

Dinesh Chander Vs. the State and anr.

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Court : Delhi

Decided On : Nov-06-1978

Reported in : 15(1979)DLT88

Judge : M.L. Jain, J.

Acts : [Indian Penal code, 1860](#) - Sections 307; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 209

Appeal No. : Criminal Revision Appeal No. 44 of 1977

Appellant : Dinesh Chander

Respondent : The State and anr.

Advocate for Pet/Ap. : S.S. Palta and; K.K. Sharma, Advs

Judgement :

M.L. Jain, J.

(1) On July 17, 1974, one Ramesh Chand lodged a report that while he was going with his brother Anurag Kumar in Tilak Bazar, the accused persons four in number attacked them with knife with the result that Ramesh Chand received a knife injury on the wrist and a scratch on his neck and Anurag Kumar suffered six simple hurts. The police after investigation challaned the accused under sections 307/324/34 Indian Penal Code The learned Magistrate purporting to act under

section 209 Criminal Procedure Code held that the case under section 307 Indian Penal Code , an offence exclusively triable by the court of session, was not made out and he proceeded to try the case under section 324 read with section 34 I.P.C. Ramesh Chand thereupon filed a criminal revision in the court of session, The learned Addl. Sessions Judge by his order dated January 12,1977, held that the Magistrate cannot appreciate the evidence. He is merely to see if from the report of the police under section 173 Criminal Procedure Code and the statements of the witnesses, a case triable by the court of session is made out or not. But, the Magistrate proceeded to appreciate the evidence and legal position involved in the case about the nature of injuries and other circumstances which he had no jurisdiction to do. He held that from the statement of the complainant, a clear case under section 307 Indian Penal Code was made out. At the stage of charge, even the Sessions Judge cannot appreciate the evidence to the extent the learned Magistrate did. The complainant had specifically stated that the accused had called out that they would not allow the victims to leave alive displaying thereby an intention to murder. The learned Addl. Sessions Judge, therefore, set aside the order of the learned Magistrate and directed him to commit the case to the court of session. The accused Dinesh Chand has filed this revision. I have heard the arguments.

(2) In *Sanjay Gandhi v. Union of India and others* : 1978 CriLJ642 , the Supreme Court explained the scope of section 209 Criminal Procedure Code as follows :-

'It is not open to the committal court to launch on a process of satisfying itself that a prima facie case has been made out on the merits. The jurisdiction once vested in him under the earlier Code but has been eliminated now under the present Code. therefore, to hold that he can go in to the merits even for a prima facie satisfaction is to frustrate the. Parliaments purpose in remoulding S.207-A (old Code) into its present non-discretionary shape. Expedition was intended by this change and this will be defeated successfully, if interpretatively we hold that a dress rehearsal of a trial before the Magistrate is in order. In our view, the narrow inspection hole through Which the cocommitting Magistrate has to look to the case, limits him merely to ascertain whether the case, as disclosed by the police report, appears to the Magistrate to show an offence triable solely by the Court of

Sessions. Assuming the facts to be correct as stated in the police report, if the offence is plainly one under S. 201 Indian Penal Code the Magistrate has simply to commit for trial before the Court of Session. If, by error, a wrong section of the Penal Code is quoted, he may look into that aspect. Shri Mulla submits if the Magistrate's jurisdiction were to be severally truncated like this the prosecution may stick a label mentioning a sessions offence (if we may use that expression for brevity's sake) and the accused will be denied a valuable opportunity to prove his ex facie innocence. There is no merit in this contention. If made-up facts unsupported by any material are reported by the police and a sessions offence is made to appear, it is perfectly open to the Sessions Court under S. 227 Criminal Procedure Code to discharge the accused. This provision takes care of the alleged grievance of the accused.'

(3) From the aforesaid observations, the following propositions emerge

1. It is not open to the committal court to hold a dress rehearsal of a trial or to launch on a process of satisfying itself that a prima facie case has been made out on the merits.

2. The Magistrate can ascertain whether the case as disclosed by the police report assuming the facts to be correct, shows if the offence is plainly one exclusively triable by the court of session.

3. If, by error, a wrong section of the Penal Code is quoted, he may look into that aspect, but if made-up facts unsupported by any material are reported by the police and a sessions offence is made to appear, then it is for the court of session under section 227 Criminal Procedure Code to discharge the accused.

4. It, therefore, follows that the Magistrate while ascertaining whether the facts as disclosed in the police report prima facie constitute an offence exclusively triable by the court of session, cannot go into its merits. The learned Addl. Sessions Judge has rightly observed that the Magistrate went into the merits of the case and thus left the limits of his Jurisdiction. That being so, the learned Addl. Sessions Judge was Justified in setting aside the order of the learned Magistrate and in directing him to commit the case to the court of session. The revision petition is,

therefore, dismissed.

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