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**The State Vs. Pancham and ors.**

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**SooperKanoon Citation** : sooperkanoon.com/498116

**Court** : Madhya Pradesh

**Decided On :** Mar-16-1956

**Reported in** : 1957CriLJ283

**Judge** : Dixit, J.

**Appellant** : The State

**Respondent** : Pancham and ors.

**Judgement** :
ORDER

**Dixit, J.**

1. The facts of this reference by the Additional Sessions Judge of Morena are that one Raghuwar Dayal filed a complaint before the Sub-Divisional Magistrate, Jaore against Harvilas, Pancham and seven others in respect of offences under sections 147, 325, 380 and 506 I. P. C. The learned Magistrate after recording the statement of the complainant under Section 200 Cr. P. C. issued processes for the attendance of the accused persons fixing 16th March 1956 as the date for the production of the complainant's evidence.

In the meantime on 1st March 1955 the police presented a challan against Harvilas and Paucham in respect of an offence under Section 324 I. P. C. on the same facts as those alleged by Raghuwar Dayal in his complaint. Harvilas and

Pancham took the objection that as the Magistrate had already taken cognisance of the offences alleged by the complainant against them, it was not competent for the Magistrate to take cognizance of an offence under Section 324 I. P. C., against them on a police challan based on the same facts.

This contention was accepted by the Sub-Divisional Magistrate and the police challan was 'filed'. The police then applied to the learned Additional Sessions judge, Morena for a revision of the order of the Sub-Divisional Magistrate refusing to take cognizance of the challan against Harvilas and Pancham. The learned Additional Sessions Judge now recommends that the order in question of the Sub-Divisional Magistrate be set aside and he be directed to amalgamate the police challan and the complaint case and try all the seven accused persons jointly.

2. In my opinion this reference, which is supported by the learned Government Advocate, must be accepted. The matter is governed by Section 190 Cr. P. C. which says that a Magistrate may take cognisance of any offence (1) on receiving a complaint of facts which constitute such offence; (b) upon a report in writing of such facts made by any police officer; (c) upon information received from any person other than a police officer, or upon his own knowledge or suspicion that such offence has been committed. The Magistrate is thus competent to initiate proceedings on the basis of the material coming up before him in any of the above manner.

The different clauses of Section 190 under Which cognizance can be taken are alternative and not mutually exclusive. That being so, when a Magistrate has before him a complaint and a police challan about certain offences on same allegations of facts he can take cognizance on both. This view is amply supported by the decisions in Bharat Kishore v. Judhistir Modak AIR 1929 Pat. 473 (FB) (A); U. Po Yone v. Emperor AIR 1933 Rang. 271 (B) and Mukania v. Achalia . In AIR 1929 Pat. 473 (A) a Full Bench of the Patna High Court held that the three clauses of Section 190 under which cognizance can be taken are not mutually exclusive but are merely alternative.

In the Rangoon case the police Presented a challan against three persons; while the complainant had instituted a complaint against these three and three others. It

was held that the Magistrate could take cognisance of the offence alleged by the police and the complainant and that all the six persons could be tried together in view of Section 239 Cr. P. C. In a similar view was expressed following the Patna and Rangoon cases referred to above. There can, therefore, be no doubt that in the present case the Sub-Divisional Magistrate was not right in refusing to take cognizance of the police challan merely because he had already taken cognizance of the offences alleged by the complainant.

As to the further question whether in the circumstances of this case the complaint and the challan should be amalgamated and all the accused persons should be tried jointly, I do not think there would be any impropriety in ordering the amalgamation and joint trial. Section 239 Cr. P. C. permits the joint trial of persons accused of different offences committed in the course of the same transaction. There Would, therefore, appear to be no bar to the joint trial of Harvilas and Pancham for an offence under Section 324 I. P. C. alleged by the police against them and of their trial together with seven other persons named by the complainant on charges under sections 147, 325, 380 and 506, I. P. C. when the facts alleged by the complainant and the police are substantially the same.

3. For the above reasons this reference is accepted and the learned Sub-Divisional Magistrate is directed to take cognizance of the police challan and try all the accused persons in the light of this order.

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