

Emperor Vs. K.R. Bhat

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Court : Mumbai

Decided On : Jun-30-1931

Reported in : (1931)33BOMLR1192

Judge : S.S. Patkar, Acting C.J. and ;Murphy, J.

Appeal No. : Criminal Application for Revision No. 148 of 1931

Appellant : Emperor

Respondent : K.R. Bhat

Judgement :

Patkar, Ag. C.J.

1. These are four applications for quashing the order of commitment of the several accused under different sections of the Indian Penal Code passed on May 14,1931, by the Special Magistrate appointed to try the case. It is not necessary to mention all the facts leading to the prosecution of the accused in this case. The commitment can be quashed under Section 215 by this Court only on a point of law.

2. The first point taken on behalf of the accused is that the case was started as a warrant case and the learned Magistrate led the accused to believe that he was trying the case under Chapter XXI of the Criminal Procedure Code and not inquiring under Chapter XVIII of the Code, and therefore the accused had no

opportunity of cross-examining the prosecution witnesses and leading evidence on their behalf before the Magistrate. It is further urged that though the Magistrate had power to commit the accused under Section 347 of the Criminal Procedure Code, the Magistrate was bound to proceed according to the procedure laid down by Chapter XVIII of the Code.

3. With regard to the point as to whether the learned Magistrate led the accused to believe that he was trying the case as a warrant case, it is sufficient to refer to the application of the accused on March 9, 1931. In paragraph 4 the accused stated that the Magistrate would be acting illegally in trying charges which were exclusively triable by the Court of Session. It would, therefore, follow that the possibility of the accused being committed to the Court of Session was not altogether absent from the minds of the accused and their legal advisers as alleged, and the learned Magistrate in his order of the same day stated :-

I have certainly got the powers to try the accused for an offence of criminal conspiracy to commit cheating, breach of trust, and falsification of accounts under Section 120B read with Sections 420, 406, 477 A and 193.

4. He also stated that if Section 120B read with Section 467 was applicable to the case, it would no doubt be exclusively triable by the Court of Session, We think, therefore, that there is no substance in the suggestion that the accused were under the impression that the Magistrate led them to believe that he was trying the case solely under Chapter XXI and would not under any circumstances commit the accused to the Court of Session.

5. The next point is whether a Magistrate committing the accused to the Court of Session under Section 347 of the Criminal Procedure Code has to follow the provisions of Chapter XVIII of the Criminal Procedure Code. Before the amendment of Section 347 in which the words 'stop further proceedings and' were previously embodied in the section, there was a difference of opinion between the Punjab, Madras and Allahabad High Courts on the one hand and Calcutta and Bombay High Courts on the other on the point whether Section 347 was controlled by Section 208 of the Criminal Procedure Code. The conflict of judicial opinion is reflected in the decision in the cases of *The Sessions Judge of Coimbatore v.*

Kangaya Mantradiyar I.L.R. (1912) Mad. 321 Emperor v. Channing Arnold (1912) 13 Cri. L.J. 877 Emperor v. Muhammad Hadi I.L.R. (1903) All. 177 In re Clive Durant (1898) Un. Cr. C. 975 and Phanindra Nath Mitra v. Emperor I.L.R. (1908) Cal. 48 It, however, appears that the Legislature has enacted by Section 91 of the amending Act XVIII of 1923 that the Magistrate has to follow the provisions of Chapter XVIII of the Criminal Procedure Code. If before passing an order for commitment the accused applies to the Magistrate for an opportunity to cross-examine prosecution witnesses and to examine the defense witnesses, and the Magistrate declines to examine the witnesses on behalf of the accused or to allow cross-examination of the prosecution witnesses, the accused might approach the High Court for a direction to the Magistrate to follow the provisions of Chapter XVIII of the Criminal Procedure Code. In Jyotsna Nath Sikdar v. Emperor I.L.R. (1923) Cal. 442 the application to cross-examine was made before the charge was framed and before the Magistrate had decided to commit the case to the Court of Session. But after an order for commitment is passed it must be shown that the accused has suffered any prejudice by reason of the action of the Magistrate taken in the proceedings: see In re Chinnavan (1914) 15 Cri. L.J. 386 It appears from the record that when the prosecution witnesses were examined the accused declined to cross-examine the witnesses, and no application was made to the Magistrate to give them an opportunity of cross-examining the prosecution witnesses. Indeed it appears from the proceedings that the accused did not even give a list of their own witnesses, and the complaint is made that the Magistrate did not examine the witnesses on behalf of the accused. We think that no prejudice has been shown to the accused by reason of any action taken by the Magistrate. A distinction must be drawn between the obligatory duties of the Court and the privileges enjoyed by the accused under the Code. Under Sections 256 and 257 there are certain obligations laid down on the Court, but under Section 208, Sub-section (1), the Magistrate shall take such evidence as may be produced on behalf of the accused and under Section 208, Sub-section (2), the accused shall be at liberty to cross-examine the witnesses for the prosecution. The accused's pleader having given up the right to cross-examine the witnesses and having declined to cross-examine them at the proper time cannot now complain that the witnesses were not cross-examined by the committing Magistrate. No application was subsequently made

by the accused to allow cross-examination of prosecution witnesses or to examine their own witnesses. In their statements the accused stated that they would give their list of witnesses in the Sessions Court. The decision of a single Judge in the case of Damodaram, In re I.L.R. (1929) Mad. 995 relied on by the learned counsel on behalf of the applicants, relates to the obligatory duty laid upon the Court, and in that case the application was made before the case had reached the stage of committal. We think, therefore, that the first ground urged on behalf of the accused must fail.

6. It is next urged on behalf of the accused that the appointment of the Special Magistrate was only for the purposes of the trial of the accused, that it did not empower the Special Magistrate to take cognizance and commit the accused for trial, and therefore the order of commitment is bad. The power to try a case would necessarily include the power to take cognizance. It is urged that a Magistrate can try a case without having taken cognizance of it when it is transferred to him under Section 192, Criminal Procedure Code. The power to take cognizance under Section 190, Clause (a), is not an ordinary power of the First Class Magistrate under Schedule III of the Criminal Procedure Code, but is one of the additional powers with which a Magistrate of the First Class may be invested under Schedule IV of the Criminal Procedure Code. The learned Government Pleader has drawn our attention to the Notification No. J-1350 dated July 5, 1906, under which the power to take cognizance of cases was conferred on the Magistrate in question irrespective of any area. He had, therefore, the power to take cognizance of the case. Under Section 190, clause (8), the Local Government or the District Magistrate, subject to the general or special orders of the Local Government, may empower any Magistrate to take cognizance under Sub-section (1), Clause (a) or Clause (b) of offences which he may try or commit for trial. We think, therefore, that having regard to the notification, the Special Magistrate in this case was empowered by the District Magistrate to take cognizance under Sub-section (1), Clause (a), of Section 190. Even assuming that he had no power to take cognizance, Section 529, Clause (e), would cure the defect, if any. The powers having been conferred on the Magistrate in this case irrespective of any local area, Section 40 of the Criminal Procedure Code need not be referred to in this connection.

7. It is next urged on behalf of the accused that the Magistrate was appointed to try the accused and that he had no power to commit the accused for trial. Under Sections 205 and 347 of the Criminal Procedure Code the Magistrate was empowered to try this case and had power to commit the accused for trial. The Magistrate had the ordinary power under Schedule III, Clause 8, as a First Class Magistrate to commit the accused for trial. It would, therefore, follow that the Special Magistrate in this case had power to take cognizance of the present offence and had also power to commit the accused for trial.

8. The last point taken on behalf of the accused was that the Magistrate was empowered under Section 14 of the Criminal Procedure Code to try the case relating to the People's Own Provident and General Insurance Co. Ltd , and it is urged that the Magistrate had no power to take cognizance of other cases which were investigated after the appointment of the Magistrate on December 23, 1930. This point was not taken either in the lower Court or in the memorandum of appeal, and it is pointed out by the Government Pleader that after the investigation which was started on December 26, 1929, several facts were discovered and the sanction of the Government was granted on January 22, 1931, under Section. 196A against the twenty-five accused for criminal conspiracy to commit offences, namely, under Sections 193, 406, 420, 467, 471 and 477A. The word 'case' is a comprehensive term and would include all the offences which came to light during the investigation. We think, therefore, that the three points urged by Mr. Dalvi fail.

9. There were several other points raised on behalf of the other accused on the question as to the misjoinder of charges and on the point as to whether the evidence was sufficient to raise an inference of prima facie case against the accused. We do not think that the commitment can be quashed on those grounds.

10. If there are any valid grounds, they might be urged before the Sessions Court. We think, therefore, that these applications must fail and the rules must be discharged.

Murphy, J.

11. The applicants have been committed to the Court of Session, Poona, to stand their trial under the criminal conspiracy, cheating and other sections of the Indian Penal Code, the substance of the charges against them being that they formed a fraudulent loan company, the object of which was to cheat the public by obtaining subscriptions in various complicated ways on the promise of loans on easy terms, One of the devices adopted was of the snowball variety, and the income used dishonestly was the bulk of the money obtained by the subscriptions of the hopeful applicants for loans.

12. The complaint in the matter was made by a C. I. D. Officer after an investigation of the affairs of the company, and a Special Magistrate was appointed by Government for the inquiry. It is alleged that this appointment was defective, that the Special Magistrate was not empowered to take cognizance or to commit for trial, that his proceedings were irregular and prejudiced the accused, and that a commitment of this nature should be quashed. The objections are in reality all technical. The Special Magistrate was appointed under Section 14 on December 27 last, and the actual terms of his appointment are 'to be a Special Magistrate to try the case concerning the People's Own Provident and General Insurance Company Ltd.' The proceedings were started in the beginning of February. The applicants' main grievance is that they were given to understand by the learned Magistrate that he would himself dispose of the case and so they did not use their right to cross-examine the prosecution witnesses, and were taken aback when an order of commitment was made. The procedure in a case to be committed is governed by Sections 206 to 213, in a case tried as a warrant case by Section 231 and the following sections, and when a decision cannot be made beforehand, the facts come within Section 254 of the Code. The last was the case here. That is, from the point when the decision is made, 'he shall commit the accused under the provisions hereinbefore contained'. There is nothing in this case to indicate a violation of the requirements of Section 208. The learned Magistrate took the evidence that was offered for the prosecution: the accused offered none. The accused declined to cross-examine, implying that they were asked. They said they would make such statements as they wanted to in the Sessions Court, and they put in no list of defense witnesses under Section 211. The accused were all represented. I think they were not misled, and that the learned

Magistrate did all that was required of him, and committed no illegality. The intention of the accused clearly was not to cross-examine unless a charge was framed, on a charge being framed to recall all the prosecution witnesses and cross-examine them in that Court, and to reserve for the Sessions Court on the third possibility, and I think the grievance is probably due to a change of mind.

13. The next point is as to the Magistrate's power to take cognizance and to commit. The power to commit is an ordinary one, implied in the appointment of a Magistrate, First Class, The power to try is not one conferrable under Schedule IV of the Code, is really implied in the appointment of the Magistrates of different classes. I think the expression 'to try' used in the notification is not used in a restrictive sense, but merely in the sense that the case shall go to him. The power of taking cognizance may be conferred by the Local Government, or a District Magistrate, and once given remains personal to the Magistrate and independent of the local area where he may be exercising it, until withdrawn by the authority conferring the magisterial powers. The Special Magistrate here appointed was so empowered long ago. Moreover, under Section 529(e) the lack of such power is not a fatal defect. I do not think that the omission to mention the power to commit while naming the power to try limits the Special Magistrate to the exercise of the latter power only.

14. Lastly, it is said the only case registered at the time of the Magistrate's appointment was one under Sections 120B and 420, and did not include the other sections mentioned in the charge. But a Magistrate has to consider the facts disclosed by the evidence, and where the facts disclose other offences not barred by lack of sanction or a similar obstacle, I do not think the Magistrate is confined to what was actually pending on his appointment.

15. Other arguments have been that the charge is too vague, but it can be amended at any time; that the order has not made out a case against some of the accused, but this is on the merits, into which we cannot go; and lastly, that the accused have been prejudiced generally, which is not, I think, the case.

16. I agree with the order proposed by the learned Chief Justice, that all the applications must be dismissed and rules discharged.

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