In Re: Hanmappa and ors.

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Court : Karnataka

Decided On : Feb-04-1959

Reported in : 1960CriLJ962

Judge : M. Sadasivayya and; A. Narayana Pai, JJ.

Appellant : In Re: Hanmappa and ors.

Judgement :

A. Narayana Pai, J.

1. All these appeals arise out of Sessions Case No. 3/8 of 1956 on the file of the court of Sessions, Raichur. There are eight accused in the case and Appeals Nos. 73 to 80 are appeals presented by them through Advocate and Appeals Nos. 90 to 93 are appeals presented through Jail by accused 1 to 4 respectively.

2. In the village of Humbhavi of Lingasugur Taluk, Raichur District, between the hours of 8 and 9 in the morning of the 3rd December 1955, a quarrel arose over the grazing of a cow which developed into a serious fight with' sticks and stones. At this fight one Eswarappa received grievous injuries. He died the following evening on the way to the hospital.

3. In respect of this incident, eleven persons, including the present eight appellants, were charge-sheeted by the Police before the Munsiff-Magistrate of Lingasugur. The original charge sheet was for offences Under Sections 324 and

148 of the Indian Penal Code, which, with the permission of the Magistrate was subsequently altered into one for offences Under Sections 302 and 148 of the Indian Penal Code. The Magistrate discharged three persons and committed the eight appellants before us to the Court of Session, Raichur, to stand their trial for the murder of the aforesaid Eswarappa. The learned Magistrate framed a charge against case accused in identical terms as follows:

That you ... on or about the 3rd day of December 1955, at the house of the Police Patil situated at Hombhavi village did commit murder By intentionally causing the death of the deceased Eshwarappa and that you have thereby committed an offence punishable Under Section 302 of the Indian Penal Code and within the cognisance of the court of session.

The Public Prosecutor at the Court of Session moved the learned Judge to frame a further charge Under Section 148 of the Indian Penal Code also. After hearing both the Public Prosecutor as well as the counsel for the accused, the learned Sessions Judge took the view that there was sufficient material to indicate that the accused must have been acting in concert and that they had inflicted some injuries on the prosecution witnesses as well. Having regard apparently to the nature of the weapons used the learned Judge, thought that only the first four accused should be charged Under Section 148 and the remaining four Under Section 147 of the Penal Code. He passed an order accordingly on 28-6-1,956. However, while actually framing the charges Sections 302 and 148 are cited in the charges against all the accused, with the addition of Section 324 in the case of the first four accused and , Section 323 in the case of the rest. The wording of the charges is identical except that in the case of the first four accused the use of sticks is mentioned whereas no. weapon of attack has been mentioned in the case of accused 5 to 8. The wording common to all is as follows:

That you, on or about the day of 3rd of December 1955 in the morning in the house of Police Patil Pampangouda, situated at Humfolhavi village, with the common object along with the accused . present did commit murder by intentionally causing death of the deceased Eshwarappa and inflicted injuries on the prosecution witnesses....

After trial, the learned Judge found the first four accused guilty of offences Under Sections 304 Part two and 148 of the Penal Code and sentenced each of them to undergo rigorous imprisonment for 5 years and 2 years respectively, both the sentences to run concurrently. He found the 2nd and the 3rd accused guilty of the offence Under Section 324 of the Code, but, apparently by oversight omitted to impose any sentence in respect of the offence Under Section 324 of the Penal Code. He found the remaining four accused Nos. 5 to 8 guilty of only one offence, viz, that Under Section 147 of the Indian, Penal Code and has sentenced each of them to undergo rigorous imprisonment for a period of three months.

4. Before dealing with the merits of the appeals, it would be convenient to dispose of one technical point raised by the learned Counsel for the appellants. According to him, the accused having been charge-sheeted for offences Under Sections 302 and 148 of the Indian Penal Code and the committing Magistrate having committed them after framing a charge under the former Section alone, it must be held that he has impliedly discharged the accused in respect of the offence Under Section 148. He relies upon a judgment of his Lordship Somnath Iyer J. in Criminal Revn Petns. Nos. 215 and 270 of 1958. We do not think that tile proposition made by the learned Counsel can be accepted or that the judgment relied up on by him supports his contention. In the case decided by our learned brother Somnath Iyer J. the facts were that the accused having been charge-sheeted Under Sections 342, 379 and 395 of the Penal Code the Magistrate expressly discharged the accused in respect of the offences under the first two Sections and framing a charge Under Section 380 of the Code instead of Under Section 395 cited in the charge sheet he proceeded to try the accused before himself.

The Sessions Judge upon revision by the prosecution having held that the accused had been improperly discharged in regard to the offence Under Section 395 of the Code, directed that the accused be committed to the Court of Session for trial in respect of that offence. It was contended before his Lordship that the Sessions Judge had no jurisdiction to make that order Under Section 437 of the Code of Criminal Procedure, because there was no order of discharge at all by the Magistrate, much less, therefore, an improper discharge within the meaning of that Section. His Lordship after a consideration of the several decisions of the various

High Courts, held that in the circumstances of the case the order of the Magistrate amounted to an implied discharge of the accused in respect of an offence Under Section 395.

On a reading of the1 discussion contained in his Lordship's judgment, including the extracts from the several rulings relied upon by his Lordship it is clear that no rule of law has been formulated to the effect that wherever a Magistrate frames charges in respect of some only of the offences mentioned in a charge-sheet and refrains from framing charges in respect of the vest of them his order necessarily amounts to a discharge in respect of the latter offences. It is really a matter of interpreting the order of the Magistrate and seeing whether his action in framing a charge in respect of a particular offence necessarily implies a discharge in respect of certain other offences either included in it or connected with it.

Obviously such an inference may be possible when it can be shown that the Magistrate has applied his mind to all facts of the case before deciding to frame charges only in respect of some offences and not in respect of the others. When there is no such conscious application of the mind supporting an inference that he had decided not to frame charges in respect of some offences, an implied discharge of the type contended by the learned Counsel for the appellants cannot be postulated. At the close of his judgment his Lordship observes that it is clear from the discussion contained in the judgment of the learned Magistrate that he did adjudicate on the question as to whether there were' sufficient grounds for committing the accused to the Court of Session for trial for an offence of dacoity and on that basis held that his order refusing to frame a charge Under Section 395 clearly amounted to an order of discharge. In this case there has admittedly been no such application of the mind by the Munsiff-Magistrate of Lingasugur.

We may further observe that whereas there may be stronger grounds for inferring such an implied discharge in cases where a Magistrate declining to commit an accused to Court of Session proceeds to try him for a minor offence before himself or sends him to another Magistrate for trial in respect of such a smaller offence, there will be hardly any basis for such an inference where he actually commits the agonized for trial before the court of Session, which, Under Section 226 of the

Code of Criminal Procedure, has ample jurisdiction to frame additional charges or alter the charges already framed by tile Committing Magistrate. Indeed to accept the theory of implied discharge of the type propounded by the learned Counsel for the appellants in such cases would mean that the jurisdiction expressly conferred by the statute on a superior court can be Impliedly taken away by a mistake or omission on the part of an inferior court which cannot be correct.

Further this point was never raised on behalf of the accused when the learned Sessions Judge passed his order regarding the charges on 28-6-1953 after hearing the counsel, for the accused, nor has it been raised even in the grounds of appeal before us. It is not suggested either that the accused has been misled or any failure of justice has in fact been occasioned. It is not, therefore, open to the appellants to raise this point, nor can we on the ground alone interfere with_ the order of the. lower court.

5. Six eye-witnesses P.Ws. 4 to 9. have spoken to the several details of the incident.

(The rest of the judgment is not material for rile purpose of the Report.)