

Ramsarup Vs. State

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Court : Rajasthan

Decided On : Jun-12-1950

Reported in : AIR1951Raj146

Judge : Ranawat, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 190(1) and 436

Appeal No. : Cri. Revn. No. 136 of 1950

Appellant : Ramsarup

Respondent : State

Advocate for Pet/Ap. : Ram Avatar, Govt. Adv.,; O.C. Chatterjee and; B.C. Chatt

Judgement :

ORDER

Ranawat, J.

1. This revn. petn. has been filed by the accused Ramswaroop against an order of the Dist. Mag. Sikar, dated 20-3-1950, by which he ordered the police to submit a challan against the accused under Section 161, Penal Code & Section 5, Anti-corruption Act.

2. After completing investigation against the accused Ram Swaroop, the Police sent a final report to the S.-D. M. at Neem ka-Thana that no case was made out against him. The S.-D. M. ordered that the case be struck off the file on 15-3-1950, but as the accused was Govt. servant he sent a report to the Dist. Mag. for information, upon which the Dist. Mag. made the order which is impugned in this revision.

3. Mr. Chatterjee, who has appeared for the accused, urged that the Dist. Mag. had no jurisdiction to revise an order of the S.-D. Mag. made under Section 173, Criminal P. C. He has put his reliance on a case reported in *Shukadeva v. Hamidmian*, A.I.E. (15) 1928 Pat. 885 : (29 Cr. L. J. 942), where- in it was held that:

"An order of the Dist. Mag. directing a police officer to submit a charge-sheet is a judicial one and not passed as an executive head of the district The Dist. Mag. has no power under the Criminal P. C. to call for a charge sheet after a final report is put up before a Mag. empowered to take cognizance of the offence under Section 173 and is disposed of by him.'

4. The Govt. Advocate has argued that the case reported in *Shukadeva v. Hamid*, A. I. R. (15) 1928 Pat. 585 : (29 Cr. L. J. 942) has been overruled by *Uma Singh v. Emperor*, A.I.R. (20) 1933 Pat. 242 : (84 Cr. L. J. 1198), which is a D. B. case, & that the Dist. Mag. was competent to order the police to submit a charge sheet against the; accused as the executive head of the district.

5. It may be observed that the order passed by the S.D. Mag. Neem-ka-Thana on a final report submitted by the police under Section 173, Criminal P.C. striking off the case from the file was made in his executive capacity, but the order made by the Dist. Mag. asking the police to submit a charge sheet against the accused cannot be construed to be an executive order, because the Dist. Mag. by that order has also issued a process against the accused for his arrest under for his arrest under Section 204, Criminal P. C. which means that the Dist. Mag. took cognizance of the case under Section 190 (1) (C), Criminal P. C. & ordered issue of process after satisfying himself that there was room for supposing that an offence has been committed by the accused. Moreover, an order putting a person

on his trial must be considered to be a judicial order. It has been observed by Jwala Prasad J., in *Shukadeva v. Hamid*, A. I. R. (15) 1928 Pat. 583 : (29 Cr. L. J. 942), that:

'It seems to me that such an order must be a judicial one as calling upon the accused to take his trial & fettering his liberty

It is clear that the order of the Dist. Mag. was a judicial one & was not an executive one is therefore, open to the accused to challenge its correctness in revn.

6. Since the order of the S.-D. Mag., Neem-ka-Thana, was an executive one, it was capable of being revised by him or by any other executive authority competent to do so. The Dist. Mag.'s order, therefore, cannot be held to be ultra vires. *Shukideva v. Hamid*, A. I. R. (15) 1928 Pat. 585 : (29 Cr. L. J. 942), has been overruled by the decision of a D. B. of the same H. C. in *Uma Singh v. Emperor*, A. I. R. (20) 1983 Pat. 242 : (34 Cr. L. J. 1198). It may be remarked that after the Dist. Mag. having satisfied him that there was a prima facie case against the accused had taken cognizance of the case under Section 190 (1) (c), Criminal P. C. & after he had ordered issue of a process for the arrest of the accused, it was not necessary for him to send the case back to the police for further investigation with a direction to submit a charge sheet against the accused. On taking cognizance of the case the Dist. Mag. ought to have informed the accused that he was entitled to have the case tried by another Ct. & if the accused had objected to be tried by the Dist. Mag, this case ought to have been transferred to some other Ct.

7. This revn. is partially accepted & the order of the Dist. Mag. remanding the case to the police for farther investigation is set aside. The Dist. Mag. is directed to transfer this case to some other Ct. for trial according to law if the accused objects to be tried by him, or to try the case himself if the accused does not raise any such objection.