The State Vs. Nanda Singh Jhanda Singh

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Court : Madhya Pradesh

Decided On : Sep-27-1957

Reported in : AIR1958MP54; 1958CriLJ189

Judge : A.H. Khan and ;Samvatsar, JJ.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 190 and 247; Madhya Bharat Excise Act, 1952 - Sections 61

Appeal No. : Criminal Appeal No. 73 of 1956

Appellant : The State

Respondent : Nanda Singh Jhanda Singh

Advocate for Def. : T.N. Saxena, Adv.

Advocate for Pet/Ap. : Mungre, Government Adv.

Disposition : Appeal allowed

Judgement :

A.H. Khan, J.

1. The excise Sub-Inspector, Gohad, filed a report against the accused Nanda Singh under Section 33 of the Madhya Bharat Excise Act (Act No. 14 of 1952) for the possession of illicit liquor. In the course of proceedings, the Excise Sub-

Inspector, who was prosecuting the case absented himself on 10-6-55, and the trial Court in consequence dismissed the proceedings under Section 247 of the Criminal Procedure Code. The State Government has filed this appeal on the ground that the provisions of Section 247 are not applicable to a report filed by the Excise Officer, because by reason of Section 61 of the Excise Act, such a report is deemed to be a Police report filed under Section 190 of the Criminal Procedure code.

2. After hearing the arguments of the learned Government Advocate and Mr. T.N. Saksena, learned counsel for the respondent, I am of the opinion that the Government appeal must be allowed.

3. Section 61 of the Excise Act runs as follows :

'If on an investigation by an Excise Officer empowered under Section 60, Sub-section (1), it appears that there is sufficient evidence to justify the prosecution of the accused, the investigating Officer, unless he proceeds tinder Section 60, Sub-section (3) shall submit a report (which shall for the purpose of Section 190 of the Indian Code of Criminal procedure, be deemed to be a police report) to a magistrate having jurisdiction to inquire into or try the case and empowered to take cognizance of offences on police reports.'

4. There is a clear direction that a report filed by an Excise Officer shall be deemed to be a Police report for the purpose of Section 190 of the Code; Section 190 enacts how and on what basis the Magistrates are to take cognizance of offences. First of all it provides that cognizance of an offence shall be taken on receiving a complaint, and a complaint has been defined in Section 4 (h) of the Criminal Procedure Code as thus :

' 'Complaint' means the allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person whether known or unknown, has committed an offence, but it does not include the report of a police officer.'

5. It is common knowledge that Criminal proceedings are initiated either by a private citizen or the Government. A private individual seeks redress of the wrong done to him, and in some cases he may as well seek redress even though no injury is directly caused to him. But the Government acts on behalf of the society as a whole. And it seems that in this view of the matter, a distinction has been made between a complaint made by an agency other than Government and a report by police (Government) whose paramount duty it is to see that a guilty man is brought to book.

6. Secondly, Section 190 provides that cognizance shall be taken on a report in writing by a police officer.

7. It is unnecessary for our purpose to examine the third alternative manner mentioned in Section 190 (c) Criminal Procedure Code under which cognizance can be taken by a Magistrate. Suffice it to bear in mind that in Section 190 of the Code two words have been used (complaint andpolice-report) and each has a particular significance.

8. If a report by an Excise Officer has been equated with a report by a Police-officer, then the logical and natural sequence is that all the incidents attached to a Police report will also be applicable to a report filed by an Excise Officer.

9. Mr. T.N. Saksena, learned counsel for the respondent, contends that a report of an excise Officer may be treated as a report by a Police Officer, but it is a report only for the purpose of Section 190 Criminal Procedure Code and no more. It is, therefore, urged that for the purpose of Section 247 Cr. P. Code it must be treated as a complaint and not a Police report and that in consequence the Magistrate was justified in acquitting the accused under Section 247 of the Criminal Procedure Code. He relies upon a Calcutta case reported in Radhika Mohan Das v. Hamid Ali AIR 1927 Cal 405 (A), in which it was held that a report of Sub-Inspector of Excise to a Magistrate is a Police report only for the purpose of Section 190 Criminal Procedure Code. The report is not a Police-report for other purposes and that for the purpose of Section 250 of the Criminal Procedure Code, the Excise Officer is a complainant or an informant. No doubt the contention put forward by the learned counsel for the accused finds support in the case he has

cited. But with great diffidence I must join issue. No particular discussion of the point is to be found in the Calcutta case and I do not think it was really meant that a report filed by an Excise Officer would for one purpose be regarded as Police report and for another it will be a complaint. Perhaps the distinction to which I have referred earlier was not considered, namely, that a complaint is by an individual or individuals; but a report is laid before the Court by Government in its official capacity, seeking criminal remedy on behalf of the society as a whole. And once an Excise report is deemed to be a Police report it follows that the report of an Excise Officer should bear all the indicia of a Police report. For if this is not the object of law, why say that the report of an Excise Officer shall be treated as a Police-report. Because without saying it, an Excise Officer could ask a Magistrate to take cognizance of his case either by way of complaint or information under (a) and (c) of Clause 1 of Section 190 Criminal Procedure Code.

10. Last but not the least, on reverting to Section 247 of the Criminal Procedure Code, I find that a Magistrate is competent to act under it and acquit the accused provided the summons is issued on a complaint. In the instant case, there was no complaint, but a report. A case instituted on report does not therefore attract the Provisions of Section 247 of the Criminal Procedure Code.

11. For reasons stated above, the Government appeal is allowed, and setting aside the order of acquittal the case is remitted to the Magistrate concerned with a direction that he should proceed according to law.

Samvatsar, J.

12. I agree with my learned brother.

13. In order to attract the provisions of Section 247 Criminal Procedure Code it is necessary not only that a summons should have been issued but it is further necessary that it should have been issued on a complaint.

14. In the present case the summons was issued to the accused in the first instance but it was on a report of the Excise Officer which for the purpose of Section 190, Criminal Procedure Code is regarded as a police report. The

provisions of Section 247 Criminal Procedure Code could not therefore be invoked to support an order of acquittal.

15. I therefore agree that the appeal beallowed, the order of acquittal be set aside and thecase be remitted to the Magistrate concerned fordisposal according to law.