

Mahadevan Vs. Lakshminarayan

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Court : Karnataka

Decided On : Sep-28-1956

Reported in : AIR1957Kant40; AIR1957Mys40; 1957CriLJ464; ILR1956KAR321

Judge : Padmanabhiah, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 155(1), 155(2), 173, 190, 190(1), 207A, 251A, 251A(2) and 251A(3); [Indian Penal Code \(IPC\), 1860](#) - Sections 379 and 477

Appeal No. : Criminal Revn. Petn. No. 197 of 1956

Appellant : Mahadevan

Respondent : Lakshminarayan

Advocate for Def. : R.S. Gopal, Adv.

Advocate for Pet/Ap. : P. Raghavendra Rao, Adv.

Judgement :

ORDER

1. This is a revision petition preferred by the petitioner-complainant against the order of the learned Principal Sessions Judge, Bangalore, in Criminal Revision Petition No. 18 of 1956 confirming the order passed by the learned Second Magistrate, Kolar, discharging the respondent-accused in. C. C. No. 2127 of 1955.

2. The facts that have given rise to this petition are briefly as follows :

3. The respondent-accused was charge-sheeted by the Kolar Town Police for an offence under Section 379, I. P. C. in the Court of the learned Second Magistrate, Kolar, alleging that he (accused) on 28-9-55 committed theft of three General Stamp paper valued at Rs. 300/- belonging to the petitioner-complainant, by snatching the same in a fit of anger from the pocket of the petitioner and tearing them off, and that he thereby committed an offence under Section 379, I. P. C.

4. The procedure provided under Section 251-A of the amended Criminal Procedure Code was followed and the learned Magistrate found that, on the materials placed before him, no case of theft was made out and he accordingly discharged the accused under Section 251-A(2) of the Criminal Procedure Code. The learned Sessions Judge, to whom a revision petition was preferred, agreed with the learned Magistrate and confirmed the order of the trial Court. Against that order, this revision petition is preferred.

5. The main point that arises for consideration is whether the disposal of the case in the manner in which it is done by the Courts below is correct. The learned Magistrate held that no offence under Section 379, I. P. C. was made out, that the materials placed before him disclosed an offence under Section 477, I. P. C. cognisable by a Court of Session and that he had no jurisdiction to deal with the matter. The learned Sessions Judge likewise held that no offence under Section 379, I. P. C. was made out, that if at all the materials placed before the Court disclosed any offence it was one of mischief which was a non-cognizable one and in respect of which the police could not place any charge-sheet, and that as no cognizable offence was made out the order of the learned Magistrate had to be upheld. I am of opinion that both the Courts were wrong in their respective views. If the views of the Courts below are accepted, it is tantamount to saying that Section 251-A requires that an accused should be discharged if the offence alleged by the prosecution as having been committed under a particular Section of the Indian Penal Code is not made out, irrespective of the fact whether the allegations made in the charge sheet prima facie disclosed any other offence or not. This, in my opinion, is not a correct statement of law.

6. Section 251-A(2) of the Criminal Procedure Code under which the respondent-accused stands discharged runs thus :

"If, upon consideration of all the documents referred to in Section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge him.'

A Magistrate under this provision is required to discharge an accused if he considers, on a consideration of the various materials referred to therein, that the charge against the accused is groundless.

In my opinion, the words "the charge against the accused to be groundless' appearing in the above section must be construed as 'when there is no legal evidence in support of the charge brought against the accused and the facts do not make out any offence at all.' The word "charge' cannot be restricted to mean only the charge brought by the prosecution under a particular Section of the Indian Penal Code. I am of the view that a final order of discharge can be passed by a Magistrate under Section 251-A(2) only when after considering the matter referred to in that Section he thinks that there is no legal evidence in support of the particular charge as falling under a particular section of the Indian Penal Code and also that the facts alleged do not disclose any offence at all. It does not seem to contemplate the discharge of an accused when the allegations made against him do not fit into the section mentioned in the charge-sheet. If the facts disclose any other offence coming under any other section of the Indian Penal Code which is triable as a warrant case and which the Magistrate is competent to try and punish adequately, it is his duty to frame a charge for that offence and dispose of the case according to law.

7. That this is a reasonable construction, and must be the construction of Section 251-A(2) is further made clear by Sub-section (3) of Section 251-A. That sub-section runs thus;

'If, upon such documents being considered, such examination, if any being made and the prosecution and the accused being given an opportunity of being heard, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try, and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused.'

That deals with the framing of a charge when the Magistrate after perusing the materials referred to therein thinks that there is ground for presuming that the accused has committed an offence triable under that Chapter. The word "an" appearing in the section after the words "that the accused has committed" and before the words 'offence triable under this Chapter' is very significant. That word "an" has to be interpreted as "any" under the context.

If it were the intention of the Legislature that 'an offence' should be taken to mean 'the offence set out in the charge-sheet as falling under a particular Section of the Indian Penal Code', I am sure they would have said so in unequivocal terms. It was very easy for them to have put in words like 'Charged with' or 'accused of' after the word 'offence' and before the words "triable under this Chapter".

8. Again the use of the words 'triable under this Chapter' also goes to indicate that a charge should be framed against the accused for any offence made out which is triable as a warrant case. Chapter XXI deals with trial of warrant cases by Magistrates. When a charge-sheet is placed for a cognizable offence and is sought to be tried under the procedure prescribed under Section 251-A, it means that the offence alleged against the accused is triable as a warrant case.

Therefore there was no necessity for the words "an offence triable under this Chapter" appearing in the body of Sub-section 3, if the Legislature intended to say by the use of the word 'an' only the offence alleged by the prosecution in the charge-sheet. The legislature must have meant to say that a charge should be framed under any other section of the Indian Penal Code provided that such an offence was disclosed on the materials placed before the Court and was triable as a warrant case.

9. The next point that arises for consideration is as to what a Magistrate should do when the facts alleged in the charge-sheet and the materials referred to in Section 251-A do not disclose the particular offence mentioned in the charge-sheet but disclose an offence different from the one mentioned therein. It is not correct to say, as has been observed by the Courts below, that the Court is helpless in such a case and that the only option left open to it is to discharge the accused of the offence mentioned in the charge-sheet. According to the learned Magistrate, the materials placed before him disclosed an offence under Section 477, I. P. C. which is exclusively triable by a Court of Session and that he had no jurisdiction to proceed further, while according to the learned Sessions Judge, the offence disclosed is one of mischief which is non-cognizable. The latter has held that the police cannot place a charge-sheet in respect of such an offence and that as no cognizable offence was made out, the order of discharge was good. In my opinion, the views of both the learned Magistrate and the learned Sessions Judge are incorrect.

10. Different procedure has been prescribed for trial of warrant cases, summons cases and Sessions Cases. If the materials placed before the Magistrate disclosed an offence under Section 477, I. P. C. the course open to him was to follow the procedure prescribed under Section 207-A of the Criminal Procedure Code under Chapter XVIII which deals with inquiry into cases triable by Courts of Session and High Courts.

Section 251-A (3) cannot be read to mean that in a case covered by that section, the Court has no power to commit simply because the section enjoins merely the framing of a charge if a prima facie case is made out.

In this case, the learned Second Magistrate, Kolar, who has passed the order of discharge, has been empowered to commit any person for trial to a Court of Session for any offence triable by the latter. The learned Magistrate was therefore wrong in not following the procedure laid down under Chapter XVIII when he came to the conclusion that an offence under Section 477, I. P. C. was disclosed.

11. If, according to the learned Sessions Judge, an offence of mischief was disclosed, then it was open to the Magistrate to follow the procedure prescribed for

the trial of non-cognizable cases. The learned Sessions Judge opines that the police had no power to place a charge-sheet for a non-cognizable offence and that the Court could not take notice of such an offence even if the charge-sheet and the materials placed before it disclosed such an offence. I do not think that this view is correct.

12. Section 155 (1) of the Criminal Procedure Code deals with the procedure to be followed by the Police when information as to the commission of a non-cognizable offence is received. Section 155(2) prohibits investigation by Police into a non-cognizable case without the orders of a Magistrate. The point for decision in this case is not whether the Police can investigate into a non-cognizable case without the orders of a Magistrate.

We are now confronted with the question whether a Magistrate before whom a charge-sheet is placed, has no jurisdiction to take cognizance of a non-cognizable offence which is disclosed in the police report. The question is one of 'cognizance' by a Magistrate and not 'investigation'. 'Cognizance' and 'investigation' are two different things.

13. I cannot accept the proposition that a Magistrate has no jurisdiction to take cognizance of a non-cognizable offence disclosed in the report made by a Police Officer. Section 190 (1), Cr. P. C. read thus :

"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.'

It empowers the Magistrates referred to therein to take cognizance of any offence disclosed in the report made by a Police Officer. The word 'any' appearing in

Section 190 (1) is full of meaning. It must necessarily mean a cognizable or a non-cognizable offence.

The wording of Section 190 clearly indicates that it empowers a Magistrate to take cognizance of any offence upon a report in writing of such facts made by a Police Officer. The wording is quite general and would include even a non-cognizable offence being taken cognizance of by a Magistrate upon the report made in writing by a Police Officer.

14. In this case, the police investigated into a cognizable offence of theft under Section 379, I. P. C. If the allegations made in the charge-sheet and the other materials placed before the Court did not disclose that offence but disclosed a non-cognizable offence, it was the duty of the Magistrate to take cognizance of that offence treating the police report in such a case as a complaint under Section 190(a) of the Criminal Procedure Code, and follow the procedure prescribed for trial of such offences.

This appears to be the consensus of opinion of some of the High Courts in the Indian Union. The Bombay High Court, after reviewing various cases on the point, has taken this view in the case reported in *Emperor v. Shivaswami Guruswami*, ILR 31 Bom 498; (AIR 1927 Bom 440) (A). The Madras High Court also has taken a similar view in the case reported in *Public Prosecutor v. Ratnavelu Chetty*, ILR 49 Mad 525; (AIR 1926 Mad 865) (FB) (B). Their Lordships have held that the Magistrates mentioned in Section 190 are entitled to take cognizance of even a non-cognizable offence upon a report made in writing by a Police Officer.

15. In any view of the case, the procedure adopted by the Courts below cannot be supported. Under Section 251-A what a Magistrate should find out is whether the materials referred to in that section make out a prima facie case against the accused in which event he has to frame a charge. It is not at that stage necessary that the materials available should conclusively establish the various ingredients of an offence to enable the Magistrate to frame a charge.

In this case, the charge-sheet and the materials placed before, the Magistrate are to the effect that the respondent-accused and his brother were quarrelling, that the

petitioner -interfered to pacify them and that the respondent-accused snatched the stamp papers from the pocket of the petitioner and tore them off thinking that it was a document affecting his (respondent-accused's) title to the family property.

I do not know how the Magistrate came to the conclusion that there was no dishonest intention on the part of the accused. The Courts below do not seem to have seriously applied their mind in finding out what offence was disclosed and they have also not properly appreciated the materials placed before them. I am of opinion that it is expedient in the interests of justice that the order of discharge should be set aside.

16. In the result, the order of the learned Sessions Judge confirming the order of discharge passed by the learned Second Magistrate, Kolar, in this case is set aside and 'this revision petition is allowed. The case will now go before the learned District Magistrate, Kolar, for being dealt with in accordance with law.

17. Petition allowed.