

**Nemi Chand Jain Vs. State**

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**Court :** Allahabad

**Decided On :** Sep-20-1976

**Reported in :** 1977CriLJ456

**Judge :** J.P. Chaturvedi, J.

**Appellant :** Nemi Chand Jain

**Respondent :** State

**Judgement :**

ORDER

**J.P. Chaturvedi, J.**

1. These are two petitions one in the nature of a revision being Criminal Revision No. 1344 of 1975 - Nemi Chand Jain v. State of U.P. and the other an application under Section 482 Cr.P.C. being Criminal Misc. Appln. No. 5800 of 1975 - Nemi Chand Jain v. State of U.P. Both are directed against an order of the Chief Judicial Magistrate and Special Magistrate of U.P., Lucknow dated 6th September 1975 rejecting the application of Nemi Chand Jain for his discharge

2. The applicant Nemi Chand Jain is Executive Director of M/s. Ashok Marketing Ltd., who are sole selling agents of chemicals and fertilizers manufactured by Sahu Chemicals and Fertilizers, The allegations in the first information report made by S.W. Shiveshwarkar, Director Generiu, Vigilance, Government of India,

Ministry of Railways (Railway Board), New Delhi, dated 6th October 1969 were that between years 1959 and 1962 at Varanasi, the applicant and other 12 persons entered into a criminal conspiracy and in pursuance of the same dispatched Ammonium Chloride manufactured by M/s. Sahu Chemicals and Feritizers, Sahupuri, Varanasi, to M/s. Dhrang Dhara Chemical Works, Dharangdhara, Surendranagar, Gujarat, describing the same as Ammonium Chloride Fertilizer in order to take advantage of concessional railway freight whereas it did not have the constituents of ammonium chloride to be fertilizer as understood within the meaning of the Feritlizer Control Order 1965, The goods could be used only as a chemical and not as a fertilizer. The Railway administration was thereby deprived of its legitimate freight amounting to Rs. 76,320/-.

3. In the course of investigation one of the accused persons, named J.N. Tandon, became approver and his statement was recorded by the Special Magistrate on 24th September, 1971 under Section 164 Cr.P.C. and later on pardon was tendered to him under the provisions of Section 337 Cr.P.C., 1898.

4. On completing investigation Ved Prakash, Dy. S.P., F.C.B.I., Special Police Establishment submitted a charge-sheet in the court of the Special Magistrate, U.P., Lucknow against 12 persons including the applicant Nemi Chand Jain under Section 420 read with Section 120-B, I.P.C. and Section 106, Indian Railways Act on 29th October, 1971. The Special Magistrate took cognizance on 27th October, 1971 and summoned the accused for the aforesaid offences. The applicant appeared in the court of the Special Magistrate on 21st January, 1972.

5. The applicant Nemi Chand Jain and M/s. Ashok Marketing Ltd. moved an application in the court of the special Magistrate for their discharge on 7th December 1973. This application was disposed of by the learned Magistrate by his order dated 6th September 1975 against which the present applicant has come to this Court. The learned Magistrate rejected the application so far as the present applicant Nemi Chand Jain is concerned holding that the submissions made by him were premature and untenable.

6. It has been contended in this Court on behalf of the petitioner that the allegations made in the charge sheet made out offences under Sections 420 read with Sections 120B I.P.C. and 106 Indian Railways Act which were triable as a warrant case in accordance with the provisions of Section 251-A Cr.P.C. 1898 that the documents supplied to the applicant in accordance with the provisions of Section 173 Cr.P.C. did not make out a prima facie case against him and that he was entitled to be discharged in accordance with the provisions of Sub-section (2) of Section 251-A Cr.P.C. 1898. The provisions of Section 337 Cr.P.C. did not in any way whittle down this right of the petitioner. On behalf of the opposite party, on the other hand, it has been urged that the provisions of Section 251-A did not apply to the case inasmuch as pardon had been tendered to one of the accused, J.N. Tandon, under the provisions of Section 337 Cr.P.C. and the case was liable to be committed to the court of Session under the provisions of Sub-section (2A) of Section 337, Cr.P.C. 1898.

7. We may consider the scope of the provisions of Section 337 Cr.P.C. 1898 at the very outset. It is to be found in Chapter XXIV of the Code of Criminal Procedure 1898. The heading of the Chapter is General provisions as to 'Inquiries and Trials' and as such this provision applies equally to enquiries and trials. Subsection (1) of Section 337 provides as follows:

In the case of any offence triable exclusively by the High Court or Court of Session, or any offence punishable with imprisonment which may extend to seven years, or any offence under any of the following sections of the Indian Penal Code, namely, Sections 161, 165, 165-A, 216-A, 369, 401, 435 and 477-A, the District Magistrate, a presidency Magistrate, a Sub-Divisional Magistrate or any Magistrate of the first class may, at any stage of the investigation or inquiry into or the trial of the offence, with a view to obtaining the evidence of any persons supposed to have been directly or indirectly concerned in or privy to the offence, tender a pardon to such person on condition of his making a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence and to every other person concerned, whether as principal, or abettor, in the commission thereof etc....

This provision empowers certain Magistrates to tender pardon to an accused person at any stage of investigation, inquiry or trial, with a view to obtaining evidence of such person on condition of his making a full and true disclosure of what he knows concerning the offence. Sub-section (1A) provides that the Magistrate tendering pardon under Sub-section (1) is to give reasons for his so doing and enjoins upon him to furnish a copy of the record to the accused. Sub-section (2) further provides that every person accepting a tender under Sub-section (1) is to be examined as a witness in the Court of the Magistrate taking cognizance of the offence and in the subsequent trial, if any.

8. Sub-section (2A) further lays down-

In every case where a person has accepted a tender of pardon and has been examined under Sub-section (2), the Magistrate before whom the proceedings are pending shall, if he is satisfied that there are reasonable grounds for believing that the accused is guilty of an offence, commit him for trial to the Court of Session or High Court as the case may be.

9. The provisions of Sub-sections (2) and (2A) of Section 337 Code of Criminal Procedure, 1898 have to be read together and construed harmoniously, Subsection (2) contemplates of two stages at which the statement of an accomplice has to be recorded. The material words are 'in the Court of the Magistrate taking cognizance of the offence' and 'in the sub-sequent trial, if any'. The first stage at Which the statement of an accomplice must be recorded cannot be at the stage of the trial of the case, it must 'be earlier than trial which can be only before a Sessions Court after commitment under Sub-section (2A). The proceedings before the Magistrate can be only in the nature of an enquiry preceding commitment to the Court of Session. Sub-section (2-A) further enjoins upon the Magistrate to commit the accused to the Court of Session if after the statement of accomplice recorded by him he is of the view that there are reasonable grounds to believe that he is guilty of the offence with which he is charged. In case he is of opinion that there are no reasonable grounds he may not commit and discharge him. Sub-section (2A) in clear and unambiguous terms bars a trial by the Magistrate tendering pardon or by any other Magistrate taking

cognizance. As such the procedure prescribed for trials could not be made applicable to the proceedings before the Magistrate taking cognizance.

10. The above construction of the provisions referred to above finds support in the case law as well.

11. In the case reported in *Jimun Shah v. Emperor* 26 Cri LJ 549 : AIR 1925 Lah 378 the appellant was tried and convicted of an offence under Section 401 I.P.C. The principal witness was Bhura Singh who had been granted pardon under Section 337 Cr.P.C. It was held that the Magistrate had no jurisdiction to try the case. The conviction was quashed and the Magistrate was directed to commit the accused for trial to the Court of Session.

12. In another case reported in *Nga. Kin v. Emperor*, 26 Cri LJ 829 -AIR 1925 Rang 207 it was held that where conditional pardon is granted to an approver under Section 337 of Code of Criminal Procedure in a case under Section 394 I.P.C. and the Magistrate is satisfied that there is a prima facie case against the accused, he is bound under the provisions of Section 337(2-A) to commit the case to the Court of Session for trial and has no jurisdiction to try the case himself.

13. In *Emperor v. Peru*, 26 Cri LJ 1216 : it was observed that what Sub-section (2A) of Section 337 Cr.P.C. means is that whenever an approver is examined, the Magistrate has no jurisdiction to proceed with the trial but must commit the accused persons to the Court of Session.

14. The fourth case is reported in *Faqir Singh v. Emperor* . In that case the appellant was convicted and sentenced by the Special Magistrate under Section 120-B and Section 471 I.P.C. It was contended before their Lordships that the Special Magistrate had no jurisdiction to try the case since it came within the provision of Section 337 Cr.P.C. and could only be lawfully tried by the High Court or the Court of Session. Upholding this view their Lordships observed-

One consequence, perhaps the most important is that when a Magistrate has tendered the pardon, the trial must not be by another Magistrate even though he is vested under Section 30 of the Code, to try such an offence, but by the High Court

or Sessions Court.

15. In the present case the applicant is charged with an offence under Section 420 I.P.C, which is punishable with imprisonment extending to seven years. The offence charged is, therefore, one contemplated by Sub-section (1) of Section 337 Cr.P.C. It is also not in dispute that one of the accused, J.N. Tandon, has been tendered pardon by the learned Special Magistrate on condition of full and true disclosure of the whole of the facts or circumstances within his knowledge. The learned Special Magistrate summoned the accomplice, J.N. Tandon, for his statement under the provisions of Sub-section (2) of Section 337 and but for the objection of the applicant in the form of his application dated 7th December 1973 he would have recorded his statement. He purported to act within the provisions of Sub-section (2), The provisions of Sub-section (2A) will, therefore be automatically applicable and he has no option but to commit the case to the court of Session for trial, if a prima facie case is made out. There can be no question of applying the procedure for warrant cases the proceedings before the Special Magistrate, not being a trial.

16. We may now consider the provisions of Section 251-A Cr.P.C. 1898 which is in Chapter XXI of the Code of Criminal Procedure, 1898 providing for the trial of warrant cases by Magistrate. The Chapter begins with Section 251 which provides two different procedures for the trial of warrant cases. In a case instituted on a police report the procedure prescribed in Section 251-A is to be followed while In any other case the procedure specified in the other sections of that Chapter has to be followed. Section 251-A (1) further provides that when, in any case instituted on a police report, the accused appears or is brought before the Magistrate at the commencement of the trial, such a Magistrate shall 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 them to be so furnished. Sub-section (2) further lays down that 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. It is necessary for the application of provisions of Section 251-A, as is clear from the title of the Chapter and the words 'at the commencement of the trial' in Clause (1) that the Magistrate has commenced the proceedings before him as a trial. The provisions of Sub-section (2) empowering the Magistrate trying a warrant case to discharge the accused if on perusal of the paper supplied to the accused under the provisions of Section 173 he is of the view that no case is made out against him, can be availed of only when he is trying the accused. This power cannot be exercised in cases which are triable by the Court of Session exclusively shown as such in Schedule II of the Code or which have to be committed to that Court under any other provision, like Section 337(2A). In such cases the proceedings before the Magistrate are in the nature of an enquiry culminating in commitment to the Court of Session.

17. The matter may be looked at from another point of view. An offence under Section 420 I.P.C. is punishable with imprisonment of either description for a term which may extend to seven years and fine and it is triable by a court of Session or a Magistrate of the First Class. In the present case the Magistrate does not appear to have indicated that he intended to try the case; on the other hand he has given an indication that he intended to make an enquiry into the case and as such he could proceed with the case under the provisions of Section 207-A rather than under Section 251-A. Under the provisions of Section 207-A he had no power to discharge an accused without recording statements of such witnesses as the prosecution may produce under the provisions of Sub-section (4) of Section 207-A, Cr.P.C.

18. The order of the trial court is, therefore, absolutely correct and the applications are liable to be dismissed.

19. Crl. Revision No. 1344 of 1975 and Crl. Misc. Application No. 5800 of 1975 are, therefore, dismissed. Stay orders dated 3-10-1975 and 1-12-1975 are vacated.