

The State Vs. Siba Prasad

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Court : Orissa

Decided On : Mar-17-1952

Reported in : AIR1953Ori84; 18(1952)CLT174

Judge : Panigrahi, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 190 and 253

Appeal No. : Criminal Ref. No. 7 of 1952

Appellant : The State

Respondent : Siba Prasad

Advocate for Pet/Ap. : S.C. Das, Adv. for Govt. Adv.

Disposition : Reference allowed

Judgement :

ORDER

Panigrahi, J.

1. The facts giving rise to this reference by the Sessions judge, Mayurbhanj, are simple. The accused, Sivaprasad Tripathy, was produced before a Magistrate charged with an offence under Section 409, I. P. C. on 4-1-51 and was released on bail by the Magistrate on the same date. The case was under Police

investigation till 16-8-51 and several adjournments had been taken by the Police for filing of charge-sheet. On 16-8-51 the Magistrate recorded an order that the time occupied by the investigation was unreasonable in the extreme and that he would warn the prosecutor that the proceedings against the accused would be dropped if the charge-sheet was not filed before 31-8-51. But even on that date charge-sheet was not filed and the same was adjourned to 3-9-51. The investigation Officer again prayed for time and the case was directed to be put up on 22-9-51. On that day also the Investigating Officer failed to produce the charge-sheet, and thereupon the Magistrate ordered that the accused be released from the bail bond. On 1-11-51 the charge-sheet was produced under Section 409, I. P. C. The Magistrate held that he had no power to revive the case which he had already dismissed on a previous occasion, and interpreted his order (sic) 22-9-51 releasing the accused from the (sic) bond as an order of discharge, under Section 252 (sic) Criminal P. C. The learned Sessions Judge (sic) of opinion that this view of the Magistrate's incorrect and has recommended that the order must accordingly be set aside.

2. It is clear that until the charge-sheet has been filed a Magistrate cannot be said to have taken cognizance of any offence. There is a distinction between 'a Magistrate' and 'the Court of a Magistrate'. The Magistrate could take cognizance of the offence and direct the issue of process only on receipt of a Police Report under Section 190, Criminal P. C. Till that stage is reached, he is said to be acting only as a Magistrate controlling the investigation made by the Police, and having the power to grant time to the Police to remand the accused to the custody pending investigation. When, after repeated adjournments, the Police failed to put up a charge-sheet the Magistrate was justified in releasing the accused from his bail bond and leaving it open to the Police to come forward later with a complaint. When, therefore, a charge-sheet was actually filed the accused was really not before the Court; but he cannot be said to have been discharged under Section 253, Criminal P. C, and the Magistrate was competent to take the charge-sheet on his file and direct the issue of process and fresh complaint is necessary to be filed.

3. I would therefore accept the reference and direct the issue of process against the accused. But if, as has been contended on his behalf, it can be established

that no case can be made out against the accused it will be open to him to move a competent Court for a remedy at a later stage.

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