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GOPAL PRASAD SINHA

v.

STATE OF BIHAR*October 16, 1970*

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[S. M. SIKRI AND I. D. DUA, JJ.]*Criminal Procedure Code (Act 5 of 1898), s. 403—Issue-estoppel—When applicable.*

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The appellant was tried under s. 409, I.P.C., for having committed criminal breach of trust during the period between January 31, 1960 and November 30, 1960 while acting as a cashier. He was put up for trial in a previous case under s. 409, I.P.C., for having committed criminal breach of trust during the period December 8, 1960 to August 17, 1961 and in that case he was acquitted because it was held that he was not in charge of the cash. On the question, whether on the principle of issue-estoppel he should be acquitted, because, if he was not a cashier from December 8, 1960 to August 17, 1961 he could not be held to be a cashier from January 31, 1960 to November 30, 1960.

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HELD : The basic principle underlying the rule of issue-estoppel is that the same issue of fact and law must have been determined in the previous proceeding, that is, the latter finding must necessarily be in contradiction of the previous determination. In the present case, however, the accused was never appointed as a cashier, but was a temporary senior accounts clerk who was alleged to be doing the work of a cashier. A person may be acting as a cashier at one period and may not be acting as a cashier at another. In such circumstances, when the periods are different, there can be no such contradiction. Therefore, the rule of issue-estoppel does not apply to the facts of the case. [621 H; 622 A-C]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 212 of 1967.

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Appeal by special leave from the judgment and order dated August 3, 1967 of the Patna High Court in Criminal Appeal No. 389 of 1965 with Special Leave Petition (Criminal) No. 1048 of 1969 from the judgment and order dated July 14, 1969, of the Patna High Court in Criminal Misc. No. 411 of 1969, from the judgment and order dated July 14, 1969, of the Patna High Court in Criminal Misc. No. 411 of 1969.

S. N. Prasad, for the appellant.

B. P. Jha, for the respondent.

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The Judgment of the Court was delivered by

Sikri, J. This appeal by special leave raises the question of the applicability of the rule of issue-estoppel. The appellant,

Gopal Prasad Sinha, was tried on a charge under s. 409, I.P.C., for having committed criminal breach of trust of Rs. 27,800/- during the period between January 31, 1960 and November 30, 1960, while acting as a cashier of the Public Works Department, East Division, Gaya. The Assistant Sessions Judge framed three points for determination :

"1. If the accused Gopal Prasad Sinha was a Public servant and was working as cashier in the office of the Executive Engineer, P.W.D., Gaya East Division, during the period between 31-1-60 to 30-11-60 ?"

2. Whether charge amount namely Rs. 27,800/- was entrusted to the accused or he had dominion over it in his capacity as a public servant ?

3. Whether the accused committed criminal breach of trust in respect of this charge amount ?"

The learned Assistant Sessions Judge, after going through the oral and documentary evidence, answered the first point in the affirmative and held that the accused was handling the cash in the office during the aforesaid period as a cashier.

On point No. 2 the learned Assistant Sessions Judge, after considering the oral and documentary evidence, held :

"It is proved that the accused was in charge of one key of one of the locks of the door of the iron chest of the office of the Executive Engineer P.W.D., Gaya East Division. It is also proved that the accused was dealing with the cash of the Division and he was receiving and disbursing money of the Division. I accordingly hold that the charge money was entrusted to the accused and the accused had dominion over the charge amount of Rs. 27,800/- while acting as cashier of P.W.D., Gaya East Division."

On point No. 3 he held that "the accused made entries in the cash book showing remittance of the charge amount to sub-divisions Nos. 2 and 3 but the same were not actually remitted by the accused nor they were received in sub-division Nos. 2 and 3."

The point of issue-estoppel was raised before him, the point being that the accused was put up on trial in a previous case under s. 409, I.P.C., for having committed criminal breach of trust with respect to certain amounts during the period December 8, 1960 to August 17, 1961, and in that case the High Court had acquitted the accused holding that he was not in

A charge of the cash. The learned Assistant Sessions Judge held that the aforesaid finding of the High Court could not operate as a *res judicata*.

B The High Court, on appeal in the present case, upheld the findings of fact of the learned Assistant Sessions Judge. The High Court also repelled the argument regarding rule of issue-estoppel thus :

C "In the earlier case out of which criminal appeal 40 of 1963 arose, the defalcations in question were alleged to have been committed by the present appellant in his capacity as a cashier during the period 8-12-60 to 17-8-61. As such, the point in issue in that case was whether the accused, that is, the present appellant, was the cashier and was incharge of the cash during the aforesaid period. In the present case, however, the defalcations in question are alleged to have been committed during an altogether different period, namely, 31-1-60 to 30-11-60 and the point in issue in the present case is whether the appellant was the cashier of the division and was in charge of the cash during this particular period. The finding of fact as given in the aforesaid appeal that the appellant was not a cashier and was not in charge of the cash must be held as being operative for the period 8-12-60 to 17-8-61 during which the defalcations forming the subject matter of the aforesaid appeal were alleged to have been committed and, as such, those findings cannot in any way operate under the principle of issue-estoppel to preclude the prosecution from adducing evidence in the subsequent case, that is, in the present case, to show that the appellant was the cashier of the division and was in charge of the cash during the period 31-1-60 to 30-11-60."

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G The learned counsel for the appellant contends that substantially it was the same issue that was tried during the earlier trial, and if the accused was not the cashier from December 8, 1960 to August 17, 1961, he could not be held to be a cashier from January 31, 1960 to November 30, 1960. He said that the defence in both the cases was identical and the evidence also almost the same.

H In our opinion, the High Court came to the correct conclusion. The basic principle underlying the rule of issue-estoppel is that the same issue of fact and law must have been determined in the previous litigation. The question then arises : Was it the same issue of fact which was determined in the earlier

case? A person may be acting as a cashier at one period and may not be acting as a cashier at another period, especially as in this case it was found that the appellant had never been appointed as a cashier. He was a temporary senior accounts clerk who was alleged to be doing the work of a cashier. If there is any likelihood of facts or conditions changing during the two periods which are under consideration then it is difficult to say that the prosecution would be bound by the finding in a previous trial on a similar issue of fact. It seems to us that the later finding must necessarily be in contradiction of the previous determination. There can be no such contradiction if the periods are different and the facts relating to the carrying on of the duties of a cashier are different.

The learned counsel has referred to a number of cases of this Court where the rule of issue-estoppel has been approved; e.g. *Pritam Singh v. State of Punjab*⁽¹⁾; *Manipur Administration v. Thokchom Bira Singh*⁽²⁾; *State of Andhra Pradesh v. Kokkili-gada Meeraiah*⁽³⁾; and *Assistant Collector of Customs v. L. R. Malwani*⁽⁴⁾, but these cases do not support the contention of the learned counsel for the appellant.

It appears that the appellant surrendered on December 1, 1961, and in Sessions Trial No. 90 of 1962 he was sentenced to five years' rigorous imprisonment. He started serving his sentence on November 15, 1962. His appeal to the High Court was allowed on October 5, 1964, and thereafter he remained in prison as an undertrial prisoner. In the present case he was sentenced to six years' rigorous imprisonment and a fine of Rs. 25,000/- or in default to undergo further imprisonment for 18 months.

In the circumstances given above we consider the sentence of six years in the present case as excessive and reduce it to rigorous imprisonment for three years, and a fine of Rs. 25,000/- or in default further imprisonment for 18 months.

In the result the appeal is partly allowed in the matter of sentence, as stated above. Special Leave Petition (Criminal) No. 1048 of 1969 is accordingly dismissed.

V.P.S.

Appeal partly allowed.

(1) A.I.R. 1956 S.C. 415.

(2) (1964) 7 S.C.R. 123.

(3) [A.I.R.] 1970 S.C. 771.

(4) [A.I.R.] 1970 S.C. 962.