

State of Mysore Vs. Gundappa and ors.

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Court : Karnataka

Decided On : Apr-01-1965

Reported in : AIR1966Mys78; 1966CriLJ273; ILR1965KAR366; (1965)2MysLJ16

Judge : T.K. Tukol, J.

Acts : Constitution Act; [Indian Penal Code \(IPC\), 1860](#) - Sections 147 and 323; ;
[Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 251-A(2)

Appeal No. : Criminal Revn. Case No. 6 of 1965

Appellant : State of Mysore

Respondent : Gundappa and ors.

Judgement :

ORDER

(1) This is a reference made by the Sessions Judge, Raichur in Criminal Revision Petition No. 20/7 of 1964 on his file recommending that the order of discharge passed by the First Class Magistrate, Lingasugur in C.C. No. 162/1 of 1964 be set aside.

(2)The facts material for appreciating the point arising in the reference are as follows: The Sub-Inspector of Police, Hutti submitted a charge-sheet against the seven respondents complaining that they formed themselves into an unlawful assembly with the common object of beating the complaint was sitting on the

Daivada katta of the village, they beat him and caused him minor injuries. The charge-sheet was for offences punishable under Ss. 147 and 323 of the Indian Penal Code. The Magistrate treated this case as a warrant case and after perusing the documents referred to under S. 173 and hearing the Police Prosecutor and the Advocate for the accused passed an order of discharge under S. 251-A(2) of the Code of Criminal Procedure. In passing this Order, he assigned a number of reasons for holding that the 'records of the police enquiry are not sufficient to frame a charge against these accused'. At the end, he observed that the charge against the accused was 'groundless' and passed the impugned order. When the State approached the learned Sessions Judge the latter was of the view that the case was at a preliminary stage when the records could not be said to disclose legal evidence and that the Magistrate had gone far beyond the limitations of S. 251-A(2) of the Code in passing the order of discharge. In support of his order the learned Sessions Judge has relied upon the decision in *Mahadevan v. Laxminarayan*, (S) AIR 1957 Mys 40 and *Abbas Beary v. State of Mysore*, 1964 Mad LJ (Cr.) 573: (AIR 1965 Mys 35).

(3) Section 251-A was introduced by Act XXVI of 1955 in order to ensure speedy disposal of warrant cases instituted on Police report without in any way of prejudicing the accused. Sub-section (1) of that section enjoins upon the Magistrate to satisfy himself that the documents referred to in S. 173 of the Code have been furnished to the accused and if he finds that the accused has not been furnished with any such document or all of them, it is obligatory on him to see that the same are furnished to the accused. Then comes sub-section (2), the scope of which requires examination to this case.

'251-A(2). If, upon consideration of all the documents referred to in S. 173 and making 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 to be groundless, then he shall discharge the accused.

(4) The question that arises for consideration in this case is whether it is open to the Magistrate to consider the pros and Constitution Act of the statements

recorded by the Police during the course of the investigation, the probability or improbability of the statements or the circumstances disclosed by any of the witnesses, the reliable or otherwise of the prosecution case as a whole. In the instant case, after considering the police statements and the first information, the Magistrate has observed that the motive set up by the complainant was a myth. He has further observed that it was improbable that the assault could have taken place in the manner alleged by the complainant. He has further observed that it was improbable that the assault could have taken place in the manner alleged by the complainant. He has disbelieved the medical report on the ground that he was unable to understand how the injury in question can be caused by a chappal. This doubt of the Magistrate could only have been explained by the complainant if he examined in Court, thereafter, the Magistrate has considered the complainant's story to be improbable on the ground that there would have been swelling had he been beaten by accused Nos. 2 to 5. All these are inference for which there is no basis.

The evidence of the prosecution, if adduced before the Court, may make it clear whether there could or could not have been swelling by the assault on the complainant. The learned Magistrate has disbelieved the statements of two eye-witnesses Lingappa and Hampanna on the ground that they did not rescue the complainant immediately and that it was not quire probable that they could have immediately arrived on the spot. He has also observed that there was no evidence to show that accused Nos. 1 to 7 were on the katta with the common object of assaulting the complainant. This survey of the reasons which the Magistrate has assigned in support of his order of discharge unmistakably discloses that the statements recorded by the Police during the course of the investigation have all been treated as legal evidence and the tests normally applied to legal evidence have been adopted in considering the acceptability or otherwise of the statements recorded by the Police during the course of the investigation. All that the Magistrate has to do at that stage is to see whether there is a reasonable basis or foundation for framing a charge. In other words, after complying with the requirements of S. 251-A(2) he has to think for himself as to whether the statements and the circumstances, if accepted, make out a prima facie case for which a charge could be framed against the accused and then proceed with the

trial for that offence.

As has been observed by this Court in *Manjoor Khan v. State of Mysore*, AIR 1962 Mys 106 the only question which he has to decide is whether the material considered in the light of the arguments can lead to the view that the charge against the accused is groundless i.e., the material furnished by the records is such that Court reasonable basis or foundation, whatever can be found to support the accusation made against the accused. It is not for the Magistrate at this stage to consider whether the material, when tested by consideration, would or would not be capable of acceptance for founding a conviction it is not for him to make presumption either on the basis of omissions or ambiguous statements which are capable of explanation. Considerations which might become available to him at the conclusion of the trial cannot be availed of at this stage.

In this connection, reference might be made to the decision of the Supreme Court in *Bipat Gope v. State of Bihar*, : AIR 1962 SC1195 where their Lordships had to consider testator scope of S. 207-A(6) of the Code.

'Whether the Magistrate holding a committal enquiry can discharge an accused 'if he is of opinion that such documents and evidence disclose no grounds for committing the accused person for trial'. Section 209(1) which deals with a committal enquiry in a proceeding instituted otherwise than on a police report empowers the Magistrate to pass an order of discharge 'if he finds that there are not sufficient grounds for committing the accused person for trial'. Reference may also be made to S.254 of the Code which provides for the framing of a charge during the trial of a case 'instituted otherwise than on a police report'. It requires the Magistrate to frame a charge when he is of opinion that there is ground for presuming that the accused has committed an offence.....'

So under this section, the Magistrate has to frame a charge if on the evidence before him, he can reasonably conclude that there is basis for inferring that the accused has committed an offence. Obviously there is greater latitude for formation of his opinion to frame a charge. It will thus be noted that the Legislature has employed in the Sections viz., Sections 207-A, 209, 251-A(2) and 254, different phraseology indicative against the accused. There could be hardly any

doubt that the word 'groundless' is stronger than the corresponding expressions used in any of the other three sections of the Code. So unless the records before him disclose no basis or foundation for framing a charge, he cannot discharge.

In dealing with the scope of S. 207-A(6) of the Code, their Lordships laid down in Bipat Gope's case, : AIR 1962 SC1195 referred to above that whatever may be the meaning of the two expressions employed in Ss. 207-A(6) and 209, neither of them invests the Magistrate with jurisdiction to investigate the case as if the sections case was before him. In the case before their Lordships. The Magistrate had not stopped to find out whether the evidence, if believed, would establish, at least a prima facie case. In their Lordships' words, he

'.....went on further to disbelieve that evidence by an elaborate and painstaking process of examination, in aid of which he brought to bear his own appraisal of inconsistencies, improbabilities etc. In short, he tried the whole case from one end to the other and established his point, as has been said already, in a fairly elaborate order.'

Such procedure as was followed by the Magistrate in that case has also been followed in the instant case. The Magistrate, by an elaborate order, has disbelieved the complainant and the eye-witnesses on the ground of omissions, ambiguities and probabilities alleged, perhaps at the time of arguments for the accused. Since the law requires the charge to be framed before according any evidence, he has to accept the statements recorded by the police at their face value and consider whether they disclose the commission of an offence by the accused. The value of omissions, ambiguities and probabilities often need explanation for their acceptance or rejection and such explanation is expected to be furnished by the evidence to be recorded after the charge is framed. The Magistrate has even disbelieved the material certificate.

In my opinion S. 251-A(2) does not warrant such an elaborate examination of the statements recorded during the course of investigation. His jurisdiction does not extend to the weighing of the Police statements and other records as if he was scrutinising the evidence recorded at the trial; he has merely to consider whether the material as a whole produced before him, discloses an offence; if it does, he

has to frame a charge and proceed with the trial. He can pass an order of discharge only when the material discloses no basis or foundation whatever for framing a charge.

(5) For the reasons aforesaid, I accept the reference made by the Sessions Judge, set aside the order of discharge passed by the Magistrate and remit the proceedings back to him for disposal according to law.

(7) Reference accepted.

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