

State Vs. Pabudan Singh

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Court : Rajasthan

Decided On : Aug-16-1950

Reported in : AIR1951Raj84

Judge : Bharadwaj, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 403, 436, 437 and 438; Indian Penal Code (IPC) - Sections 307 and 506

Appeal No. : Criminal Ref. No. 151 of 1950

Appellant : State

Respondent : Pabudan Singh

Advocate for Pet/Ap. : Mansaram Purohit, Govt. Adv.

Judgement :

ORDER

Bharadwaj, J.

1. Pabudan Singh was challaned in the Court of the Mag. 1st Class, Sujangarh, under Section 307, I.P.C. The learned Mag. after the inquiry framed a charge under Section 506, I.P.C. against him. The prosecution, being dissatisfied with the order of the Mag. preferred a revision petn. under Section 435, Criminal P. C. in the Ct. of the Ses. J. Churu. The learned Ses. J. after hearing both the parties, has

made this report, under Section 438, Criminal P. C, to this Ct. with the recommendation that the Mag. should be ordered, by this Ct. to frame charge against the accused under Section 307, I.P.C. instead of under Section 506, I. P. C, already framed by him.

2. There is no doubt that the Ses. J. is within his powers, in making this report to this Ct., under Section 488, Cr. P. C, but the question arises -could not the learned Ses. J. proceed in this case under Sections 436 & 437, Criminal P. C. & dispose of the petn. himself In that case much of the trouble & time of this Ct. would have been saved especially when the work in this Court is already piled up. For the future guidance of the Courts it is necessary that this question should be minutely gone into.

3. In the present case, the charge under Section 506 was framed on 17-3-1950. The Mag. did not write anything in his order, with regard to the offence under Section 307, I.P.C. He simply wrote that in his opinion the offence under Section 506, I.P.C. is made out, against the accused, of which the order to frame the charge was given. The Mag. did not, in so many words, write in his order that the accused is discharged of the offence under Section 307, I.P.C. The action of the Mag. to frame a charge on a minor offence under Section 506, I.P.C., and to omit to write anything with regard to the major offence under Section 307, I.P.C. for which the accused was challaned in his Ct. amounted to a discharge of the accused of the major offence under Section 307, I.P.C. In the case of a discharge a Ses. J. is fully empowered under Section 436, Criminal P. C. to pass an order for further inquiry in the case. In *Ganga Dutta v. Emperor*, A. I. R. (23) 1986 Nag. 87 : (37 Cr, L. J. 715), the principle was enunciated thus :

'Where a Magistrate deliberately frames a charge on a minor section instead of on the major section, on which the case starts, his action is equivalent to a discharge with regard to the major offence and further inquiry can be ordered by the Sessions Court under Section 436, Cr. P. C.'

4. Moreover, the present case was exclusively triable by the Sessions Court, and was pending before the Mag. for inquiry before the trial. The Mag. was to commit the accused, in case the offence under Section 307, was prima facie established

against the accused. If in the opinion of the learned Ses. J. the case under Section 307, Penal Code was prima facie established and a charge under Section 307, Penal Code, was competent, he could himself under Section 437, Criminal P. C. order the Mag. to commit the accused to the Sessions Court to stand his trial under Section 307, Penal Code. There was no necessity of sending the case under Section 438, Criminal P. C. to this Court. In re K. V. M. Parmeswarayya, A.I.R. (36) 1949 Mad. 430 : (50 Cr. J. 558), it was held :

'When an accused is charged under Section 307, I.P.C., but the Mag. framed a charge under Section 337, Cr. P. C. and does not frame one under Section 307, I.P.C. his action amounts to a discharge of the accused of an offence under the latter section and in such a case it is open to the Dist. Mag. under Sections 436 or 437, Cr. P. C. either to order a farther inquiry or to order commitment to the Court of Sessions.'

5. In the present case the learned Ses. J. is competent to proceed under Section 436, Cr. P. C. or or under Section 437, Cr. P. C , and hence without accepting his recommendation the file is sent back to the Ct. of the learned Ses. J. Churu to proceed and pass order under Section 436 or 437, Criminal P. C.

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