

Md. Abdullah Khan and ors. Vs. State of Bihar and anr.

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Court : Patna

Decided On : Jan-24-2002

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 192, 192(1), 200, 202(1) and 482; Indian Penal Code (IPC) - Sections 34, 201 and 302

Appeal No. : Cri. Misc. No. 13472 of 2001

Appellant : Md. Abdullah Khan and ors.

Respondent : State of Bihar and anr.

Advocate for Def. : Govt. Pleader

Advocate for Pet/Ap. : Raghib Ahsan, Azhar Alam and Khurshid Alam, Adv.

Disposition : Application dismissed

Prior history : 1. In this application filed under Section 482 of the Code of Criminal Procedure, prayer made by the petitioners is to quash the order dated 10-4-2001 passed by the Judicial Magistrate, 1st Class, Bettiah in Complaint Case No. 1434 (C) /2000 (Trial No. 1540 of 2001), whereby the learned Magistrate, having found that a prima facie case under Sections 302, 201/34 of the Indian Penal Code has been made out, directed for issuance of process. 2. Bereft of unnecessary details, facts giving rise to t

Judgement :

1. In this application filed under Section 482 of the Code of Criminal Procedure, prayer made by the petitioners is to quash the order dated 10-4-2001 passed by the Judicial Magistrate, Ist Class, Bettiah in Complaint Case No. 1434 (C) /2000 (Trial No. 1540 of 2001), whereby the learned Magistrate, having found that a prima facie case under Sections 302, 201/34 of the Indian Penal Code has been made out, directed for issuance of process.

2. Bereft of unnecessary details, facts giving rise to the present application, is that the complainant O.P. No. 2 Maqbool Ahmad, filed a petition of complaint in the Court or the Chief Judicial Magistrate, Bettiah for proceeding against the petitioners for commission of offence under Section 302/34 of the Indian Penal Code. The Chief Judicial Magistrate perused the complaint petition and after hearing the counsel for the complainant, by order dated 11-9-2000, made over the case to another magistrate for disposal in accordance with law, in exercise of its power conferred under Section 192(1) of the Code of Criminal Procedure (hereinafter referred to as 'the Code'). The transferee Magistrate, examined the complainant on oath and decided to hold an inquiry under Section 202 of the Code in which witnesses were examined. The transferee Magistrate, being satisfied, prima facie, that the allegation made in the complaint petition, statement of the complainant on solemn affirmation and the witnesses examined during the course of inquiry, disclosed commission of offence under Sections 302/34 and 201 of the Indian Penal Code, by order dated 10-4-2001, directed for issuance of process against the petitioners. It is this order of the learned Magistrate which has been impugned in the present application.

3. Mr. Raghib Ahsan, learned counsel appearing on behalf of the petitioners, contends that Section 192 of the Code confers power to the Chief Judicial Magistrate to make over a case to another Magistrate but the same is permissible only after the Chief Judicial Magistrate examines the complainant on solemn affirmation. He points out that in the present case, the Chief Judicial Magistrate without examining the complaint on solemn affirmation, has made over the case to another Magistrate which is impermissible in law and as such, the order of the transferee Magistrate issuing process, is illegal. He further submits that the order of the Chief Judicial Magistrate, does not indicate that he had taken cognizance

before making over the case and as such, the impugned order passed by the transferee Magistrate, is vitiated in the eye of law.

4. In support of his submission, learned counsel has placed strong reliance on a judgment of this Court in the case of Ram Ekbal Pandey v. Kapildeo Rai 1983 BBCJ 717 : 1984 Cri LJ 945 and my attention has been drawn to paragraph No. 14 of the judgment which reads as follows :

14. There is another ground equally forceful, contended by the learned counsel is that action taken by the Magistrate in the instant case stands vitiated, as the learned Chief Judicial Magistrate, by order dated 8-5-80 made over the case to the Magistrate under Section 192 of the Code without applying himself to the facts mentioned in the petition of complaint which will necessarily mean without taking cognizance of the offence. Section 192 of the Code does not permit a routine order of transfer in a casual way. Section 192 of the Code lays down that any Chief Judicial Magistrate may, after taking cognizance of offence, made over a case for enquiry or trial to any competent Magistrate subordinate to him, and any departure from it makes the order bad.

5. Another decision on which reliance has been placed, is the judgment of this Court in the case of Arvind Kumar Sinha v. State of Bihar 1990 BBCJ 142 and my attention has been drawn to paragraph No. 3 of the judgment which reads as follows :

3. It is submitted by the learned counsel for the petitioners that the learned Chief Judicial Magistrate transferred the case under Section 192(1) of the Code to Sri S. I. Daudi without taking cognizance and thus contravened the mandatory provisions of Section 192(1) of the Code and hence Sri S.I. Daudi, Judicial Magistrate has no jurisdiction to take cognizance of the case and issue process against the petitioners. There appears sufficient force in this contention on behalf of the petitioners.

Section 192(1) of the Code reads as follows :

Any Chief Judicial Magistrate may, after taking cognizance of an offence make over the case for inquiry or trial to any competent Magistrate subordinate to him.'

It is evident from the reading of the section that the Chief Judicial Magistrate should make over the case for inquiry or trial to any Magistrate subordinate to him only after taking cognizance of the offence.

6. Yet another decision which has been cited in support of the submission is the decision of this Court in the case of Kush Kumar alias Kushwal v. State of Bihar 2000 (3) Pat LJR 199 and pointed attention has been drawn to the following passage from paragraph No. 14 of the judgment, which reads as follows :

14. The word 'after taking cognizance' occurring in Section 192 together with the language in Section 202(1) of the Code will lead to the result that a complaint case may be transferred by the Magistrate taking cognizance before issuing process and the transferee Magistrate may issue process thereafter. Conversely these words also make it clear that where a Chief Judicial Magistrate or a Judicial Magistrate of the 1st Class specially empowered merely sent a case for disposal to another Magistrate without first taking cognizance it would not amount to a , 'transfer' within the meaning of Section 192. This view finds support from the case of Gopal Das Sindhi v. State of Assam AIR 1961 SC 986 : 1961 (2) Cri LJ 39. Relying on this decision the learned single Judge of this Court in the case of Arvind Kumar Sinha v. State of Bihar 1990 BBCJ 142 : 1990 (2) Pat LJR 511 has held that when there was nothing in the order of the Chief Judicial Magistrate making over a case to a Judicial Magistrate to show that the cognizance of the offence has been taken the same order is hit by Section 192(1) of the Code inasmuch as the procedure adopted by the Chief Judicial Magistrate was against the provision of this section and was, therefore, illegal and without jurisdiction.

7. Having given my most anxious consideration, I find myself unable to accept the submission of the learned counsel either on principle or precedent. This necessitates examination of the scheme of the Code. Section 192 of the Code provides for making over complaint case to a Magistrate for inquiry or trial by the Chief Judicial Magistrate, same reads as follows :

192.- Making over of cases to Magistrates.- (1) Any Chief Judicial Magistrate may, after taking cognizance of an offence, make over the case for inquiry or trial to any competent Magistrate subordinate to him.

(2) Any Magistrate of the first Class empowered in this behalf by the Chief Judicial Magistrate may, after taking cognizance of an offence, make over the case for inquiry or trial to such other competent Magistrate as the Chief Judicial Magistrate may, by general or special order, specify, and thereupon such Magistrate may hold the inquiry or trial.

8. Section 200 of the Code provides for examination of the complainant on oath, same reads as follows :

200.- Examination of complainant.- A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate.

Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses-

(a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint, or,

(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under Section 192 :

Provided further that if the Magistrate makes over the case to another Magistrate under Section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.

9. In view of the aforesaid provisions what requires consideration is as to whether power conferred on the Chief Judicial Magistrate to make over the case for inquiry or trial, after taking cognizance of an offence, would necessarily require the Chief Judicial Magistrate to examine the complainant on oath. It is, no doubt, true that Section 190 of the Code, requires the Chief Judicial Magistrate to take cognizance

before making over the case for inquiry or trial to another Magistrate and Section 200 of the Code obliges a Magistrate taking cognizance of an offence, on a complaint, to examine upon oath the complainant. However, proviso to Section 200 of the Code carves out an exception and provides that when the complaint is made in writing, the Magistrate is not mandatorily required to examine the complainant on oath, if the Magistrate makes over the case for inquiry or trial to another Magistrate under Section 192 of the Code. It is well settled that proviso is added to an enactment to create an exception to what is in the enactment. Here, in the scheme of the Code, an exception has been carved out by proviso and in view of that exception in proviso (b) of Section 200 of the Code, I have no manner of doubt that in a case where the Magistrate makes over the case for inquiry or trial to another Magistrate under Section 192 of the Code, the former is not required to examine the complainant on oath.

10. Having held that the Chief Judicial Magistrate is not required to examine the complainant on oath while making over the case to another Magistrate under Section 192 of the Code, next question which falls for determination, is as to whether the Chief Judicial Magistrate can transfer the same without taking cognizance. Section 192 of the Code, inter alia, provides that any Chief Judicial Magistrate may after taking cognizance of an offence, make over the case for inquiry or trial to any other competent Magistrate. It is well settled principle of statutory interpretation that when the words of statute are clear, plain or unambiguous, i.e. they are reasonably susceptible to only one meaning, the Courts are bound to give effect to that meaning irrespective of consequence. In other words, if the words of the statute are themselves precise and unambiguous, than no more can be necessary than to expound those words in their natural and ordinary sense. Bearing in mind this principle, I proceed to examine the meaning of expression 'after taking cognizance' used in Section 192 of the Code. In my opinion, from a plain reading of Section 192 of the Code, it is evident that the Chief Judicial Magistrate can make over the case to any other Magistrate only after taking cognizance. Any other view, in my opinion, would be not only in teeth of the well settled principle of statutory interpretation as indicated above, but shall also be in conflict with the other principle that Legislature does not waste its words. If I hold that the Chief Judicial Magistrate can make over the case for inquiry or trial

without taking cognizance, I shall be guilty of not giving the plain meaning of the words 'after taking cognizance' as used in Section 192 of the Code as also for brushing aside the words of the statute, which is impermissible. As such, I am of the considered opinion that the Chief Judicial Magistrate can make over the case to any other Magistrate only after taking cognizance.

11. Having held that the Chief Judicial Magistrate can make over a case to any other competent Magistrate only after taking cognizance, the next question which falls for determination is what meaning is to be attributed to the word 'cognizance'. Although this word has been used in various sections of the Code but has not been defined, nonetheless it has acquired a definite meaning because of its consistent use and authoritative construction by superior Courts. The word 'cognizance' has no esoteric or mystic significance in criminal law or procedure. In my opinion, taking cognizance does not involve any formal action, but is taken the moment the Magistrate applies his mind to the suspected commission of the offence when a complaint is presented before him. In my considered opinion, the moment the Magistrate looks into the petition of complaint, for the purpose of making over the same for inquiry or trial to another Magistrate under Section 192 of the Code, he takes cognizance and such transfer of case is in tune with the requirement of law.

12. Bearing in mind the aforesaid principle, I proceed to examine the order passed by the learned Chief Judicial Magistrate making over the case to another Magistrate under Section 192 of the Code. As observed earlier, the learned Chief Judicial Magistrate has not only perused the complaint but also heard the counsel for the complainant and thereafter made over the case to another Magistrate under Section 192 of the Code. This would obviously mean that he has done so after taking cognizance. Thus, on principle, I do not find that any error has been committed by the learned Magistrate while making over the case.

13. Now, reverting to the decision of this Court, it is relevant here to state that the decision of this Court in the case of Arvind Kumar Sinha (1999 BBCJ 142) (supra) came up for consideration before this Court in the case of Ram Bilas Singh v. Sumitra Kuer 1991 (1) Pat LJR 472 before a learned single Judge of this Court

(Hon'ble Mr. Justice B. N. Agrawal, as he then was) and relying on an earlier Division Bench decision of this Court in the case of Sudama Singh v. Ravindra Narain Singh 1973 PLJR 35, his Lordships observed that the decision of this Court in the case of Arvind Kumar Sinha, not to be binding precedent and a decision is per incuriam. In the words of this Court:

3. The only point raised on behalf of the petitioners in support of this application is that it was incumbent upon the learned Chief Judicial Magistrate to first examine the complainant on solemn affirmation before passing any order under Section 192 of the New Code. In support of his submission learned counsel has placed reliance on a decision of this Court by a learned single Judge in the case of Arvind Kumar Sinha v. The State of Bihar 1990 BBCJ 142 : 1990 (2) Pat LJR 511 in which case cognizance was quashed upon two grounds. Firstly, on the ground that the petition of complaint did not disclose any criminal offence and secondly, on the ground that the learned Magistrate transferred the case under Section 192 of the New Code without examination of the complainant on solemn affirmation. In my view, it is not possible to follow this decision and the law laid down therein cannot be a binding precedent as the said decision is per incuriam in view of the fact that it has not, even referred to an earlier decision of this Court by a Division Bench in the case of Sudama Singh v. Ravindra Narain Singh 1973 BLJR 66 : 1973 Pat LJR 35 laying down contrary law. In that case without examination of the complainant on solemn affirmation the case was transferred under Section 192 of the Code of Criminal Procedure, 1898 (hereinafter referred to as the 'Old Code'). The transferee Court also did not examine the complainant on solemn affirmation and he directed for issuance of process against the accused. This Court maintained the order passed by the learned Magistrate, transferring the case under Section 192 of the Old Code and set aside the order of the transferee Court only by which without examination of the complainant on solemn affirmation he had directed for issuance of process against the accused after interpreting provisos (a) and (c) of Section 200 of the Old Code.

14. The decision of this Court in the case of Kush Kumar alias Kushwal v. State of Bihar 2000 (3) Pat LJR 199 (supra) has been rendered following an earlier decision of this Court in the case of Arvind Kumar Sinha (1990 BBCJ 142) (supra)

but unfortunately, the attention of the Court was neither brought to the Division Bench decision of this Court in the case of Sudama Singh (1973 BLJR 66) (supra) or the decision in the case of Ram Bilas Singh (1991 (1) Pat LJR 472) (supra). It is well settled that when an earlier decision of this Court has been considered in a latter decision and the former decision has been explained, one is obliged to follow the latter decision. For the reasons stated in the case of Ram Bilas Singh (supra), I have no opinion than to hold that the decision of this Court in the case of Arvind Kumar Sinha (1990 BBCJ 142) and Kush Kumar alias Kushwal, 2000 (3) Pat LJ R 199 are the decisions per incurian and not binding on me.

15. As regards the decision of this Court in the case of Ram Ekbal Pandey (1984 Cri LJ 945) (supra), the same is clearly distinguishable. In the said case, the Chief Judicial Magistrate made over the case to another Magistrate without applying to the facts of the case and the facts of that case, this Court held that the transfer was made without taking cognizance. However, in the present case, as found earlier, the Chief Judicial Magistrate has perused the complaint, which would obviously mean that he had taken cognizance and only thereafter, made over the case to another Magistrate, which is in tune with Section 192 of the Code.

16. To sum up before making over the case to another Magistrate, the Chief Judicial Magistrate is not. obliged to examine the complainant on oath. He can do so after taking cognizance and the expression taking cognizance would mean that the moment he sees or peruses the complaint for the purpose of making over the case to another Magistrate under Section 192 of the Code, he takes cognizance.

17. In the result, I do not find any merit in this application which is dismissed accordingly.