

Kamal Kishore Vs. S.D. Mathur

Kamal Kishore Vs. S.D. Mathur

SooperKanoon Citation : sooperkanoon.com/703913

Court : Delhi

Decided On : Apr-16-1996

Reported in : ILR1996Delhi443

Judge : Jaspal Singh, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 200

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 1943 of 1992

Appellant : Kamal Kishore

Respondent : S.D. Mathur

Advocate for Pet/Ap. : Ashok Arora and; P.S. Arora, Advs

Judgement :

Jaspal Singh, J.

(1) On a complaint made by a public servant relating to commission of an offence triable exclusively by the Court of Sessions under the Narcotic Drugs and Psychotropic Substances Act (hereinafter called the Act), is the Metropolitan Magistrate bound to examine the complainant and the witnesses before passing an order of committal Whereas the petitioner says that the Metropolitan Magistrate is bound to. as per the respondent there is no such requirement. The question arises in the circumstances detailed below.

(2) We are told that the officers of the Directorate of Revenue Intelligence, West Bengal intercepted a lorry allegedly carrying machinery items from Delhi to Calcutta meant for export to Saudi Arabia and U. K. and on examination of the consignment, recovered there from 743 Kgs. of Hashish. This led to the arrest of the petitioner under section 29 read with section 21 of the Act. Later a complaint was filed by the respondent a public servant, under section 29 read with section 21 of the Act in the court of the Additional Chief Metropolitan Magistrate, New Delhi who, without recording the statement of the complainant or of any of the witnesses cited by him, committed the case to the Court of Sessions. It may, however, be noticed that the order which reads as under, was passed before the constitution of the Special Courts :- 'I have satisfied that the complete copies of documents as required under section 173, Criminal Procedure Code ., 1973 has been (sic) supplied to both the accused persons. The offence alleged is triable exclusively by the Court of Sessions, hence the accused persons are committed to the Court of Sessions for trial. The Ahlmad shall prepare the file and send it to the Court of Sessions. Accused persons will appear before the Court of Sessions on 16-4-1987.'

(3) The petitioner feels that: for the reason noticed above, the order of committal is bad.

(4) To search for an. answer we must necessarily look at sections 200, 202 and 208 of the Code of Criminal Procedure. To facilitate proper grip let me reproduce them. They run as under :-

'200.Examination of complainant.-A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and' the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate ; Provided that. when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses :- (a) If a public servant acting or purporting to act in the discharge of his official duties or a court has made the complaint : or (b) If the Magistrate makes over the case for inquiry or trial to another Magistrate under Section 192 ; Provided further that if the Magistrate

makes over the case to another Magistrate under section 192 after examining the complaint and the witnesses, the latter Magistrate need not re-examine them,' 202.

Postponement of issue of process.-(1) Any Magistrate, on receipt of a complaint of an offence which he is authorised to take cognizance of or which has been made over to him under Section 192, may, if he thinks fit, postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding; Provided that no such direction for 'investigation shall be made :- (a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session ; or (b) Where the complaint has not been made by a court, unless the complainant and the witnesses present (if any) have been examined on oath under Section 200. (2) In an enquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath :- Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath. (3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer in charge of a police station except the power to arrest without warrant.' 208.

Supplies of copies of statements and documents to accused in other cases triable by Court of Session.-When in a case instituted otherwise than on a police report, it appears to the Magistrate issuing process under Section 204 that the offence is triable exclusively by the Court of Session, the Magistrate shall without delay furnish to the accused, free of cost, a copy of each of the following : -- (i) the statements recorded under Section 200 or section 202, of all persons examined by the Magistrate, (ii) the statements and confessions if any, recorded under Section 161 or Section 164 ; (iii) any document, produced before the Magistrate on which the prosecution proposes to rely ; Provided that if the Magistrate is satisfied that any such document is voluminous, he shall instead of furnishing the accused with a copy thereof, direct that he will only be allowed to inspect it either personally or through pleader in Court.'

- (5) How are these provisions to be interpreted when the complaint is by a public servant and the offence is exclusively triable by a Court of Sessions
- (6) Mr. Ashok Arora who appears for the petitioner has drawn my attention to a Full Bench judgment of the Kerala High Court in *Moideen Kutty HaJi v. Kunhikoya* 1987 Cri Lj 106 wherein it was held that on a complaint disclosing an offence exclusively triable by a Court of Sessions a Magistrate before issuing process to the accused must necessarily call upon the complainant to produce all his witnesses and then examine them on oath.
- (7) With all respect I beg to differ.
- (8) The first proviso to section 200 of the Code of Criminal procedure lays down in unambiguous term that in case of complaint by a public servant acting or purporting to act in the discharge of his official duties (as is admittedly the case as far as the matter in hand is concerned) it is not necessary to examine the complainant and/or his witnesses. Significantly, in this regard, section 200 of the Code makes no distinction with regard to cases exclusively triable by a Court of Sessions. This distinction, however, appears in section 202 though in a limited manner.
- (9) As per section 202 of the Code, the Magistrate may, if he thinks fit, postpone the issue of process against the accused. And, if he so decides and the offence complained of is not exclusively triable by a Court of Sessions, he may (a) either inquire into the case himself or (b) direct an investigation to be made by a police officer or by such other person, as he thinks fit. However, where it appears to the Magistrate that the offence complained of is triable exclusively by a Court of Sessions and 'if he thinks fit to postpone the issue of process' to the person complained against, in that case he is required to hold a preliminary enquiry himself and to call upon the complainant to produce all his witnesses and to examine them on oath.
- (10) Thus, with regard to a complaint by a public servant acting or purporting to act in discharge of his official duties, of an offence which appears to the Magistrate triable exclusively by a Court of Sessions he may order issue of process against

the accused without calling upon the complainant to produce all his witnesses and examining them on oath. However, where he does think it fit to postpone the issue of process, in that case he has to hold the enquiry himself and has to necessarily examine on oath all the witnesses of the complainant.

(11) The words 'may, if he thinks fit' in section 202 of the Code show that it is entirely within the judicial discretion of the Magistrate whether or not an enquiry under this section should be made. The requirement of examination on oath of witnesses of the complainant in the case of an offence triable exclusively by a Court of Sessions would thus arise only 'if' the Magistrate 'thinks fit' to 'postpone' the issue of process against the accused and not otherwise.

(12) In the case in hand the complaint was made by a public servant acting or purporting to act in the discharge of his official duties and as the learned Magistrate did not think it fit to postpone the issue of process, his order of committal without calling upon the complainant to produce all his witness and examining them on oath, does not suffer from any legal malaise.

(13) It was argued that the very fact that section 208 of the Code enjoins upon the Court to supply to the accused copies of statements recorded under section 200 or section 202, of all persons examined by the Magistrate, therefore, it must be taken that before committal the Magistrate is required to record such statements. However, unfortunately for the petitioner, I stand unpersuaded. I have already noticed above that on a complaint filed by a public servant the Magistrate is not bound under section 200 of the Code to examine the complainant and/or his witnesses. As far as section 202 of the Code is concerned, the Magistrate is so bound only if he thinks fit to postpone the issue of process and not otherwise. Section 208 of the Code cannot be looked into in isolation. It is to be interpreted keeping in view the scheme of Sections 200 and 202, and once section 208 of the Code is looked into in that perspective, it would be dear that when it speaks of the requirement to supply copies of the statements recorded under section 200 or section 202, it only means that where the Magistrate exercises his discretion under section 200 and does examine the public servant and/or his witnesses and/or where, while acting under section 202 he thinks fit to postpone issue of

process and thus proceeds to examine the public servant and/or his witnesses then and then only the Magistrate must furnish to the accused copies of the statements so recorded. In other words, where the Magistrate does not examine the public servant and/or his witness under section 200 and also does not think it fit to postpone issue of process and thus does not examine any person on under section 202, the question of supply of copies of the statements would not arise and in such a case section 208(i) would not be attracted.

(14) For the reason recorded above, I discern no infirmity in the impugned order. The petition is consequently dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com