

The State Vs. Dalu Maya Ram

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SooperKanoon Citation : sooperkanoon.com/503076

Court : Madhya Pradesh

Decided On : Apr-21-1961

Reported in : 1962CriLJ343

Judge : N.M. Golvalker, J.

Appellant : The State

Respondent : Dalu Maya Ram

Judgement :

ORDER

N.M. Golvalker, J.

1. This is a reference under Section 438, Criminal Procedure Code, by the Sessions Judge, Hoshangabad, recommending that the order of the Judge Magistrate, Harda, dated 17.12.1960 in Criminal Case No. 866 of 1960, discharging the accused under Section 207A(6), Criminal Procedure Code, without further deciding to try the accused under Section 354, Indian Penal Code, with which he was already charged, be set aside and he be directed to try the accused to the said charge.

2. Briefly stated the circumstances leading to this reference are these. The accused Dalu was charge-sheeted by the police for having committed the offence punishable under Section 354, Indian Penal Code. The chalan was presented in

the Court of Magistrate 2nd Class, Harda, In due course a charge under Section 354, Indian Penal Code, was framed against the accused and the Magistrate proceeded to try him on that charge. However as the evidence of the prosecutrix disclosed an offence punishable under Section 376, Indian Penal Code, against the accused, the Magistrate referred the case for being entrusted to a Magistrate competent to commit the accused, as the offence was triable by the Court of Sessions.

3. The case was accordingly transferred to the Judge Magistrate, Harda, and he proceeded to hold an inquiry as provided in Chapter XVIII, Criminal Procedure Code. In the course of inquiry some witnesses including the prosecutrix were examined and after examining the accused, the Magistrate came to the conclusion that no offence, rendering the accused liable to be committed to stand his trial for the same before the Court of Sessions, was made out. Accordingly he passed an order under Section 207A (6), Criminal Procedure Code, discharging the accused.

4. The State challenged the correctness of the order of discharge and claimed committal of the accused under Section 376, Indian Penal Code. In the alternative it was prayed that in any case the accused be directed to be tried for the offence under Section 354, Indian Penal Code, for which he was already charged by the Magistrate 2nd Class.

5. The learned Sessions Judge appears to have accepted the revision petition filed by the State. But he has not come to the conclusion that the order of discharge with respect to the offence under Section 376, Indian Penal Code, was in any manner illegal or improper and liable to be set aside. From his order of reference he appears only to be of the opinion that the accused ought to have been tried for the offence under Section 354, Indian Penal Code, for which charge had already been framed and the said charge continued to subsist. He has accordingly made the recommendation as stated in the beginning.

6. Shri A.D. Deoras, the learned Counsel for the accused, appeared to oppose the reference and contended that the charge framed under Section 354, Indian Penal Code, stood wiped out for purposes of the inquiry under Chapter XVIII, Criminal Procedure Code, and the Judge Magistrate could not as such proceed to try the

accused for that offence, He conceded that if the Judge Magistrate, on the basis of the evidence made available to him during inquiry had come to his own independent conclusion that the accused was liable to be tried for the offence under Section 354 or for the matter of that for any other offence disclosed in that evidence, he could certainly proceed to do so. But in that case he would have been required to so order. In the absence of such an order it will have to be held that it had not appeared to the Magistrate that the accused was liable to be tried before himself or before some other Magistrate. In no case, it was contended that the Judge Magistrate could adopt the charge under Section 354, Indian Penal Code, framed by the Magistrate 2nd Class, Harda, and proceed to try the accused.

7. Shri A.R. Choubey, learned Advocate appearing for the State, referred to Sub-section (2) of Section 346, Criminal Procedure Code, and contended that since the case will be deemed to have been submitted by the Magistrate 2nd Class to the Judge Magistrate under Section 346 as required by Sub-section (2) of Section 347, Criminal Procedure Code, and as the Magistrate to whom the case is submitted has either to try the accused or to commit him for trial, he could not discharge the accused. He will have to try the accused on the charge framed by the Magistrate submitting the case to him.

8. In the view I take the contentions raised before me on behalf of the accused are well founded and have to be accepted. The reasons are very simple and plain. The proceedings relating to the inquiry under Chapter XVIII, Criminal Procedure Code, contemplate that the Magistrate holding it has to determine for himself if the evidence, produced before him by the prosecution alone under Section 207A, Criminal Procedure Code, both by the prosecution and the defence as provided under Section 208 of that Code, discloses any offence against the accused rendering him liable to stand his trial for the same before the Court of Sessions. This he has to determine for the first time on his own and therein he is not to be guided Or controlled by any other agency. So if he is required to proceed with already a charged accused, the entire inquiry will have to be necessarily kept confined to determine if any higher or graver charge is disclosed or not. The accused summoned to participate in the said inquiry will have to accept the charge already framed against him and his endeavour will only be to show that no charge

higher and graver than that could be framed against him.

The inquiry contemplated under Chapter XVIII of the Criminal Procedure Code is only of one kind where the accused is given an opportunity to show that no offence whatsoever could possibly be levelled against him. In any case he is entitled to show that no offence for which he could be committed to stand his trial before the Sessions Court was made out against him. The inquiry proceeds so to say with a clean slate and it is only after due inquiry that the committing Magistrate tot the first time records on that clean slate such charge against him as the evidence discloses. In fact even after the case is submitted to a Magistrate under Section 346, Criminal Procedure Code, such a Magistrate is left free to come to his own conclusion as to whether the accused is guilty or not or liable to be committed to stand his trial in the Sessions Court or not. His judgment is not fettered in any manner by what the submitting Magistrate may have chosen to record. That is why in Sub-section (6) of Section 207A, Criminal Procedure Code it is laid down that it is only when it appears to the¹ Magistrate that the accused is liable to be tried, by himself that he has to act accordingly and this satisfaction has to be for the first time on the basis of the materials placed before him.

It cannot be disputed that whenever a Magistrate decides to hold committal proceedings whether on his own initiative while holding a trial or on being called upon by the police in a case triable by the Sessions Court Or on getting the case under Section 340, Criminal Procedure Code, the procedure laid down in Chapter XVIII of the Code has to be strictly followed an³ no departure therefrom is permissible without being struck down by the higher appellate Courts. If any authority is needed, I may respectfully refer to the latest pronouncement of the Supreme Court in the case of Chhadamilal Jain v. State of Uttar Pradesh : 1960 CriLJ145 .

9. So in the aforesaid view I do not see how the charge framed by the Magistrate 2nd Class could subsist for trial of the accused thereon by the Judge Magistrate to whom the case was sent tinder Section 346 of the Code. It is little amusing to read the reasoning of the learned Sessions Judge that when the record was sent, the charge (obviously meaning the paper on which charge was scribed) was also sent

along with it and hence it subsisted. So far as the matter that was placed before the Judge Magistrate was concerned he has decided that no offence as could be tried in the Court of Sessions has been disclosed. On coming to this conclusion he had to discharge the accused leaving the prosecution to pursue afresh such remedy as may be available against the accused.

10. Then there is another result which, in my opinion, is fatal to the prosecution. If it is to be held that the charge under Section 354, Indian Penal Code, subsisted and had to be tried, the order of the Judge Magistrate will have to be construed as an order of acquittal inasmuch as by that order he will be deemed to have held that the accused is not guilty of that offence too. If he had the right to try the accused on that charge then it will necessarily follow that he could acquit him of that charge. If the discharge order has to be treated as an order of acquittal, then the question that arises is whether this Court can interfere with that order without there being any appeal filed by the State. But as that question is not properly before me I need say nothing on it.

11. The learned Sessions Judge was apparently satisfied with the correctness of the order of discharge so far as the offence under Section 376, Indian Penal Code, was concerned, as otherwise he would have himself directed committal of the accused. Therefore so far as this reference is concerned I do not, in the view that I have taken, feel disposed to accept it. Accordingly I reject the same.