Mohammad Vs. the State

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Court : Rajasthan

Decided On : Sep-16-1960

Reported in : AIR1961Raj174

Judge : D.S. Dave and; B.P. Beri, JJ.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 207A, 207A(4), 215, 439 and 561A

Appeal No. : Criminal Revn. No. 151 of 1960

Appellant : Mohammad

Respondent : The State

Advocate for Def. : Kan Singh, Govt. Adv.

Advocate for Pet/Ap. : Magraj, Adv.

Disposition : Application dismissed

Judgement :

Dave, J.

1. This is an application in revision filed by accused Mohammad who has been committed to the Court of the Sessions Judge, Pali, by the Sub-Divisional Magistrate, Pali, to stand his trial for an offence under Section 302, I. P. C.

2. It is contended by the petitioner that his commitment is illegal and therefore it should be quashed. Ho had filed a similar application in the Court of the Sessions Judge, Pali, but it was rejected on 31-3-60. Thereupon, he filed another application in this Court and it came for hearing before a learned Judge on 7-6-60, The learned Judge was of opinion that an important question of law was involved in this case and so he thought it proper to refer it to a larger Bench. This is how the matter has come before us.

3. Before dealing with the question of law, which has given rise to this revision application, it would be proper to set out briefly the prosecution case against the applicant. The prosecution story is that on the night between the 27th and 28th September, 1959, the applicant entered the house of one Nizam Ghoshi and stabbed one Mst. Chhoti with a dagger with the result that she died on the same night even before she could be removed to the hospital. A report of this occurrence was made at the police station, Pali, by one P. W. Majid at about I on the same night. The police at once started investigation and it came to the conclusion that although there was no eye-witness to the occurrence, there was very strong circumstantial evidence to connect the applicant with the crime.

According to the prosecution, when the deceased was injured by the applicant she had raised a cry which attracted P. Ws. Aladin and Gola Singh to the site. They chased the applicant to some distance and although they could not get hold of him, they were able to identify him. Another circumstance pointed out by the prosecution was that a wrist watch was recovered from the site of occurrence and it was identified as that of the accused by two persons namely P. Ws. Nizam and Murad. The third circumstance was said to be the recovery of a blood-stained dhoti from the personof the accused at the time of his arrest on 3-10-59, while the fourth one was the alleged recovery of a blood-stained dagger and a shirt at the instance of the accused on 5-10-59.

Lastly, it was alleged by the prosecution thatthe accused had made an extra-judicial confession before P. W. Ramju. On the basis of this evidence, the accused was challaned in the court of the Sub Divisional Magistrate, Pali for an offence under Section 302 I. P. C. The Magistrate examined 3 witnesses, namely, Aladin,

Abas Ali, and Majid and further considered all the documents which were produced by the prosecution before him. Thereafter, he examined the accused and framed charge against him. The accused pleaded alibi and stated that he would produce a list of his defence witnesses before the Sessions Court. The Magistrate was satisfied that a prima facie case was made out against the applicant and so he committed him to the Court of Session.

4. Now, the main argument, which was raised by the applicant before the learned Sessions Judge and which has been again stressed before this Court is that the Magistrate did not examine all the material witnesses, that he failed to comply with theprovisions of Section 207A(4) of the Code of Criminal Procedure and therefore the commitment should be quashed and the case should be sent back to the Magistrate with direction to examine all the important witnesses.

5. Before coming to the question whether theSub Divisional Magistrate has committed any illegality under Section 207A Cr. P. C., it seems necessaryto consider the question whether the amendmentmade in the Criminal Procedure Code by Act No. 26 of 1955 has caused any effect on the powers of this Court for quashing the order of commitmentmade in a case instituted on a police report. This question has arisen because while it has been urged on behalf of the petitioner that this Court's powers are wide and unfettered, it has been hinted faintly from the opposite side that Section 215 no longer applies to a case of the said type and therefore this Court should not interfere with the matter.

6. We have given due consideration to the said arguments and it may be observed that Section 215 Cr. P. C., as it stands now, does not really apply in terms to a commitment made by a Magistrate in a case instituted in his court on a police report. Section 215 Cr. P. C. runs as follows:

'215. Quashing commitments under Section 213 --A commitment once made under Section 213 by a competent Magistrate or by a Civil or Revenue Court under Section 478, can be quashed by the High Court only, and only on a point of law'.

A plain reading of the said section shows that it applies to a commitment made by a competent Magistrate under Section 213 Cr. P. C. It also relates to commitments made by a Civil or Revenue Court but we are not concerned with that part in the present case.

7. Now, before the amendment of the Code of Criminal Procedure by Act No. 26 of 1955, the only section under which a commitment could be made by a Magistrate was Section 213 Cr. P. C. There was no distinction between a commitment made in a case instituted on a police report and a case instituted otherwise than on a police report. It was by the said Amendment Act (No. 26 of 1955) that Section 207A was introduced for the first time and a separate procedure was laid down for inquiry (into cases triable by the Court of Session) by a Magistrate in a proceeding instituted on a police report.

Sub-section (10) of Section 207A lays down that after the Magistrate has completed the inquiry in the manner laid down upto Sub-section (9), he may make an order committing the accused for trial to the High Court or the Court of Session as the case may be. Thus, after the introduction of Section 207A., the accused against whom inquiry is made under this section, is committed thereunder and not under Section 213, as he used to be, prior to this innovation. Sections 208 to 212 Cr. P. C. now; relate only to that inquiry (which is made by a Magistrate in the cases triable by a Sessions Court and) in which the proceeding is instituted otherwise than on a police report. Section 213 Cri. P. C. runs as follows:

'213. Order of commitment -- (1) When the accused, on being required to give in a list under Section 211, has declined to do so, or when he has given in such list and the witnesses (if any) included therein whom the Magistrate desires to examine have been summoned and examined under Section 212, the Magistrate may make an order committing the accused for trial by the High Court or the Court of Session (as the case may be) and (unless the Magistrate is a Presidency Magistrate) shall also record briefly the reasons for such commitment

(2) If the Magistrate, after hearing the witnesses for the defence, is satisfied that there are not sufficient grounds for committing the accused, he may cancel the charge and discharge the accused'.

It is dear from the language of the said section that it relates only to that commitment which is made in a case to which Sections 211, and 212 Cri. P. C. are applicable, that is, which is instituted otherwise than on a police report. This leaves no doubt about! the fact that Section 215 Cr. P. C. which refers only to Section 213 and not to Section 207A, does not apply in terms to a commitment made under the latter section.

8. This change naturally gives rise to the question whether the omission to refer to Section 207A in Section 215 Cri. P. C. was deliberately made by the legislature to extinguish or restrict or enlarge the powers of this Court for quashing a commitment made under Section 207A Cr. P. C. The matter is not free from difficulty. But, after giving our anxious consideration to this vexed question, we are led to think that the legislature neither intended to take away or restrict the powers of this Court nor to enlarge them, because we have not been referred to any material whereby it may be concluded that the legislature had bestowed its attention to this aspect of the matter.

It seems to us that the attention of the legislature was not attracted towards making a corresponding change in Section 215 when Section 207A was introduced, If the words 'Section 207A or' were inserted in Section 215 after 'under' and before 'section 213', the present difficulty would not have arisen. However, St is not within our province to make the change and so it has to be considered, whether under the provisions of the law as it stands, this Court canquash a commitment made under Section 207A and if so, in what circumstances.

9. We think that this Court has not been rendered helpless in correcting the errors in appropriate cases because even though Section 215 Cr, P. C. is not applicable in terms to a case committed under Section 207A, this Court has ample powers under Sections 439 and 561A Cr. P. C. to deal with such matters. Section 561-A in particular saves the inherent powers of this Court to make such orders as may be necessary to give effect to any order under the Code or to prevent abuse of the process of any court or otherwise to secure the ends of justice.

Therefore, if it is found by this Court that the committing Magistrate has abused the process of the court and that he has committed an illegality, or that a grave

injustice has been done to the accused in his commitment, then in order to secure the ends of justice, it will be not only within its power but it will also be its solemn duty, to interfere in the matter.

For instance, if this Court finds in a particular case that the Magistrate has committed an accused without applying his mind to the evidence placed before him and that there is no legal evidence -- or for that matter, no evidence worth the name -- to justify his commitment, it cannot sit as a helpless spectator in his persecution and turn down his request for quashing his commitment. At the same time, it may be observed that there is no force in the argument that the powers of this Court have been enlarged on account of the absence of reference to Section 207A in Section 215 Cr. P. C. In other words, a commitment made under Section 207-A may bequashed by this Court alone and only on a point of law just like a commitment made under Section 213 Cr. P. C. In our opinion, there would be no justification for applying different yard-slicks in a matter relating to quashing of commitment.

10. We have now to see whether the Magistrate in the present case has committed a mistake of Jaw which would Warrant interference by this Court for quashing the commitment order. As pointed out above, the main objection raised by learned counsel for the petitioner is that the Magistrate has failed to comply with the provisions of Section 207A(4), Cr. P. C. inasmuch as the evidence of all the material witnesses has not been recorded and the evidence which he has recorded is not sufficient to make out a prima facie case against the petitioner.

It is urged by applicant's learned counsel that it was incumbent upon the Magistrate to examine all the prosecution witnesses relating to every circumstance, on whose basis the applicant's conviction was sought, except the formal witnesses. In support of his argument, learned counsel has referred to the decisions of this Court in State v. Birda, ILR (1957) 7 Raj 716: ((S) AIR 1957 Raj 318) and Ghisa v. State, ILR (1959) 9 Raj 944: (AIR 1959 Raj 294). Since the argument turns upon the interpretation of Section 207A (4), it would be proper to reproduce it at this place. It runs as follows:

'257A (4). The Magistrate shall then proceed to take the evidence of such persons, if any, as may be produced by the prosecution as witnesses to the actual commission of the offence alleged; and if the Magistrate is of opinion that it is necessary inthe interests of justice to take the evidence of any one or more of the other witnesses for the prosecution, he may take such evidence also'.

It may be pointed out that the first part of the said sub-section requires the Magistrate to take the evidence of such persons, if any, as may be produced by the prosecution as witnesses to the actual commission of the offence alleged. Then, the second part provides that even after recording the evidence of witnesses to the actual commission of the offence alleged, if the Magistrate is of opinion that it is necessary in the interests of justice to take the evidence of any one or more of the other witnesses for the prosecution, he may take such evidence also. In the present case, the first part of the said subsection was not attracted, because according to the prosecution itself, there was no eye-witness to the actual commission of the offence.

In Ghisa's case, ILR (1959) 9 Raj 944; (AIR 1959 Raj 294) the prosecution had cited 11 eyewitnesses; out of them Only 5 were examined by the Magistrate. On an objection being raised oh behalf of the accused it was held that it was the duty of the Magistrate to examine all the eye-witnesses whom the prosecution wanted to examine at the trial. The commitment was quashed and the case was sent back to the Magistrate to examine all the witnesses who were named in the police report submitted under Section 173 Cr. P. C. and whom the prosecution wished to examine at the trial.

That was not a case in which the prosecution wanted to rely only on the circumstantial evidence and therefore it was not observed as to what was the duty of the Magistrate in such a case. In ILR (1957) 7 Raj 716: ((S) AIR 1957 Raj 318), the facts were more akin to those of the instant case. There were no eye-witnesses to the occurrence and the case against the accused rested upon circumstantial evidence alone, but even that case is distinguishable inasmuch as the Magistrate in that case did not record any evidence whatsoever.

He simply went through the documents produced by the police and committed the accused to the court of the Sessions Judge, Jodbpur. It was held that 'where a case rests on evidence other than the evidence of persons who witnessed the actual commission of the crime, a proper exercise of the Magistrate's powers under Section 207A(6) can be ensured only if he takes the evidence of any one or more of the other witnesses for the prosecution himself.

It will of course not be necessary for him to record the evidence of merely formal witnesses, but if he were to exercise his discretion judicially in such cases, it will certainly be necessary in the interest of justice for him to take the evidence of such witnesses who prima facie establish the connection of the accused with the crime alleged against him'. The commitment was quashed and the record was sent back with direction that the Magistrate should record all such evidence which was necessary in the interests of justice to record.

IN the present case, it is urged from the opposite side that under Section 207A (4) Cr. P. C. it is for the Magistrate to form an opinion whether it is necessary in the interests of justice to take the evidence of any one or more of the witnesses other than those who are witnesses to the actual commission of the offence and if he thinks that the examination of such witnesses is not necessary, it cannot be said if he has committed any illegality. Our attention has also been drawn to Krishna v.State of Mysore, (S) AIR 1957 Mys 5. In that case it was observed that:

'What is obligatory on the Magistrate is the recording of the evidence of witnesses to the actual occurrence, and if there are no witnesses to speak to the actual commission of the offence, the Magistrate is not bound to examine any other witness or witnesses'.

It was also a case in which there was only circumstantial evidence against the accused and the Magistrate had committed the accused without recording any evidence and on the mere perusal of the documents referred to in Section 173 Cr. P. C. It was held that the Magistrate had not committed any mistake. It was also observed in that case that,

'the object of enacting Section 207-A was to simplify the procedure and secure an expeditious termination of the proceedings by shortening the duration of the enquiry'.

We agree with the learned Judges to the extent that the object of enacting Section 207A Cr. P. C. was to expedite the enquiry by Magistrates in cases instituted upon a police report and triable by Sessions Judges, but, with great respect, we think that St would not be proper to go to the extent of laying down that in a case in which there are no eye-witnesses to the occurrence, it is open to the Magistrate simply to refer to the documents forwarded to him under Section 173 Cr. P. C., and to commit the accused to the Court of Session.

If this view is upheld, then in cases in which the accused is challaned only on the basis of circumstantial evidence and such cases are quite large in number most of the Magistrates are likely to behave merely as post offices and it would be difficult for the accused to obtain order of discharge even in proper cases. It could not have been the intention of the legislature to put the cases in which there is only circumstantial evidence on a higher footing as compared to those in which there are also witnesses to the actual commission of the offence alleged. It is true that Sub-section (4) of Section 207A does not expressly lay down that in cases depending upon circumstantial evidence the Magistrate has to examine a particular type or number of witnesses. It is only the second part of the said sub-section which applies to such cases and it is left to the Magistrate to form an opinion whether it is necessary in the interests of justice to take the evidence of any one or more of the other witnesses for the prosecution, but the Magistrate should form that opinion not according to his whim or caprice but by the exercise of his judicial discretion.

If the Magistrate is of judicial frame of mind, he is bound to form an opinion in all cases depending upon circumstantial evidence that it would be necessary in the interests of justice to take the evidence of a a few material witnesses. No hard and fast rule can be laid down as to what type or what number of witnesses he should examine in such cases. It would certainly not be proper to go to the length of laying down, as learned counsel for the petitionerwants us to do in the present

case, that the Magistrate must examine all the witnesses about all the circumstances whereby the prosecution wants to link the accused with the crime.

If the Magistrate is required to go to that length in cases instituted upon a police report, then there would be little difference left between the enquiry instituted on a police report and the enquiry which is instituted otherwise than on a police report. In an enquiry which is instituted on a police report the Magistrate has all the documents referred to in Section 173 Cr. P, C. before him and since those documents are furnished to the accused also, he (the accused) also knows what evidence against him is going to be led.

It is therefore not necessary for the Magistrate to hold the enquiry in the elaborate manner provided by Section 208 Cr. P. C. onwards. In short, the Magistrate should neither reduce himself to the position of a mere forwarding officer, nor is it incumbent upon him to hold an elaborate enquiry in the manner laid down ibr cases instituted otherwise than on a police report. The proper course, in our opinion, to be followed by the Magistrate is that he should first see at the commencement of the enquiry and after going through all the documents forwarded to him under Section 173 Cr. P. C. as to what are the main circumstances whereby the prosecution wants to connect the accused with the crime.

(In other words, he should apply his mind and after analysing the evidence on which the prosecution wants to rely, he should find out those links of circumstantial evidence whereby the crime is sought to be fastened upon the accused. Thereafter, he should record the evidence of important witnesses in order to examine the strength of the said links. The main purpose of his enquiry is to see whether the said links are weak and therefore the accused should be discharged or that the circumstantial evidence is strong enough to charge the accused with the crime and commit him to the Court of Session.

In a case in which he finds that the evidence recorded by him on particular circumstances is weak, he will have to examine more and more evidence till he is satisfied that a prima facie case is made out against the accused. In another case, where he finds that certain circumstances are proved by the evidence of the

witnesses and they are strong enough to bring the guilt home to the accused, it may not be necessary for him to examine all the remaining witnesses.

11. We have examined the present case in the light of the above observations and we find that the Magistrate has examined 3 witnesses and he has come to a finding that P. W. Aladin had seen and identified the applicant when he was running immediately after the occurrence and that at that time he had a dagger in his possession and his shirt was blood-stained. This case is therefore clearly distinguishable from that of ILR (1957) 7 Raj 716 : ((S) AIR 1957 Raj 318). It further appears from the record that the Magistrate had before him the statements of a number of witnesses who were examined by a Magistrate under Section 164 Cr. P. C. on other circumstances.

It cannot, therefore, be said justly that this was a case of no evidence against the applicant or thatthe Magistrate has violated the provisions of Section 207A (4) Cr. P. C. No useful purpose will be served in such a case by quashing the commitment, because the Magistrate, who has relied upon the evidence of certain witnesses is not expected to declare the same as unreliable. On the other hand, the very purpose on account of which Section 207A was introduced, namely, the speedy termination of the trial, would be defeated.

12. There is no force in this revision application and it is hereby dismissed.