division. the plea of prejudice of failure of justice is neither pleaded nor proved. Not only that, even the judgment of the High Court does not indicate any possibility of prejudice or failure of justice. There was no suggestion either of any possibility of prejudice or failure of justice. The order passed by the III Additional City Civil and Sessions Judge could not, therefore, be quashed. [302A-C]

E

2. Section 462 Cr.P.C. even saves a decision if the trial has taken place in a wrong Sessions Division or Sub-Division or a district or other local area where the court has no territorial jurisdiction, and such an error could only be of some consequence if it results in failure of justice, otherwise no finding or sentence could be set aside only on the F basis of such an error. Therefore, even if the trial before the III Additional City Civil and Sessions Judge would have taken place in a Division other than the Bangalore Metropolitan Area for which III Additional City Civil and Sessions Judge is also notified to be a Sessions Judge, still the trial could not have been quashed in view of s.462. [303C-E]

G 3.1 The scheme of s.409 indicates that the Sessions Judge had powers to withdraw any case and to allot it to any one of the Additional Sessions Judges. The Principal Sessions Judge of the Division under s. 194 had power to allot any Sessions case to any one of the Additional Sessions Judges of the Division. He could pass such orders either for individual cases or allot particular areas to particular Additional Judge H of the Division. [299H; 300A]

3.2 The III Additional City Civil and Sessions Judge who tried the instant case apparently tried it as it must have been allotted to him. The Case must have been allotted to him as the distribution orders have not been sent for by the High Court nor have they been produced. If enquiries were made it might have been discovered that the case had been transferred in exercise of the powers under s. 194 by the Principal Sessions Judge. [300B-C]

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 823 Of 1981 Etc.

From the Judgment and Order dated 27.7.1981 of the Karnataka High Court in Crl. A.NO. 215 of 1981.

M. Veerappa for the Appellant.

M.B. Lal (Amicus Curiae) K.R. Nagaraja for the Respondents.

The Judgment of the Court was delivered by,

OZA, J. These appeals have been preferred by the State of Karnataka against the judgment of the High Court of Karnataka setting aside conviction of the respondents and remanding the cases before the Sessions Court for retrial.

The respondents were committed for trial to the Sessions Judge, Metropolitan Area, Bangalore City in number of Sessions cases including Sessions Case No. 35 of 1980 in respect of an offence under Sec. 302 for which after trial the respondent Kuppuswamy was sentenced to death and also for offence under Sec. 332 of the Indian Penal Code and sentence of rigorous imprisonment of one year. Against the conviction and sentences appeal were preferred before Hon'ble the High Court. Kuppuswamy's matter also came before the High Court apart from his appeal also by reference.

The facts which gave rise to these appeals were that about 2 A.M. on 9th April 1980 it was alleged that Kuppuswamy the present respondent stabbed Narayanaswamy who expired at 11 P.M., and also Ramu who expired at 8.05 P.M. and Sunil Kumar, Sub-Inspector of Police, who expired at 2.30 A.M. on the next day. Sunil Kumar and his police party happened to go there in a van on hearing galata in the railway platform of the Cantonment railway station, Bangalore, and when Sunil Kumar caught hold of the wrist of the accused respondent.

A he somehow managed to slip out and stabbed him. PW 1 Ulaganathan, who was the Senior Trains Clerk, went and lodged the First Information Report Ex.P.1. Investigation was taken up and after investigation chargesheet was filed. It is not necessary for us to go into these question as question involved in these appeals is merely a technical question pertaining to procedure and does not pertain to the merits of the B matter.

The accused persons were committed to the Sessions Court, Metropolitan Area, Bangalore City and it appears that the Principal Sessions Judge Metropolitan Area, made over the Sessions case in exercise of his powers under Section 194 of the Code of Criminal C Procedure to II Additional Sessions Judge, Metropolitan Area, Bangalore City who framed charges on 21.8.80 and recorded to plea of the accused persons.

On 17th November 1980 City Civil Courts Act came into force. D ,Monthly statements of cases wherein the accused persons were in custody were prepared and it appears that these statements also reached the High Court and have been made use of by the learned Judges in disposing of these appeals. It has been observed by the learned High Court that in the monthly statement of October 1980 Sessions Case No. 35 of 1980 (with which we are concerned) is shown E having been pending on the board of II Additional Sessions Judge, Metropolitan Area, Bangalore City and was posted for evidence. It is further observed by the learned Judges of the High Court that the statement of November 1980 which was prepared after the Bangalore City Civil Courts Act was brought into force and powers of Sessions were conferred on all the City Civil Judges under Sec. 9(3) Cr.P.C. by F the High Court, this case has been shown as pending before the IV Additional City Civil and Sessions Judge, Metropolitan Area, Bangalore City. The High Court has also referred to a Notification issued on 30th January 1981 by the Registrar of Bangalore City Civil Courts saying that Sessions cases and other matters pending before the II, III and VI Additional City Civil and Sessions Judges are to be tried by G them and on 12th Jan. 1981 the III Additional City Civil and Sessions Judge, Bangalore City recorded the evidence in the case. It is also observed by the High Court in its judgment that the Office informed the learned Judges that there was no order of transfer under Sec. 407 Cr.P.C. transferring this case viz. Sessions Case No. 35 of 1980 from the file of the IV Additional City Civil and Sessions Judge to the file of H III Additional City Civil and Sessions Judge.

Under Sec. 194 Cr.P.C. the Principal City Civil and Sessions Judge, Metropolitan Area, Bangalore has the power to make over a Sessions case for trial and disposal in accordance with law. The High Court, it appears, has proceeded on the basis that as the plea was recorded when the case was pending before the II Additional City Civil and Sessions Judge, the Sessions Judge could not transfer the case to the board of III Additional City Civil and Sessions Judge under the provisions contained in Sec. 409 clause 2. The High Court also proceeded on the assumption that there is no order of the Sessions Judge presiding over the Principal City Civil Court for allotment of this case to the Court of III Additional City Civil and Sessions Judge. The learned High Court also came to the conclusion that provisions contained in Sec. 465 also will not remedy the defect. Consequently the High Court allowed the appeals, quashed the convictions and directed remand for retrial of the cases.

What appears from the judgment of the High Court is that after commitment this case i.e. Sessions Case No. 35 of 1980 was shown in the list of October 1980 as pending in the Court of II Additional Sessions Judge as it was made over to that Court in exercise of powers conferred under Sec. 194 by the Principal Sessions Judge and this also was inferred by the High Court from the fact that the II Additional Sessions Judge framed charges on 21.8.80 in this case and recorded the plea of the accused on the same day.

After the coming into force of the City Civil Courts Act in November 1980, in the list this case was shown to be pending before the IV Additional City Civil and Sessions Judge and what further has been observed by the High Court is that on 12th January 1981 the evidence in the case commenced on the board of III Additional City Civil and Sessions Judge. It appears that the learned Judges of the High Court looked into the Notification issued by the Registrar of the City Civil Court and also the list of pending cases pertaining to accused in custody which probably was sent to the High Court every month and also made enquiries from the Office of the High Court as to whether any sessions trial was transferred by orders of the High Court under Sec. 407 but it appears that the learned Judges did not direct to get the orders passed by the Principal Sessions Judge of the Sessions Division under Sec. 194 Cr.P.C. As the Principal Sessions Judge of the Division under Sec. 194 had power to allot any Sessions case to any one of the Additional Sessions Judges of the Division. At the same time such orders under Sec. 194 could be passed by the Principal Sessions Judge either for individual cases or by general orders allotting particular

areas to particular Additional Judge of the Division. In fact Sec. 194 contemplates that all the Sessions Judges (Principal and Additionals) who are the Sessions Judges in the Division, have been notified as Sessions Judges in the Division and therefore each one of them has jurisdiction to try the case arising out of an incident in that Division. What has been observed by the learned Judges of the High Court that this case from IV Additional City Civil and Sessions Judge went to the III Additional City Civil and Sessions Judge for which they could not find any order of transfer passed under Sec. 407 by the High Court but it appears that if enquiries were made it might have been discovered that the case might have been transferred in exercise of powers under Sec. 194 by the Principal Sessions Judge.

The usual practice in big places (Sessions Divisions) where a number of cases are committed and there are number of courts exercising the same jurisdiction in respect of the whole Division, distribution memos are prepared by the Principal Sessions Judge so that cases are so distributed to all the Additional Judges so that they are disposed of expeditiously. It appears that this aspect of the matter was not brought to the notice of the learned Judges of the High Court even by the counsel appearing for the State.

It is not disputed that the Metropolitan Area, Bangalore City has a Sessions Division and is presided over by a Principal Sessions Judge and has a number of Additional Sessions Judges. It is also not disputed that all the Sessions Judges sitting in this Division are notified as Sessions Judges for the Division and therefore it is also not disputed that all of them have jurisdiction to try a case arising out of the Sessions Division. Even the judgment of the High Court does not indicate any lack of inherent jurisdiction. What has weighed with the High Court is that as the charge was framed by the II Additional Sessions Judge the case could not be transferred to the board of III Additional City Civil and Sessions Judge without an order of transfer by the High Court as it was observed that under Sec. 194 the case could not be withdrawn by the Principal Sessions Judge after commencement of the trial and this was inferred from the provisions contained in Sec. 409 clause 2. Sec. 194 reads as under:

> "*Additional and Assistant Sessions Judges to try cases made over to them:-* An Additional Sessions Judge or Assistant Sessions Judge shall try such cases as the Sessions Judge of the Division may, by general or special order, make over to

him for trial or as the High Court may, by special order, direct him to try." A

Sec. 194 authorises an Additional Sessions Judge or an Assistant Sessions Judge to try a Sessions case arising in the Sessions Division when such a case is allotted to him either by a special or general order or a case which has been allotted to him by the High Court. Apparently therefore the III Additional City Civil and Sessions Judge who tried the case, tried it as it must have been allotted to him. It is not disputed that it must have been allotted to him as the distribution orders have not been sent for by the High Court nor have been produced nor it is disputed but what is observed by the High Court is that as the charge was framed by the II Additional City Civil and Sessions Judge it could not have been withdrawn under Sec. 409 clause 2 and allotted to any other Additional Sessions Judge: B C

"Section 409 reads:

"*Withdrawal of cases and appeal by Sessions Judge:* (1) A Sessions Judge may withdraw any case or appeal from, or recall any case or appeal which he has made over to any Assistant Sessions Judge; or Chief Judicial Magistrate subordinate to him. D

(2) At any time before the trial of the case or the hearing of the appeal has commenced before the Additional Sessions Judge, a Sessions Judge may recall any case or appeal which he has made over to any Additional Sessions Judge. E

(3) Where a Sessions Judge withdraws or recalls a case or appeal under sub-section (1) or sub-section (2), he may either try the case in his own Court or hear the appeal himself, or make it over in accordance with the provisions of this Code to another Court for trial or hearing, as the case may be." F

Clause 2 talks of "before the trial of the case ..... commenced." In fact the scheme of Sec. 409 indicates that the Sessions Judge had powers to withdraw any case and to allot to any one of the Additional Sessions Judges. G

In a Sessions trial recording of plea whether will amount to commencement of the trial or not has not been discussed by the High H

A Court and it is not necessary for us also to go into this question. So far as the trial of the case is concerned it is not found by the High Court that the Sessions Judge who tried the case had no jurisdiction. On the contrary it is not disputed before us that he had the jurisdiction to try the case arising out of the Sessions Division, the only objection which B has prevailed with the High Court is that as charge was framed and plea was recorded by the II Additional City Civil and Sessions Judge it could not have been withdrawn by the Principal Sessions Judge and made over to III Additional City Civil and Sessions Judge. It is not disputed that it was withdrawn and made over. In this view of the matter therefore the provisions contained it Sec. 465 are of some C importance.

The High Court, however, observed that provisions of Sec. 465 Cr.P.C. can not be made use of to regularise this trial. No reasons have been stated for this conclusion. Sec. 465 Cr.P.C. reads as under:

D "*Finding or sentence when reversible by reason of error, omission or irregularity:-*

(1) Subject to the provisions hereinbefore contained, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered by a Court of E appeal, confirmation or revision on account of any error, omission or irregularity in the complaint, summons, warrant, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code, or any error, or irregularity in any sanc- "tion for the prosecution, unless in the opinion of that Court, F a failure of justice has in fact been occasioned thereby.

(2) In determining whether any error, omission or irregularity in any proceeding under this Code, or any error, or irregularity in any sanction for the prosecution has occasioned a failure of justice, the Court shall have regard to G the fact whether the objection could and should have been raised at an earlier stage in the proceedings."

It is provided that a finding or sentence passed by a Court of competent jurisdiction could not be set aside merely on the ground of irregularity if no projudice is caused to the accused. It is not disputed that H this question was neither raised by the accused at the trial nor any prejudice was pleaded either at the trial or at the appellate stage and

therefore in absence of any prejudice such a technical objection will not affect the order or sentence passed by competent court. Apart from Sec. 465, Sec. 462 provides for remedy in cases of trial in wrong places. Sec. 462 reads as under:

> "*Proceedings in wrong place:*
>
> No finding, sentence or order of any Criminal Court shall be set aside merely on the ground that the inquiry trial or other proceedings in the course of which it was arrived at or passed, took place in a wrong sessions division, district, sub-division or other local are unless it appears that such error has in fact occasioned a failure of justice."

This provision even saves a decision if the trial has taken place in a wrong Session Division or Sub-Division or a district or other local area and such an error could only be of some consequence if it results in failure of justice otherwise no finding or ssentence could be set aside only on the basis of such an error.

It is therefore clear that even if the trial before the III Additional City Civil and Sessions Judge would have been in a Division other than the Bangalore Metropolitan Area for which III Additional City Civil and Sessions Judge is also notified to be a Sessions Judge still the trial could not have been quashed in view of Sec. 462. This goes a long way to show that even if a trial takes place in a wrong place where the Court has no territorial jurisdiction to try the case still unless failure of justice is pleaded and proved, the trial can not be quashed. In this view of the matter therefore reading Sec. 462 alongwith Sec. 465 clearly goes to show that the scheme of the Code of Criminal Procedure is that where there is no inherent lack of jurisdiction merely either on the ground of lack of territorial jurisdiction or on the ground of any irregularity of procedure an order or sentence awarded by a competent court could not be set aside unless a prejudice is pleaded and proved, which will mean failure of justice. But in absence of such a plea merely on such technical ground the order or sentence passed by a competent court could not be quashed.

It is not disputed that the plea of prejudice or failure of justice is neither pleaded nor proved. Not only that even the judgment of the High Court does not indicate any possibility of prejudice or failure of justice. Learned counsel appearing for the respondent also did not suggest any possibility of prejudice or failure of justice. Under these

A circumstances therefore the view taken by the High Court does not appear to be correct in view of the language of Sec. 462 read with Sec. 465. The judgment of the High Court is therefore set aside. The direction of remand made by the High Court is also quashed. It is unfortunate that these matters pertaining to incidents of 1980 should not have been disposed of till today and that the matter should have remained B pending on such technical grounds for all these years. We therefore direct that the appeals be remitted back to the High Court so that they are heard and disposed of on merits as expeditiously as possible.

P.S.S. Appeal allowed.