

**Sukh Lal Vs. the State**

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**Court :** Rajasthan

**Decided On :** Jan-07-1955

**Reported in :** AIR1955Raj1; 1955CriLJ1394; AIR 1955 Raj 177

**Judge :** Modi, J.

**Appellant :** Sukh Lal

**Respondent :** The State

**Judgement :**

ORDER

**Modi, J.**

1. This is an application Under Section 215, Cr.PC by the petitioner Sukhlal, and has arisen under the following circumstances.

2. The present petitioner, along with one other person with whom we are not concerned for the purposes of the present revision, has been committed by the Extra Magistrate, Banswara, to stand his trial Under Section 302 read with Section 109, Penal Code in the Court of the Additional Sessions Judge, Banswara. This application has been filed on his behalf for quashing the order of commitment, mainly, on the ground that there is no evidence, worth the name on the basis of which the Magistrate could have committed the accused.

3. A preliminary objection was raised by the learned Deputy Government Advocate that the petitioner should have submitted his application in the first instance before the learned Sessions Judge concerned, and then come up to this Court, and that as this has not been done, this Court should refuse to go into the merits of this application. On the other hand, it was strenuously contended on behalf of the petitioner that Under Section 215, Cr.PC a commitment once made Under Section 213 by a competent Magistrate could be quashed by the High Court only and only on a point of law, and, therefore, the only proper course for him was to bring the matter up to this Court in the very first instance and the preliminary objection was without any substance and should be overruled.

4. Both parties made reference to certain cases in support of their respective points of view but I consider it altogether unnecessary to cite them, inasmuch as the point pressed before me was never taken up in any of these cases. I am, therefore, of opinion that the authorities brought to my notice can be of no assistance in deciding the point raised before me, nor do I find otherwise any direct authority dealing with this point.

5. Now, I may state at once that this Court undoubtedly has the jurisdiction and authority to hear such an application direct and the objection raised on behalf of the State is not intended to question this power. The question nevertheless arises whether, as a matter of salutary practice, this Court should insist on such an application being filed before the Sessions Court before the High Court is approached as regards it. This brings me to a consideration of the question as to what is the nature of the jurisdiction which this Court exercises, or is called upon to exercise in a matter of this kind. The jurisdiction of a High Court may be original, appellate or revisional. The petitioner is obviously not asking this Court to exercise its original or appellate jurisdiction in the present case. Such jurisdiction, as has been invoked, can, therefore, be only revisional.

For the exercise of such jurisdiction, reference may be made to Sections 435, 438 and 439, Cr.PC Section 435 enables the High Court or any Sessions Judge or District Magistrate to call for and examine the record of any proceeding before any inferior criminal Court for the purpose of satisfying itself or himself as to the

correctness, legality or propriety of any finding, sentence or order. Section 438 then provides that the Sessions Judge or the District Magistrate may, on examining the record of any proceeding Under Section 435 or otherwise, report for the orders of the High Court the result of such examination. Then follows Section 439 which deals with the High Court's powers of revision. Now, the rule seems to me to be firmly established in this Court, as also elsewhere, that where the revisional powers of a High Court are invoked, it will as a rule not exercise such jurisdiction unless the party concerned has applied to the Sessions Judge or the District Magistrate, as the case may be, in the first instance, and such Court has had the opportunity to consider the case and record its opinion thereon.

There is a good deal in favour of such a practice because it enables this Court to have before it the opinion of the Sessions Judge in a case of this character when it is called upon to exercise its own authority. Nor, do I see any force in the contention that the Sessions Judge cannot pass any order himself because in all cases which fall outside the purview of Section 436, Cr.PC the Sessions Judge where he considers that interference is called for, is required to report a case after examining it for the orders of the High Court with the result of his examination. The language of Section 438 is wide enough, for an application of the present character to be filed before him, as seems to me to be amply indicated by the words 'or otherwise' occurring therein. If the Sessions Judge comes to a conclusion in favour of the petitioner, the matter is very much simplified at the time it comes before this Court. Should he, however, come to a contrary conclusion, it would be still open to the aggrieved party to apply to this Court to consider the application and the opinion of the Sessions Judge would be before it. I am of opinion that such a practice would be highly desirable and would generally tend to save the time of this Court.

For the foregoing reasons, I hold that the petitioner ought, in the first instance, to make his application before the Sessions Judge who will examine the case Under Section 438, Cr.PC and make a recommendation in the matter if he considers the quashing of the commitment to be called for. It will, however, be open to the petitioner to move this Court in the matter if the Sessions Judge refuses to make any such recommendation and the petitioner still wishes to press his application to

quash the commitment. I may add that there is nothing in the language of Section 215, Cr.PC which, to my mind, sets the limits for the exercise of the power to quash the commitment but does not lay down the procedure, that militates against the view, taken by me.

6. The result is that I decline to go into the merits of the present application until the petitioner has moved the Sessions Judge in the matter and the latter has had an opportunity of examining the case and recording his opinion on it, and in this view dismiss the present application.

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