

**The State Vs. Salu and anr.**

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**Court :** Rajasthan

**Decided On :** Feb-12-1962

**Reported in :** AIR1963Raj98; 1963CriLJ613

**Judge :** J.S. Ranawat, C.J. and; P.N. Shinghal, J.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 251A and 252 to 259

**Appeal No. :** Criminal Appeal No. 231 of 1961

**Appellant :** The State

**Respondent :** Salu and anr.

**Advocate for Def. :** Lekh Raj, Adv.

**Advocate for Pet/Ap. :** S.N. Gurtu, Asstt. Govt. Adv.

**Disposition :** Revision allowed

**Judgement :**

Ranawat, C.J.

1. Although this petition was filed as an appeal from the order of the Sessions Judge, Balotra, dated the 25th of February, 1961, the learned Assistant Government Advocate prayed that as the interim order was not appealable, this petition may be treated as one for revision.

2. Mst. Sukhi filed a complaint in the Court of the Sub-Divisional Magistrate, Banner, on the 21st of August, 1959, against Salu and Deda, with the allegations that, on the previous day, namely, the 20th of August 1959, both the accused went to the bank of Kareli 'Nadi' where Mst. Sukhi had gone to fetch water, and that Deda caught hold of both her hands and Salu bit her on her face, and that when she cried, Hazari, Kesha and others reached there and they saved her. The Magistrate issued process against the accused persons after examining the complainant under Section 200, Cri. P. C. Mst. Sukhi also filed a first information report at Police Station, Barmer, on the same day, and the police registered a case under Sections 354 and 324, I. P. C. against the accused persons.

While the complaint case was still pending and no evidence had been recorded, the police presented a challan against both the accused on the 8th of October, 1959. The Magistrate thereupon passed an order that as a challan had been received, the Prosecuting Sub-Inspector should undertake to prosecute the case. He then framed charges against both the accused and tried them in accordance with the procedure laid down by Section 251A, Cri. P. C. and finally convicted Salu under Sections 354 and 323, I. P. C. and Deda under Section 354 read with Section 114, I. P. C. and sentenced them to various terms of imprisonment. On appeal, the learned Sessions Judge, Balotra, held that the accused were prejudiced inasmuch as the trial was not held according to the provisions of Sections 252 to 259, Cri.P.C. He therefore remanded the case for retrial after setting aside the convictions of the accused persons.

3. In this revision petition, it is urged on behalf of the State that the learned Sessions Judge was in error in thinking that the Magistrate could not take cognizance of the case on a police challan after he had already initiated the proceedings against the accused persons by issue of process on complaint. It is argued that even though the Magistrate had taken cognizance of the case on a private complaint, he was not debarred from taking cognizance on a police challan subsequently and trying the case on the challan as provided by Section 251A, Cri. P. C. allowing the complaint proceedings to remain dormant. It is further contended that the proceedings of the trial were in accordance with the law and did not suffer from any illegality.

4. Mr. Lekhraj, for the accused, has contended that once the Magistrate had taken cognizance of the case on a complaint, it was not open to him to change the procedure and try the case in accordance with the procedure provided for police challan cases. He has argued that the procedure for the trial under Sections 252 to 259, Cri. P. C. is more comprehensive and that the accused were prejudiced on account of the Magistrate's following the procedure meant for the trial of police challan cases. He has therefore supported the order of the appellate court.

5. It may be noted that two distinct procedures have been provided under the Criminal Procedure Code for the trial of warrant cases according as cognizance is taken on a complaint or on a police challan. In a case instituted on a complaint, the procedure provided under Sections 252 to 259, Cri. P. C. has to be followed, while in a case of which cognizance is taken on a police challan under Section 190(1)(b), Cri. P. C., the procedure provided under Section 251A, Cri. P. C. has to be followed. In the instant case, cognizance was taken by the Magistrate on a complaint and, while the proceedings were still pending, a police challan was also tiled and the Magistrate, from that stage onward, tried the case as laid down in Section 251A, Cri. P. C. The language of his order dated the 8th of October, 1959, is not very clear, but virtually it amounts to allowing the complaint case to remain dormant and proceeding with the trial under Section 251A, Cri. P. C., as a challan had been submitted by the Police.

6. Mr. Gurtu has referred to a decision of this Court in *Jagdish v. State*, 1961 Raj LW 191, in which it was held that a Magistrate could take cognizance of a case on a police challan even though he had taken cognizance of the same offence on a private complaint. In that case Jagdish lodged a complaint in a court of the Magistrate First Class against 11 accused persons for offences under Sections 452, 323, 504 and 147, I. P. C. and, while the case was still pending, the police submitted a challan against all the accused persons for offences under Sections 452 and 440, I. P. C., and the Magistrate thereafter tried the case as a police challan under Section 251A, Cri. P. C. and allowed the complaint to be tagged on to the challan. He convicted the accused persons, but on appeal the Sessions Judge held that the trial was vitiated on account of the Magistrate's consolidating the two cases and holding the trial in accordance with the provisions of Section

251A, Cri. P. C. He, therefore, remanded the case.

On revision, it was held by this Court that the view of the appellate court was not well founded for the reason that the two cases had not been consolidated although the accused persons had been tried according to the procedure laid down by Section 251A, Cri. P. C. and also because there could have been no prejudice to the accused on that account. The decision in Jagdish's case, 1961 Raj LW 191 no doubt lays down that cognizance can be taken by a Magistrate on a police challan even after he had taken cognizance of a case on the same facts on a private complaint. In *Mukania v. Achalia*, ILR (1952) 2 Raj 153: (AIR 1952 Raj 160), it was held as follows,--

'Section 190 of the Code of Criminal Procedure gives jurisdiction to a Magistrate to take cognizance of any offence under three circumstances:

- (a) upon receiving a complaint of facts which constitute such offence;
- (b) upon a report in writing of such facts made by any police-officer; and
- (c) upon information received from any person other than a police-officer, or upon his own knowledge or suspicion, that such offence has been committed.

It is open to a Magistrate to act on any one of these three grounds but these three grounds are not, in our opinion, mutually exclusive and it is possible for a Magistrate to take cognizance of any offence upon two or more of such grounds e.g., both upon receiving a complaint and on a police report.' Thus, according to the rule laid down in *Mukania's case*, ILR (1952) 2 Raj 153: (AIR 1952 Raj 160) it is competent for a Magistrate to take cognizance of a case on a police report and also on a private complaint. The decision in *Bharat Kishore Lal v. Judhistir Modak*, AIR 1929 Pat 473 (FB) was approved in that case. The decision in *Mukania's case*, ILR (1952) 2 Raj 153 : (AIR 1952 Raj 160) was given before Section 251A, Cri. P. C. was introduced in the Criminal Procedure Code, but this circumstance cannot affect the correctness of the rule laid down in it.

We do not think there is any illegality in the Magistrate taking cognizance of the police challan after he had issued process on a private complaint. The accused

has a right to be tried according to the procedure laid down by the Code, i.e., under Section 251A, Cri. P. C. in police challan cases and Sections 252 to 259, Cri. P. C. in complaint cases. However, where there is a complaint and also a police challan, it is competent for the Magistrate to proceed with the trial of one of the two cases according to the procedure applicable to it. In other words, if he continues to try the complaint case he may do so and follow the procedure laid down under Sections 252 to 259, Cri. P. C. and allow the police challan to lie over and vice versa. This being the correct position in law, it cannot be said that the Magistrate in this case was in error in trying the accused according to the procedure laid down in Section 251A, Cri. P. C. and in taking no action on the private complaint, which ultimately became infructuous on account of the decision in the challan case.

The learned Sessions Judge has referred to the decision of this Court in *Ghisia v. State*, ILR (1959) 9 Raj 909: (AIR 1959 Raj 266). It may be noted that for that case the only procedure applicable was the one prescribed in the Code for the trial of a complaint case, but the Magistrate, instead of following that procedure, tried the accused in accordance with the procedure provided by Section 251A, Cri.P.C. It was under those circumstances that this Court held that there was an illegality in the trial of the case to the prejudice of the accused which vitiated it. That was not a case where both the procedures could be followed in the alternative. The decision in *Ghisia's case*, ILR (1959) 9 Raj 909: (AIR 1959 Raj 266) is, therefore, of no assistance for the purposes of this case.

7. The contention that the accused was prejudiced on account of the Magistrate having followed the procedure provided for police challan cases, is without any substance. A police challan having come before the Magistrate, it was competent for him to take cognizance of the same offence upon that challan and to proceed to try the accused as provided by Section 251A, Cri. P. C. The order of the learned Sessions Judge is clearly erroneous and cannot be maintained.

8. The revision petition is allowed, the order of the Sessions Judge remanding the case for retrial is set aside and he is directed to restore the appeal to its original number and to decide it on merits according to law.

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