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Court : Allahabad

Decided On : Oct-14-1965

Reported in : AIR1966All192; 1966CriLJ386

Judge : J.N. Takru, ;D.S. Mathur and ;D.P. Uniyal, JJ.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 161, 164, 164(1) and 173

Appeal No. : Criminal Appeal No. 2748 of 1964

Appellant : Raja Ram

Respondent : State

Advocate for Def. : Deputy Govt. Adv. and ;B.N. Katju, Adv.

Advocate for Pet/Ap. : Lalji Prasad and ;C.S. Saran, Advs.

Judgement :

Takru, J.

1. The following question has come up before this Full Bench on a reference by Verma and Gupta, JJ.

'Whether a confession recorded by a Magistrate under Section 164 of the Code of Criminal Procedure after the police had completed its investigation and submitted

a charge-sheet, but before the Magisterial enquiry has commenced, is inadmissible in evidence.'

2. The reference was necessitated as in the view of those learned Judges the decision in Ram Singh v. State, 1958 All LJ 660: (AIR 1959 All 518), and the cases on which it was based, required reconsideration.

3. The facts giving rise to this reference are not in dispute, and, in so far as they are material for our purposes, are as follows:

4. On the 8th of April 1964, the police submitted a charge-sheet against the appellant under Section 302 I. P. C. treating him asan absconcler. The appellant was subsequently arrested at Malda in West Bengal on the 3rd of May 1964, and his confession was recorded by a First Class Magistrate there on the 5th of May 1964. The enquiry before the committing Court was registered on the 25th of May 1964, which, for the purposes of this case, I shall assume as the date of the commencement of the enquiry. It appears that the confession was received in evidence and the appellant's conviction was, to a large extent, based upon it. Accordingly the learned counsel for the appellant, relying upon the decision in 1958 All LJ 660: (AIR 1959 All 518), contended before the Division Bench that, as the said confession was recorded after the investigation of the case was over and the police had submitted a charge-sheet, it was inadmissible in evidence. That decision no doubt supports the aforesaid contention. We have, therefore, been called upon to decide whether the aforesaid decision can be held to lay down good law. I shall begin my discussion with an examination of the relevant provision of law, bearing upon this matter, namely Section 164, Cr. P. C. That section, in so far as it is material for the present enquiry, reads thus:--

'164 (1) ..... any Magistrateof the first class..... may, if he is nota police officer, record any statement or confession made to him in the course of an investigation under this Chapter ..... or at anytime afterwards before the commencement of the inquiry or trial.'

5. A bare reading of the aforesaid subsection shows that it invests every Magistrate of the first class with the power to record any confession made to him

in the course of an investigation under that Chapter or at any time afterwards but before the commencement of the inquiry or trial. The words 'at any time afterwards clearly show that if the confession was not made in the course of investigation then it can be made any time afterwards but before the commencement of the inquiry or trial. Thus, according to this sub-section the latest point of time upto which a confession can be recorded is the 'commencement of the inquiry' or 'the trial' as the case may be. To hold that this power comes to an end as soon as the investigation is completed and a charge-sheet submitted is to make the expression 'or at any time afterwards before the commencement of the inquiry or trial' otiose. It is a well-established rule of construction, that every word in a Statute must be given its ordinary meaning, unless, the doing so, would result in some anomaly, repugnancy, or conflict with the other provisions, or the avowed object, of that Statute. As the interpretation put by me on this sub-section does not have any of the aforesaid effects, I am not prepared to put a construction on it which would have the effect of rendering an entire (sic) used therein as superfluous and meaningless.

6. I shall now proceed to examine the authorities bearing upon this question. The earliest case is that of State v. Ram Autar Chaudhry, AIR 1955 All 138. In this case theconfession was recorded after the preliminary inquiry against the accused had commenced, and it was in this context that the Bench consisting of Raghubar Dayal and James, JJ. held that:

'We are therefore of opinion that a Magistrate could not have recorded the confession of Budhoo purporting to exercise the powers conferred on him under Section 164 Cr. P. G. and that a confession so recorded by him could not be taken in evidence.'

7. Thus to the extent to which it goes, this decision supports the view which I have myself expressed above.

8. The next case is that of Bachchan Lal v. State, AIR 1957 All 184. In this case also the confession was recorded during the preliminary enquiry, and, in fact, after the Committing Magistrate had recorded the statements of certain witnesses. Purporting to rely upon their earlier decision in AIR 1955 All 138, Raghubar Dayal

and James, JJ. held that:

'.....this confession cannot betaken in evidence as a Magistrate can record a confession under Section 164 Criminal Procedure Code during the investigation of the crime by the police and not subsequent to the closing of the investigation and submission of the charge-sheet.'

9. it may be mentioned, however, that in the case of AIR 1955 All 138, there is no observation to the effect that a Magistrate can record a confession under Section 164 only during the investigation of a crime by the police and not subsequent to the closing of the investigation and submission of the charge-sheet, and the said observation must, therefore, be held to have been made for the first time in this case. I have mentioned this fact only in the interest of accuracy, and not because I attach any importance to it. But what I do find of considerable significance in both these decisions, is that in neither of them, is there any reference to much less discussion of the expression 'or at any time afterwards before the commencement of the inquiry or trial.' With all respects to the learned Judges who decided it, I am of the opinion that the case of AIR 1957 All 184, in so far as it purports to lay down that a confession cannot be recorded by a Magistrate 'subsequent to the closing of the investigation and submission of the charge-sheet' cannot be said to have laid down good law.

10. The latest case is that of 1958 All LJ 660: (AIR 1959 All 518). In this case the charge-sheet was submitted on the 26th August 1956, and the confession was recorded on the 23rd October 1956. It does not appear from the judgment as to whether the preliminary inquiry in that case had commenced by the 23rd October 1956 or not? The Bench, consisting of Gurtu and Mulla, JJ. relying upon the decision in AIR 1955 All 138, held that:

'It is, therefore, clear that it was recorded after the charge-sheet had been submitted while it is open to an accused person to confess at any stage of the inquiry or trial but a record of his confession under Section 164 Cr. P. C. cannotbe made after a charge-sheet has been submitted. If such a record has been made it cannot be taken in evidence as a confession under Section 164 Cr. P. C. can be recorded only during the investigation of a crime and not subsequent to the closing

of the investigation and the submission of the charge-sheet.'

11. in this case also the important meaning of the expression 'or at any time afterwards before the commencement or the inquiry or trial' in Section 164 (1) Cr. P. C. was omitted from consideration, and that being so, I do not think that there is anything in this decision either which would justify my departing from the construction which, in my view, should be placed on Section 164 (1), Cr. P. C. I am, therefore, constrained, with the greatest respect, to hold that Ram Singh, 1958 All LJ 660: (AIR 1959 All 518), also, cannot be held to have laid down the correct law in this regard.

12. For the reasons stated above, I would answer the question referred to us in the negative.

D.S. Mathur, J.

13. I agree but shall like to give additional reasons for not regarding the words 'or at any time afterwards before the commencement of the inquiry or trial' used in Section 164, Cr. P. C. as surplusage.

14. it is one of the rules of interpretation of statutes not to brush aside words in a statute as being inapposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute. (See Aswini Kumar Ghose v. Arabinda Bose, AIR 1952 SC 369). The other rule of interpretation is if the language of an Article is plain and unambiguous and admits of only one meaning, effect must be given to it. (See Thakur Amar Singhji v. State of Rajasthan, (S) AIR 1955 SC 504 and The State of Punjab v. Ajaib Singh, AIR 1953 SC 10).

15. A Magistrate can take cognizance of an offence under Section 190 (1) Cr. P. C. upon receiving a complaint of facts which constitute such offence, or upon a report in writing of such facts made by any polices-officer, or upon information received from any person other than a police-officer, or upon his own knowledge or suspicion, that such offence has been committed. In cases taken cognizance of on a complaint, and not a police charge-sheet, Magistrates shall not have the

jurisdiction to record a confession under Section 164, Cr. P. C. In case the words reproduced above are regarded to be mere surplusage. Apparently, the legislature had in mind to empower every Magistrate of the First Class to record the, confession of an accused provided that the inquiry or trial had not commenced; and it was after the commencement of the inquiry or trial that only the Magistrate who had taken cognizance of the offence could record the confession during the inquiry or trial, as the case may be. A general provision like Section 164 (1) Cr. P. C. must be given an unrestricted meaning, all the more, when the language is plain and unambiguous and is not capable of more than one interpretation. If the words reproduced above can be regarded as surplusage, it can be said with equal force thatinstead the words 'to the course of an investigation under, this Chapter or under any other for the time being in force or at any time afterwards' used earlier in Section 164 (1) Cr. P. C. be held to be surplusage. When both the counter contentions have the same force, it shall be proper not to regard any part of Section 164 (1) Cr. P. C. as surplusage.

16. Our attention was also drawn to Item III (7a) of Schedule III of the Code of Criminal Procedure, wherein one of the ordinary powers of a Magistrate of the First Class is described as 'power to record statements and confessions during a police investigation, Section 164.' On the basis of Schedule III it was urged that a confession under Section 164 Cr. P. C. could not be recorded after the close of the police investigation, that is, after the submission of the police-charge-sheet. Schedule III summarises the powers of the various categories of Magistrate already detailed in the main Code ana being the precis of the main Code cannot override the provisions thereof. In other words, Section 164 (1) Cr. P. C. must be given the wider meaning and its scope cannot be restricted by the words contained in Schedule III.

17. The fact that Section 164 Cr. P. C. is contained in Chapter XIV of the Code of Criminal Procedure bearing the heading of 'Information of the Police and their Powers to investigate,' and exists between Sections 156 and 173, Cr. P. C.--Section 156 giving power to an officer in charge of a police station to investigate, without me order of a Magistrate, any cognizable offence committed within his jurisdiction, and Section 173 giving the nature of the report to be submitted by a

police officer after the completion of the police investigation--cannot restrict the scope of Section 164 Cr. P. C. It is not unusual for the legislature to make a general provision in a Chapter to apply not only to that Chapter but to others also. Consequently, the Courts of law shall not be justified in not admitting in evidence a confession duly recorded after the completion of the police investigation but before the commencement of the inquiry or trial.

18. The other sections of the Code of Criminal Procedure also suggest that the confession of an accused recorded by a Magistrate in accordance with the provisions of Section 164 Cr. P. C. after the completion of the police investigation but before the commencement of the inquiry or trial, is not inadmissible in evidence, even though no copy of the confession was furnished to the accused, nor could it be furnished, at the stage of Section 173 (4) Cr. P. C. The various provisions governing the inquiry or trial of offences do not restrict the admission in evidence of only such oral evidence as was recorded by the police during the investigation under Section 161 Cr, P. C. and of such documents as are referred to in Section 173, Cr. P. C. In a proceeding instituted on a police report the Magistrate making the inquiry can record the evidence of such persons, if any, as may be produced by the prosecution as witnesses to the actual commission of the offence alleged and of any one or more of the other witnesses for the prosecution whose evidence the Magistrateconsiders necessary in the interest of justice to record (see Section 207-A (4) Cr. P. C.) : during the trial the Magistrate of the Court of Session, as the case may be, has to record all evidence as may be produced in support of the prosecution. (See Sections 244 (1), 251-A (7) and 289 (1) Cr. P. C.). Similarly, in cases started on a complaint by a person other than a police officer the Court records the evidence of the complainant and takes all such evidence as may be produced in support of the prosecution. (See Sections 244 (1), 252 (1) and 289 (1) Cr. P. C.). The words 'evidence as may be produced in support of the prosecution' or 'examination of the witnesses for the prosecution' shall include a confession recorded by a Magistrate under Section 164 Cr. P. C. after the submission of the police charge-sheet, if any, provided that such confession was recorded before the commencement of the inquiry or trial.

19. There is thus no reason why any part of Section 164 (1) Cr. P. C. be omitted on the ground of surplusage while laying down the scope of this section. I, therefore, agree that the question referred to the Full Bench be answered in the negative.

20. UNIYAL, J. : I concur with my brothers Takru and Mathur that the answer to the question referred to the Full Bench must be in the negative.

21. Section 164 of the Code of Criminal Procedure, which is the material section to be construed, consists of two parts: the first deals with the power of a Magistrate of the 1st Class to record a confession made to him in the course of investigation and the second empowers him to record a confession of the accused at any lime after the investigation is concluded but before the inquiry or trial commences.

22. The instant cases falls in the second part of Section 164 because admittedly the confession was recorded by the Magistrate on 5-5-1964 after the police investigation had been completed on 8-4-1964 and a report submitted under Section 173 to the Magistrate empowered to take cognisance of the offence.

23. it may be noted that the offence complained of was one which was exclusively triable by the Court of Session and the question to be considered is whether the Magistrate had power to record the confession after the police investigation had been completed. The answer to this problem is contained in the wording of Section 164 which says: 'A Magistrate may record a confession made to him at any time afterwards before the commencement of the inquiry or trial.'

24. Under the provisions of the Code the inquiry under Chapter XVIII commences when the Magistrate takes cognisance of the offence within the meaning of Section 190 (1). After the police had submitted a report under Section 173 cognisance of the offence could be taken by the Magistrate under clause (b) of Subsection (1) of Section 190. In the circumstances of this case the Magistrate would have taken cognisance of the offence when he applied his mind to the contents of the police report for the purpose of proceeding in the manner indicated in Section 207-A of Chapter XVIII of theCode. (See Narayandas Bhagwandas v. State of West Bengal, AIR 1959 SC 1118).

25. Sub-section (3) of Section 207-A gives an indication as to the point of time when the inquiry may be said to commence.

'That sub-section reads thus: At the commencement of the inquiry the Magistrate shall when the accused appears or is brought before him, satisfy himself that the documents referred to in Section 173 have been furnished to the accused, and if he finds that the accused has not been furnished with such documents or any of them he shall cause the same to be so furnished.'

Sub-section (4) and the subsequent sub-sections provide how the Magistrate should proceed to record evidence produced on behalf of the prosecution and empower the Magistrate to summon such evidence as he may consider necessary, and to call upon the accused if necessary to make a statement in regard to the accusation against him. It would thus appear that the inquiry commences only after the Magistrate is satisfied that the documents referred to in Section 173 have been supplied to the accused and when the Magistrate proceeds to take the evidence in support of the prosecution case.

26. it is common ground that on the date when the confession dated 5-5-1964 was recorded by the Magistrate he had not taken any steps towards summoning the accused for the purpose of proceeding under Section 207-A of the Code and the inquiry under Chapter XVIII had not commenced. Therefore, the confession recorded by the Magistrate was validly recorded in terms of Section 164 of the Code.

27. In AIR 1955 All 138 the confession was recorded after the preliminary inquiry had commenced, while in AIR 1957 All 184 the confession was recorded during the pendency of the inquiry. In both these cases the learned Judges came to the conclusion that the confession could not be taken in evidence as the same had riot been recorded in accordance with the provisions of Section 164 (1). The view taken by the learned Judges was in accord with the provisions of Section 164 and does not touch the question referred to the Full Bench.

28. The facts given in the case of (1958 All LJ 660: (AIR 1959 All 518)), do not clearly show as to whether the confession in that case was recorded before or

after the commencement of the inquiry under Chapter XVIII. The observations made by the learned Judges that a record of the concession of the accused under Section 164 Cr. P. C. cannot be made after a charge-sheet has been submitted and that such a confession cannot be taken in evidence, appear to be unjustified, for the language of Section 164 does not admit of any such limitation on the power of a Magistrate. On the other hand, the expression 'or at any time afterwards before the commencement or the inquiry or trial' in that section clearly empowers the Magistrate to record a confession even after the police has submitted a charge-sheet against the accused provided that the inquiry under Chapter XVIII has not yet commenced. I am of me opinionthat it is not permissible to restrict the scope of Section 164 (1) of the Cr. P. C. by importing limitations on the power of the Magistrate to record a confession only during the course of the investigation.

29. BY THE COURT: In view of the opinions expressed by us in our separate, but concurring judgments, we answer the question referred to us in the negative, Let the papers of this case be returned to the Bench concerned with our answer.

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