

V. Dharma Reddy Vs. the State

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Court : Andhra Pradesh

Decided On : Dec-22-1970

Reported in : 1972CriLJ436

Judge : Sharfuddin Ahmed, J.

Appellant : V. Dharma Reddy

Respondent : The State

Judgement :

ORDER

Sharfuddin Ahmed, J.

1. The main ground on which the order of the learned Sessions Judge. Nizamabad, dated 27-7-1970 made in Criminal Revision Petition No. 9 of 1970 is challenged, is that the learned Sessions Judge was not competent to make an order under Section 436, Criminal Procedure Code without reference to the High Court as the order of discharge by the Magistrate concerned was made under Section 251-A of the Criminal Procedure Code.

2. The facts leading up to this Criminal Revision Case may briefly be stated : A prosecution was laid in C, C. No. 185 of 1969 on the file of the Judicial-cum-First Class Magistrate. Kamareddy, against the petitioner and one M. A. Khaliq. by the Police Kamareddy, alleging that M. A. Khaliq. was the Secretary of the Co-

operative Marketing Society, while the petitioner. V. Dharma Reddy, was the Accountant of the said Society and they worked as such from 1-10-1965 to 31-10-1968 and 1-7-67 to 26-12-68 respectively and that, on 6-9-1967 and 8-9-1967 the Secretary received an amount of Rs. 2,500/- and Rs. 1,500/- respectively towards the sale-proceeds of the paddy-mixture of the Society, but only part of the amount was entered in the account books of the Society and a sum of Rs, 1,796-00 was misappropriated by the Secretary and the Accountant. Similar was the allegation in respect of certain other purchases and sales. The charge-sheet was laid under Section 409 of the Indian Penal Code. Both the accused pleaded 'not guilty'. The learned First Class Magistrate. Kamareddy who tried the case on a consideration of the material on record held that no offence was made out against any of the accused and, in that view, passed an order discharging the accused under Section 251-A Clause (21) of the Criminal Procedure Code. Aggrieved by this order, the State went in revision to the Sessions Judge, Nizamabad, in Criminal Revision Petition No. 9 of 1970. The learned Sessions Judge, referring to the audit-report and the statement of the Deputy Registrar, Co-operative Societies, etc, held that the 2nd respondent as an Accountant had initialled all the entries, and when the entries were initialled by both, there was a prima facie case against both of them. In that view, he allowed the revision petition setting aside the order of discharge and made over the case to the Munsiff Magistrate. Nizamabad for further enquiry. This Criminal Revision Case is filed against the said order.

3. The learned Counsel for the petitioner, Sri B. P. Jeevan Reddy. contended that there was no prima facie case so far as the petitioner (the accountant) was concerned and, therefore, the learned Sessions Judge was not justified in setting aside the order of discharge made by the Magistrate. The second, ground urged by him is, that as the order of discharge was made under Section 251-A of the Criminal Procedure Code, the Sessions Judge was not competent to pass an order under Section 436, Criminal P. C. without reference to the High Court,

4. So far as the first point is concerned, the learned Sessions Judge, with reference to the audit report and the statement of the Deputy Registrar, has come to the conclusion that the petitioner, as also the Secretary, had initialled all the entries in respect of which the allegations of misappropriation have been made.

He concluded therefrom that when the entries were made by both there is a prima facie case against both of them, adding further that if, however, after trial the Court came to the conclusion that both are liable or only one of them is liable, it would be in a position to pass appropriate orders against both or any one of them. The learned Counsel pointed out that there is no material on record to warrant the conclusion that the petitioner and the Secretary had initialled all the entries. But as the entire record is not before this Court, it is not possible to decide whether the conclusion reached by the learned Sessions Judge is correct, or not. Obviously, the conclusion is based on the audit report and the statement of the Deputy Registrar and there is no reason to assume that the learned Sessions Judge has misread the report and the statement of the Deputy Registrar. This is a matter which can only be gone into on a perusal of the entire material which, unfortunately, is not before this Court. I, therefore, refrain from commenting on this aspect and proceed on the footing that the observation of the learned Sessions Judge is based on the material placed before him. In that view, it is difficult to hold that there was no material to sustain the order of the learned Sessions Judge for making the impugned order.

5. So far as the next contention is concerned, the argument proceeds on the ground that whereas under Section 251-A the trial commences from the very beginning i. e. for the date of appearance of the accused, the position is not the same under Section 252. The emphasis is on the words 'at the commencement of the trial' found in Section 251-A (1). It is mentioned therein that:

When, in any case instituted on a Police report, the accused appears or is brought before a Magistrate at the commencement of the trial, such magistrate shall satisfy himself...

It is contended therefrom that as the trial commences from the date of appearance of the accused under Section 251-A an order of discharge made under this Section will not come within the scope of Section 436, Criminal P. C. Reliance is placed for this proposition on a decision of this Court in *Govindaswamy v. State* : AIR 1960 AP391 . In the said case, the petitioner was an accused in C. C No. 264 of 1958 on the file of the Additional District Munsif-Magistrate, Tirupati for offences

punishable under Secs. 332 and 355. I. P. C. and when the Assistant Public Prosecutor applied to the Magistrate to frame a charge under Section 322, I. P. C. the Magistrate dismissed the application. Thereupon, a revision was filed before the Sessions Judge under Secs. 435 and 436 of the Criminal Procedure Code. The learned Sessions Judge, on a consideration of the facts of the case, remanded the matter for further enquiry and transferred the case to the principal District Munsif-cum-First Class Magistrate. Tirupati.

Aggrieved by the said order, a revision was filed and it was contended that the order was untenable and the further enquiry directed by the Sessions Judge under Section 436 was incompetent. Thereupon the learned Judge observed as under:...There appears no reason why effect should not be given to the plain meaning of the expression 'at the commencement of the trial' used in Sub-section (1) of Section 251-A. Therefore, the contention on behalf of the petitioner that as the trial has already commenced, there is no scope for an enquiry and that a Sessions Judge has no power to interfere in cases of discharge under Section 251-A(2) is well founded. If a Sessions Judge acting under Section 435 finds in such cases that a trial should be conducted on charges in respect of which there was a discharge, the only course available to him is to report the matter under Section 438 for the orders of the High Court. It follows that the order in question of the Sessions Judge has to be set aside.

No doubt, the case cited above is applicable to the facts of this case, as even here the order of discharge was passed under Section 251-A, the case having been filed on a police report, but, with respect. I am not inclined to agree with the conclusion of the learned Judge. Under Section 436 of the Criminal Procedure Code, the High Court or the Sessions Judge have been empowered to 'direct the District Magistrate by himself or by any of the Magistrate subordinate to him to make...further enquiry into any complaint which has been dismissed under Section 203 or Sub-section (3) of Section 204, or into the case of any person accused of an offence who has been discharged.' This power has to be exercised on examining any record which has been summoned under Section 435 of the Criminal Procedure Code and thus. Section 435 is the enabling Section which empowers the High Court or the Sessions Judge to call for the records of the

inferior Courts. This power, undoubtedly, applies to cases filed on a police report, as also private complaints. It is not confined only to cases filed on the basis of complaints alone. Section 436, however, empowers further inquiry into any complaint which has been dismissed under Section 203 or Sub-section (3) of Section 204 and further, into the case of any person accused of an offence who has been discharged. Undoubtedly, the present case falls under the last limb of this section, namely, the 'case of any person accused of an offence who has been discharged.'

It is contended that if it had been a case of discharge under Section 253, it would be covered by this provision but a? this is a case of discharge under Section 251-A this provision is not attracted, mainly on the ground that Section 251-A contemplates the commencement of trial from the beginning whereas there is no such provision under Section 252. No doubt as noted above the words at the commencement of the trial' are wanting in Section 252 but it may be noted that under Section 251 the procedure for the trial of warrant cases by Magistrates is laid down. Section 251 reads as follows:

In the trial of warrant cases by Magistrate, the Magistrate shall-

(a) in any case instituted on a police report, follow the procedure specified in Section 251-A and

(b) in any other case, follow the procedure specified in the other provisions of this Chapter.

So that even if the procedure specified in section 252 is followed, it is a trial of a warrant case by a Magistrate, as laid down in section 251. It does not lose the character of a trial, even though the words 'the commencement of the trial' are found wanting in that section. It is difficult to hold that for an order of discharge under Section 251-A a retrial has to be ordered, while for an order of discharge under Section 253 a mere enquiry is contemplated. It would have the effect of cutting down the powers vested in the Sessions Judge under Section 436. Criminal Procedure Code.

I find that the Gujarat High Court in Kanbi Becharlala v. State : AIR1962 Guj316 has come to a similar conclusion. It has been observed therein that the expression 'at the commencement of a trial' used in Section 251-A does not cut down the scope of section 436 which allows the Sessions Judge to direct further inquiry into the case of a person accused of an offence who is discharged and a Sessions Judge is competent under Section 436 to direct further inquiry in such a case. The view taken by this Court in Govindaswamy v. State (Circle Inspector of Police Madanapalli) : AIR 1960 AP391 was dissented from. I find myself in agreement with the view taken by the learned Judge in the decision cited above. Accordingly, I find no merit in this Criminal Revision. It is, accordingly, dismissed.

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