

Niranjan Bhuyan and ors. Vs. State

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Court : Guwahati

Decided On : May-24-1961

Judge : T.N.R. Tirumalpad, J.C.

Appellant : Niranjan Bhuyan and ors.

Respondent : State

Prior history : T.N.R. Tirumalpad, J.C. 1. The petitioners Were convicted by the first class Magistrate Sadar in G.R. case No. 579 of 1957 under Section 147 I.P.C., and sentenced to pay a fine of Rs. 100 each. Their appeal to the Sessions Judge proved unsuccessful. Hence they have come up in revision, Three other persons who had also been charged under Section 147 I.P.C., before the Magistrate were given the benefit of doubt and acquitted by him. 2. The case against the petitioners was that they along with 5

Judgement :

T.N.R. Tirumalpad, J.C.

1. The petitioners Were convicted by the first class Magistrate Sadar in G.R. case No. 579 of 1957 under Section 147 I.P.C., and sentenced to pay a fine of Rs. 100 each. Their appeal to the Sessions Judge proved unsuccessful. Hence they have come up in revision, Three other persons who had also been charged under Section 147 I.P.C., before the Magistrate were given the benefit of doubt and acquitted by him.

2. The case against the petitioners was that they along with 5 others went to the Nirala Restaurant on the night of 22.2.1957 and took food, that when the bill was prepared by P.W. 2 Nanigopal Roy and presented to them by the server P.W. 3, Prafulla Chandra Saha, they got furious considering the bill to be exorbitant and tried to leave the Restaurant without making any payment. When P.W. 2, who was in charge of the cash and bills asked them to make payment, they assaulted P.W. 2, P.W. 3 and also the cook and started throwing away chairs and tables and radio set causing damage. It was also stated that they took away cash. But they were not charged or convicted for that. The owner of the Restaurant was not present at the time. As soon as he returned and learnt about the occurrence he went to the kotwali police station and lodged the F.I.R. at 11-45 P.M. implicating the 4 petitioners and another Gopal Dutta. Then there was police investigation by P. W. 8 and charge-sheet was filed against petitioners 2-4 as well as the 3 others who were acquitted by the Magistrate. No charge-sheet was filed against Niranjana Bhuiya, petitioner No. 1 herein.

2A. The case was eventually transferred to (the file of Sri K.P. Dutta, first class Magistrate. On 24.3.1958 Sri K.P. Dutta after reading the charge-sheet, the F.I.R. and the police diary ordered issue of process against petitioner No. 1 also saying that the name of Niranjana Bhuyan found a prominent place in the F.I.R. itself, that the evidence recorded by the police justified process being issued against him also and that the Court was unable to agree with the police that there was no direct evidence against him. Thus the case proceeded against all the 7 persons and charges were framed under Section 147, I.P.C. Eight prosecution witnesses were examined, four of whom were eye-witnesses. On a consideration of the evidence, the Magistrate found the case proved against the 4 petitioners and convicted and sentenced them as stated above. The learned Sessions Judge after a detailed examination of the oral evidence also found in the appeal that the case was proved against the 4 petitioners and he confirmed the conviction and sentence.

3. Now in revision it was argued that the Magistrate was wrong in perusing the police diary in order to issue summons against petitioner No. 1, that taking cognizance against petitioner No. 1 must be treated as having been done under

Section 190(1)(c) Cr.P.C. that therefore the Magistrate ought to have informed him under Section 191 Cr.P.C., that he was entitled to have the casuistries by another Court and that the failure to follow the statutory provision in Section 191 Cr.P.C., vitiated the proceedings not only against petitioner No. 1, but against all the petitioners. It was also argued that on the evidence adduced, the lower Courts were wrong in finding the petitioners guilty under Section 147 I.P.C.

4. All these points were urged before the Sessions Judge, but he did not accept the contentions and dismissed the appeal. With regard to the first contention that the Magistrate was wrong in perusing the Police diary for issuing process against petitioner No. 1 who was not charge-sheeted by the police, my attention was drawn to the decision *Noor Mohammad v. The State* : AIR1959 Cal276 . In that decision the Calcutta High Court was of opinion that though Section 172 Cr.P.C., provided that materials to be found in police diaries may be used by the Court to and it in an enquiry or trial, the Court can for the purpose of framing a charge consider only the documents referred to in Section 173 Cr.P.C., and should not be influenced by the case diary in framing the charges. They therefore quashed the charges in the said case. With all respect, I am unable to agree with such a view.

5. In Section 169 Cr.P.C., it is provided that if the police officer making the investigation considers that there is not sufficient evidence of reasonable ground of suspicion to justify the forwarding of an accused to a Magistrate, such officer shall release him on his executing a bond with or without sureties to appear as and when so required before a Magistrate empowered to take cognizance of the offence on a police report and to try the accused or commit him for trial. This would mean that even though the investigating officer was of opinion that no case was made out against a particular accused, it is the Magistrate who has to decide the matter and that there will be nothing wrong on the part of the Magistrate in taking cognizance of the offence against that particular accused, even though he has not been charge-sheeted under Section 173 Cr.P.C. Again under Section 157 Cr.P.C., an officer-in-charge of a police station has to submit a report to a Magistrate empowered to take cognizance of an offence upon a police report, when such officer has reason to suspect the commission of an offence which he is empowered under Section 156 Cr.P.C., to investigate. When such a report is

received by the Magistrate, he can proceed under Section 159 and he can direct an investigation Or himself hold a preliminary enquiry or depute any Magistrate subordinate to him to hold such an enquiry. That is in a case where there has not been an investigation or enquiry already.

6. In our present case petitioner No. 1 Niranjan Bhuiya was mentioned in the F.I.R. itself as having taken a prominent part and as having as saluted the hotel servants in the course of the occurrence. The police investigated the case against him also instead of proceeding under Section 157(1)(b), Cr.P.C. If on investigation, the police officer was of opinion that there was not sufficient evidence against him, he hare to proceed under Section 169 Cr.P.C., and direct the accused to appear before the Magistrate empowered to take cognizance of the case on police report. The statements recorded in the police investigation would then be available to the Magistrate and if would not be necessary for him either to hold a preliminary enquiry himself Or to direct a Subordinate Magistrate to hold such an enquiry or even to order further investigation by the police. Section 172(2) specifically provided in such cases that the Court may send for the police diaries of a case under enquiry Orin trial in such Court and may use such diaries not as evidence in the case but to aid it in such enquiry or trial.

7. Thus the Court has every right to peruse the police diaries when the case comes before It for enquiry under Section 251A Cr.P.C. and if the Court finds that the police have unjustly filed to charge-sheet any particular person whose presence a, an accused was necessary in the enquiry or trial, I fail to see how it can be held that the Court has no right to issue summons against the said accused who U mentioned in take F.I.R. and against whom there was investigation by the police. The duty of the Court when an accused person appears before it, as directed under Section, 169 Cr.P.C. or is summoned by the Court for appearance, is to proceed under Section 251A(1) and see that he is furnished with the documents referred to under Section 173 Cr.P.C. Thereafter, the Court may still discharge him under Section 251A(2). If however the Court is satisfied under Section 251A(3) that there is ground for presuming that the accused has committed an offence triable under Chapter 21 Cr.P.C. and that charge should be framed against him also, it will be meaningless to say that the Court will be

powerless in the matter and cannot frame charge.

8. In our present case the Court disagreed with the investigating officer on a perusal of the statements recorded in investigation that there was no direct evidence against Niranjana Bhuiya and it was satisfied that he should also be proceeded against and that charge should be framed against him. In the decision cited by the learned Government Advocate Panu Samal v. Emperor AIR 1940 Pat 111, the first information lodged with the police made mention of three accused, but the police submitted the final report that it was a mistake of law on the ground that it was a civil dispute, But the Sub-divisional Magistrate read the case diary and as a petition by the prosecution and called for a charge-sheet. It was argued before the Patna High Court that the case would come under Section 190(1)(c) Cr.P.C. But the High Court held that the case would really come under Sections 190(1)(a) and 190(1)(b) Cri.P.C.

9. Really speaking, the case against Niranjana Bhuiya, petitioner No. 1 would come under Section 190(1)(b) Cr.P.C. alone and not under Section 190(1)(a) or 190(1)(c).

10. Section 190(1) is as follows:

190. Cognizance of offences by Magistrate- (1) Except as hereinafter provided any Presidency Magistrate, District Magistrate or Sub-divisional Magistrate, and any other Magistrate specially empowered in this behalf, may take cognizance of any offence-

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a report in writing of such facts made by any police officer;

(c) upon information received from any person other than a police officer, or upon his own knowledge or suspicion, that such offence has been committed.

11. It is clear that the Magistrate did not take cognizance of the case against Niranjana Bhuiya upon receiving a complaint under Section 190(1)(a). Nor did he take cognizance under Section 190(1)(c) either upon information received from

persons other than a police officer or upon his own knowledge or suspicion. There was the report of the police officer dated 10.12.1957 before him sent under Section 173 on the facts of the case. In that report the investigating officer while charge-sheeting the other accused stated that there was no direct evidence against) Nirranjan Bhuiya. It was on that report that the 'Court considered it necessary to send for the police diary and to peruse it in order to and at the enquiry. The Court then found that there was direct evidence against Nirranjan Bhuiya. In such a Case, it can only be stetted that the Court took cognizance of the offence against Nirranjan Bhuiya only upon a report in writing of such facts made by a police officer. Even if the Court took cognizance without accepting the report in its entirety, it would still be taking cognizance on the report.

12. We may look at the matter in another way. What the Court takes cognizance of under Section 190 is of an offence and not of the case against any particular accused. The Court has got before it the charge sheet with respect to the offence against the other accused and the Court is already taking cognizance of the offence against those accused under Section 190(1)(b). In adding one more accused along with the accused mentioned in. the charge-sheet the Court cannot be and to be taking cognizance of the offence against that accused under Section 190(1)(c) while it is doing so against the charge-sheeted accused under Section 190(1)(b).

13. This is the view which I find has been accepted as correct in the A.I.R. Commentaries to the Code of Criminal Procedure at pages 830 and 831. It is seen from the said Commentaries, that there is a conflict of decisions on the question. The decision Kachu Gogoi v. The State AIR 1951 Assam 151 holds that Section 190(1)(c); will not apply in such cases, while the decision Suchandra Kumar v. The King AIR 1950 Cal. 1138 hag taken the other view. The Commentators are of the opinion that the view expressed in the Calcutta case is not the correct view. I certainly agree with the A.I.R. Commentaries on this point. I may also mention that in the Calcutta case the question was whether Section 190(1)(a) or 190(1)(c) would apply. In that case, the Magistrate issued process against a person not named in the complaint and not for the charges mentioned in the complaint, but for different charges. Thus the said decision can be distinguished from our present

case. I have therefore no doubt that in the present case it has to be treated that cognizance of the case against all the petitioners was taken under Section 190(1)(b) Cr.P.C.

14. It follows that it was not necessary for the Magistrate to inform petitioner No. 1 under Section 191 Cr.P.C. that he was entitled to have the case tried by another Court. In any case this will not help petitioners 2-4 as the trial against them will under no circumstances be vitiated on this account. The said objections of the petitioners are not valid.

15. With regard to the merits of the case against the petitioners, I do not propose to discuss the oral evidence. Both the lower Courts have come to concurrent findings of fact on sufficient evidence before them including the evidence of 4 eye-witnesses. It is not possible for me in revision to review the whole evidence again unless it is shown that the view of the Courts below is utterly perverse. No such attempt was made before me.

16. The revision petition therefore fails and it is accordingly dismissed.