

State Vs. Dhuleswar Das

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Court : Orissa

Decided On : Jul-29-1965

Reported in : AIR1966Ori104; 1966CriLJ570

Judge : R.K. Das, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 207; Indian Penal Code (IPC) - Sections 406, 409 and 420

Appeal No. : Criminal Ref. No. 12 of 1965

Appellant : State

Respondent : Dhuleswar Das

Advocate for Pet/Ap. : N. Kr. Das, Standing Counsel

Disposition : Reference accepted

Judgement :

ORDER

R.K. Das, J.

1. This is a reference made by the Sessions Judge, Mayurbhanj, recommending to quash the order of commitment dated, 24-11-1964 passed by Shri R.K. Misra, a Magistrate, 1st Class Baripada in a trial for offences under Sections 409 and 420,

I. P. C.

2. One Dhuleswar Das was working as a peon of the Block Development Officer, Kuliana. He was deputed to village Kothabila to serve demand notice on some of the parties. He accordingly went to that village and realised a sum of Rs. 142 from one Bhutal Majhi and another sum of Rs. 8 from Hadia Majhi, but did not grant them any receipt, nor did he deposit the amount in the Block Office. The matter came to the notice of the B. D. O. who on 28-4-1964 submitted a report to the Officer-in-charge, Kuliana Police Station. The Officer-in-charge treated the report as F.I.R. and registered a case. After investigation he submitted two charge-sheets against the accused Dhuleswar, one in respect of the sum of Rs. 142 received by the accused from Bhutal Majhi and the other in respect of the sum of Rs. 8 received from Haria Majhi, the former charge being under Section 409, and the latter under Sections 406/420 I. P. C. After the charge-sheet was submitted the learned Magistrate instead of trying the case, chose to make an enquiry under chapter XVIII of the Cr. P. C. and after the enquiry was completed he committed the accused to the Court of Sessions. The learned Sessions Judge, Mayurbhanj has now recommended to this Court for setting aside the order of commitment as in his opinion no adequate reasons have been given by the learned Magistrate for committing the accused to the Court of Sessions instead of he himself trying the offender.

3. Section 207 in Chapter XVIII, Cr. P. C, deals with the procedure in inquiries preparatory to commitment, in cases triable by the Court of Sessions or High Court and it provides that in every enquiry before a Magistrate where the case is triable exclusively by a Court of Sessions or High Court or in the opinion of the Magistrate ought to be tried by such court, the Magistrate shall, (a) in any proceeding instituted on a police report follow the procedure specified in Section 207-A and (b) in any other proceeding of this Chapter. It has to be seen whether the Magistrate was justified in committing the accused to the Court of Sessions Judge. No doubt, offences under Sections 409 and 420 I. P. C. are triable both by the Court of Sessions as well as by the Magistrate and not exclusively by the Sessions Judge, but in such cases, if a Magistrate wants to commit the accused for trial before the Court of Sessions, he should follow the procedure laid down under Section 207,

Cr. P. C. and give adequate reasons for such commitment.

4. In the present case the amounts involved are Rs. 142 and Rs. 8 and the Magistrate had the concurrent jurisdiction to try the case. While committing the accused to the Court of Sessions, he has given absolutely no reason as to why he considered it necessary to commit the? case to the Court of Sessions while he himself was competent to try the case. It is settled by the authorities that in such cases while exercising jurisdiction under Section 207, the Magistrate must record the reasons for committing a person for an offence which is not exclusively triable by the Court of Sessions.

5. In a Full Bench decision of the Allahabad High Court reported in 50 Cr LJ 59 : (AIR 1949 All 1) Rex v. Matoley, it was held that a Magistrate, otherwise competent, may commit any person for trial to the Court of Sessions or the High Court for any offence, but he must give adequate reasons for committing a person for an offence which is not exclusively triable by the Court of Sessions or the High Court.

6. The Punjab High Court in a case reported in 31 Cr LJ 178 : (AIR 1930 Lah 312) Emperor v. Karam Singh, held that in committing cases not exclusively triable by the Court of Sessions, Magistrates should exercise a proper discretion and give adequate reasons for making commitment to the Court of Sessions. The reasons should be such as to show whether the commitment is made in the sound exercise of the discretionary power vested in the Magistrate by law, and if he does not give adequate reasons, the commitment may be quashed.

7. In a case of the Andhra Pradesh High Court reported in AIR 1956 Andhra, 17 In Re, Ummadi Pulla Reddi, their Lordships took the: view that in committing a case which the Magistrate is competent to try and in which he can commit the accused to the Court of Sessions.

8. In the present case, as already stated, the Magistrate has not assigned any reason as to why he considered it necessary to commit the accused to the Court of Sessions. In absence of any such reasons, the order of the Magistrate is liable to be quashed. Accordingly the reference is accepted and the order of the

Magistrate, dated 24th November 1964 is quashed and the Magistrate will now proceed with the trial of both the cases in accordance with law.

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