

Chauthmal and ors. Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jan-16-1982

Reported in : 1982CriLJ1403; 1982()WLN396

Judge : K.S. Sidhu, J.

Appellant : Chauthmal and ors.

Respondent : State of Rajasthan

Advocate for Pet/Ap. : Mr. Tyagi

Judgement :

ORDER

K.S. Sidhu, J.

1. This order will deal with S. B, Criminal Miscellaneous Bail Application No. 636 of 1981 and S.B. Criminal Miscellaneous Application No. 136 of 1981. These two applications arise out of case, F.I.R. No. 215 of 1980, Stale v. Dudhia and Ors., under Sections 302, 147, 148 and 149,-I.P.C. which was instituted on a police report in the Court of judicial magistrate, Sangod, on December 23, 1980, and is still pending there.

2. The facts, in so far as they are necessary for the disposal of these applications, may be shortly stated here. On November 9, 1980, one Ram Bharose carried in a

cart the dead body of Gordhan and another person, Gajanand by name, in an injured condition, to police station, Sangod and gave information (F.I.R. No. 215 of 1980) to the police that Shyam Behari, Bhagwati, Kalu, Chauthmal, Gomta Pratap, Chhitter Kalia, Madan, Shrilal and Bhoga had committed rioting and inflicted fatal blows to Gordhan and grievous hurt to Gajanand earlier that morning. The police registered a case under Sec5. 147, 148, 302-149, 307-149, 326-149 I.P.C. Gajanand also succumbed to his injuries on November 10, 1980. On investigation, the police submitted a charge-sheet against 10 out of the aforementioned 11 accused and 2 others in all 12 accused,. excluding Shyam Behari on the ground that there was not sufficient evidence to justify the submission of a charge-sheet against him. While excluding Shyam Behari, the police included the names of two other persons, namely Dudhia and: Gopal, in the charge-sheet stating that their participation in the commission of the crime had come to light during the investigation. The judicial magistrate Sangod, took cognizance of; the offence under Section 190(1)(b) Cr. P.C. and supplied copies of the police report and other documents to all the 12 accused in accordance with the provisions of Section 207, Cr. P.C. on December 23 1930. By his order dated January 30, 1981, learned judicial magistrate purported to lake cognizance of the offence against Shyam Behari as well on the basis of the aforementioned police report hiking the view that the statements re-corded¹ under Section 161 Cr. P.C. and other documents accompanying the said report warranted the taking of such cognizance. The learned magistrate ordered the issue of a warrant for causing Shyam Behari to be brought before him on February 13, 1981.

3. By its order dated April 29, 1031, this Court (Kasliwal J.) ordered Dudhia Gomta, Shrilal, Gopal and Partap to be released on bail. He however rejected by the same order a similar application for bail moved on behalf of Chauthmal, Bhaga, Chhitter Kalu, Madan, Bhagwati and Kalia. These seven persons then moved another application, registered as S. B, Criminal Misc. Bail Application No. 636 of 1981 on June 1, 1981, for bail and they simultaneously challenged their detention as illegal on various grounds which will be adverted to a little later. The said application came up before the vacation Judge (Agrawal J.) on June 23, 1981. He granted interim bail to all the aforementioned seven accused till final decision on their application. That application is now before me for final decision,

4. The other application which is being dealt with along with the application of the aforementioned seven accused is the one made on behalf of Shyam Behari and registered as S, B. Misc. Criminal Application No. 136 of 1981. This application purports to have been made under Section. 482 Cr. P.C. challenging the validity of the order, dated January 30, 1981, whereby the Judicial Magistrate took cognizance of the offence against Shyam Behari notwithstanding the report of the police that there is not sufficient evidence to justify the forwarding of that accused to the magistrate, and further ordered the issue of a warrant of arrest against him.

5. Mr. Tyagi, learned Counsel for the accused petitioners raised the following points in support of the relief prayed in these two applications:

(i) The magistrate has taken cognizance of the offence against Shyam Behari upon a complaint dated January 16, 1981, received by him from one Banshi Lal, and that he issued the warrant against the former under Section 204 Cr. P.C. without examining the complainant upon oath and his witnesses, as required by Section 200 Cr. P.C. Such cognizance is illegal and therefore deserves to be quashed.

(ii) In the final police report submitted to the magistrate under Section 173 Cr. P.C. the police did not include the name of Shyam Behari as an accused on the view that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of that person to the magistrate. The magistrate could not take cognizance of any offence lawfully, against Shyam Behari, on the basis of such a report.

(iii). Inquiry by a magistrate preparatory to commitment of an accused for trial by a Court of session, as provided for in the old Code of Criminal Procedure, since repealed by the Code of Criminal Procedure, 1973 (Act No. 2 of 1974) hereafter called the 'New Code', has been dispensed with by the New Code. Thus, there is no committal enquiry pending before the Magistrate. That being so, the learned magistrate could not lawfully invoke the aid of Section 319 of the New Code to proceed against Shyam Behari and issue a warrant against him.

(iv) Since the proceedings pending before the magistrate do not come within the purview of inquiry, the magistrate is not competent under Section 309 of the New Code to remand to jail custody any of the seven accused whose bail application was rejected by this Court. All orders of remand made by the magistrate from time to time since December 23, 1980, are therefore illegal.

(v) The magistrate committed another illegality in adjourning the proceedings from time to time under Section 309 of the New Code without recording reasons for such adjournments.

(vi) Most of the accused in this case belong to the Scheduled Castes. The State Government of Rajasthan in consultation with the High Court of Judicature for Rajasthan has established a Special Court of Judicial magistrate of the first class at Kota Under Section 11(1) of the New Code to try all cases arising in that local area, in which any one or more of the accused belong to the Scheduled Castes or Scheduled Tribes. The magistrate who has taken cognizance of the offence and who is seized of the case for committal proceedings is not a special Court of judicial magistrate of the first class, appointed under Section 11(1), and therefore, he has no jurisdiction to take cognizance of the offence against any of the accused in this case.

(vii) The committal proceedings pending before the learned magistrate against all the accused and the warrant issued against Shyam Behari deserve to be quashed as illegal. In the alternative the accused petitioners deserve to be granted bail on merits in accordance with the provisions of Section 439 of the New Code.

6. These points may now be discussed in the order stated above. Points (i) and (ii) are interconnected and may therefore be discussed together.

Points (i) and (ii)

7. The arguments that the magistrate took cognizance of the offence against Shyam Behari upon a complaint dated January 16, 1981, filed by one Banshi Lal, suffers from an obvious fallacy. A perusal of Banshi Lal's application dated January 16, 1981, which is being referred to by Mr. Tyagi as a complaint is in fact

not a complaint properly so called-This application is no better than what is generally termed as a protest petition against the police report submitted under Section 173 of the New Code which excluded the name of Shyam Behari from the category of accused persons. Banshi Lal made the said application with the avowed object of drawing the attention of the magistrate to the entire material comprised in the police report and the documents accompanying it with a view to showing that the police had taken a wrong view of the facts disclosed therein by expressing the opinion that no case was made out for including the name of Shyam Behari in the category of the accused. He expressly requested the magistrate to take cognizance of the offence against Shyam Behari on the basis of the facts as disclosed in the said report. The magistrate took cognizance of the offence against Shyam Behari and issued the warrant of arrest against him on the basis of his own reading of the police report instead of accepting the opinion of the police or acting upon the so-called complaint made by Banshi Lal.

8. Even assuming that the application dated January 16, 1981, filed by Banshilal can be treated as a 'complaint', as defined in Section 2(d) of the New Code, it was open to the magistrate in the circumstances of this case, to treat it as such and take proceedings thereon in accordance with the provisions of Sections 200 to 204 of the New Code, or to treat it merely as a protest petition in view of the fact that he had already taken cognizance of the offence against 12 persons on December 23, 1980, and therefore he had jurisdiction and power to issue process against any other person or persons against whom, according to his reading of the police report and the documents accompanying it, reasonable grounds of suspicion of his or their involvement in the commission of the offence exist. There is no illegality involved in the Magistrate adopting the second course. This view is supported by ample authority. I may refer here only to a few comparatively recent cases, including two by the Supreme Court.

9. Saifar v. State of West Bengal : AIR1962 Cal133 is a case decided by a Division Bench of the Calcutta High Court. The facts in the cited case bear a close similarity to the facts in the instant case. The Magistrate in that case, on an application by the informant (like the application of Banshilal in the instant case) and on perusal of the police report, decided that there was reasonable ground for

proceeding against six other persons in addition to the eight accused who had already been sent up by the police by submission of a charge-sheet against them; and therefore the magistrate ordered the process to issue' against them for their appearance before him as co-accused for further proceeding according to law. Relying on a Full Bench decision of the Judicial Commissioners, Sind, reported as *Mehrab v. Emperor* AIR 1924 Sind 71 : (1925) 26 Cri LJ 181, the Division Bench held as under (Para 6):

Thus, before examination of any witness by perusing the statements recorded by the police under Section 161 of the Criminal Procedure Code and the other documents referred to under Section 173 like the first information report and the dying declaration, if any, and the medical report, the Magistrate has to decide whether there is a prima facie case against the persons sent up by the police along with the charge-sheet. It is clear that at the same time, the Magistrate can also decide on the basis of the same materials whether there is a prima facie case against other persons not sent up by the police and if the Magistrate is so satisfied certainly the Magistrate is entitled to summon them and place them on trial along with the other persons sent up by the police. The Magistrate takes cognizance of the offence on the police report or charge-sheet; for as has been repeatedly held in many decided cases, the Magistrate takes cognizance of the offence and not of the offender, and having taken cognizance of the offence on the police report, if he summons additional persons not sent up by the police, he still not taking cognizance under Clause (c) of Section 190(1), but acting under the cognizance which he has already taken under Clause (b).

10. Another case which may be cited here with advantage is reported in *Fatta v. State* AIR 1964 Punj 351 : 1964 (2) Cri LJ 204. Relying on *Saifar v. State of West Bengal* (supra) and the Full Bench case of the Judicial Commissioners of Sind, mentioned above, a Division Bench of the Punjab High Court:

consisting of I.D. Dua and H.R. Khanna, JJ. who later adorned the Bench of the Supreme Court held that when a magistrate takes cognizance of the case as a whole with the result that even if the police in their charge-sheet submitted under Section 173 have not mentioned all the parties concerned in an offence which has

been sent up for enquiry or trial, the Magistrate is not debarred from issuing process against persons other than those mentioned in the police charge-sheet.

11. The Calcutta and Punjab view, as expressed in *Saifar v. State of West Bengal* (1962)(1) Cri LJ 283 (supra) and *Fatta v. State* 1964 (2) Cri LJ 204 (supra), was approved by the Supreme Court in *Raghubans Dubey v. State of Bihar* : 1967 CriLJ1081 . Their Lordships have laid down the law on the point in these terms (Para 9):

In our opinion, once cognizance has been taken by the Magistrate, he takes cognizance of an offence and not the offenders; once he takes cognizance of an offence it is his duty to find out who the offenders really are and once he comes to the conclusion that apart from the persons sent up by the police some other persons are involved, it is his duty to proceed against those persons. The summoning of the additional accused is part of the proceedings initiated by his taking cognizance of an offence.

12. Now, as to the connected argument that if the police, on investigation, submit a final report instead of a charge-sheet to the effect that no case is made out against the accused, the Magistrate has no power to take cognizance of any offence upon such a report against any person, it may be mentioned here that so far as the instant case is concerned, it is not a case of submission of a final report for cancellation of the case on the ground that it is a false case, but of submission of a charge-sheet upon which valid cognizance of the offence could be and was taken by the Magistrate. That being so, it was open to the Magistrate as explained above to issue process in the offence of which cognizance had already been taken by him even against persons other than those not named in the charge-sheet and therefore not sent up by the police to face enquiry or trial before the Magistrate. Even if it had been a case of submission of a final report instead of a charge-sheet, certain observations of the Supreme Court which, were of course made in the nature of obiter dicta, are available to support the view that even in the case of a final report, as contradistinguished from a charge-sheet, a Magistrate will be well within his jurisdiction and power to take cognizance of an offence under Section 190(1)(b) of the New Code if, on perusal of the final report and the statements

recorded by the police under Section 161 of the new Code and other: documents accompanying the report, the Magistrate forms the opinion, contrary to the opinion of the police, that there is a reasonable ground of suspicion to justify the taking of cognizance of the offence upon the said report. Reference may be made in this connection to *Abhinandan Jha v. Dinesh Mishra* : (1967) IILLJ863SC .

13. I may now sum up my views and findings on points (i) and (ii) as follows:.

(a) The application, dated January, 16, 1981, filed by Banshilal is not a 'Complaint' as defined in Section 2(d) of the new Code.

(b) Assuming that the said application is a 'complaint', the learned Magistrate was not bound to and he did not take cognizance of the offence upon that complaint because he had already taken such cognizance upon police report on December 23, 1980.

(c) Once a Magistrate takes cognizance upon a police report, he takes cognizance of the offence and not the offender. In such a situation, it is his duty to issue process not only against the accused mentioned as such in the charge-sheet, but also against others whose involvement in the commission of the crime may be suspected by him on the basis of the material appearing in the police report.

(d) A Magistrate is not debarred from issuing process against persons other than those mentioned in the police charge-sheet, merely because the police have expressed an opinion in the report that the case against other persons is false.

14. In view of the foregoing discussion and findings, points (i) and (ii) of Mr. Tyagi's arguments fail and are therefore rejected.

Point (iii)

15. A reference to Section 2(g) of new Code which defines the expression 'inquiry' would show that enquiry means every inquiry other than a trial conducted under the said Code by a Magistrate or Court. Once a Magistrate takes cognizance of an offence upon a police report and it appears to him that the offence is exclusively triable by the Court of Session, as in the instant case, the inquiry held by the

magistrate preparatory to the commitment of the accused to the Court of Session, is obviously an 'inquiry' as defined in Section 2(g) of the new Code. It bears repetition that 'inquiry means every enquiry conducted under the Code by a Magistrate. Therefore, every inquiry conducted by the Magistrate and that includes furnishing to the accused copies of the police report, the F.I.R., the statements recorded under Section 161, confessions and statements recorded under Section 164 and other documents accompanying the police report, and examination as a witness of the person, if any, accepting a tender of pardon under Section 306 during the investigation must be treated as inquiry as defined in Section 2(g).

16. This view is supported by a Division Bench of this Court reported in Swaroop Singh v. State of Rajasthan 1976 WLN 167 : 1976 Cri LJ 1655. The Division Bench noted that though under Section 209 of the new Code which deals with commitment of a case to a court of session when the offence is exclusively triable by it, the Magistrate is not required to embark upon the recording of evidence etc., as he was required to record under the earlier Code, he must nevertheless scrutinise all the papers produced before him by the police, supply their copies to the accused and then find out of the case is exclusively triable by a Court of Session or not. Such proceedings taken by the Magistrate under Section 209 would squarely fall, as held by the Division Bench within the ambit of 'inquiry' as defined in Section 2(g).

17. Mr. Tyagi, learned Counsel for the petitioners on the other hand, cited the 41st Report of the Law Commission and two rulings, one reported as Sanjay Gandhi v. Union of India : 1978 CriLJ642 and the other Harii Ram v. State of Rajasthan, 1979 Cri LR (Raj) 248, in support of his argument that committal inquiry or preliminary, enquiry as known to the earlier Code, has been dispensed with by the New Code, and that, therefore, whatever be the nature of proceedings taken by the learned magistrate preparatory to the commitment of the case to the Court of Session, such proceedings cannot now be treated as 'inquiry' within the ambit of the definition as given in Section 2(g).

18. I have very carefully studied the above rulings cited by Mr. Tyagi, and find that the point as to whether the proceedings taken by a magistrate commencing from

the stage immediately after taking cognizance of an offence upon a police report up to the stage of making the order of commitment in a case exclusively triable by a Court of Session fall within the ambit of definition of 'inquiry' as given in Section 2(g) of the New Code or not, did not arise for decision in any of the two cited cases. I may therefore ignore the remarks in Harji Ram's case (supra) to the effect that 'committal enquiry is done away with' in the New Code as obiter dicta, more so because these remarks are in direct conflict with an earlier ruling of a Division Bench of this Court which was binding on the learned single Judge who decided Harji Ram's case,

19. As for Sanjay Gandhi's case 1978 Cri LJ 642 (supra), their Lordships of the Supreme Court have not made any observation therein which may be reasonably construed to mean that what a magistrate does preparatory to the commitment of a case to a Court of Session does not fall within the ambit of the definition of 'inquiry'. Of course, their Lordships observed that it is not open to a magistrate under Section 209 of the New Code to launch on a process of satisfying himself that a prima facie case has been made out on merits, and that such jurisdiction which vested in the magistrate under the earlier Code has been eliminated under the New Code. But at the same time, _their Lordships added that the jurisdiction vested in the Magistrate under the new Code is very narrow inasmuch as all that the magistrate has to do is to ascertain, whether the case as disclosed by the police report, is exclusively triable by the Court of Session. Whatever be the scope of the jurisdiction of the magistrate in the matter of proceedings preparatory to the commitment of the case to the Court of Session, there is no room for doubt that the said proceedings would fall within the ambit of the definition of 'inquiry' as given in Section 2(g) of the new Code.

20. Turning now to the 41st Report of the Law Commission, it is true that the Law Commissioners while recommending insertion of provisions of a new Section (S. 209 of the new Code) observed that 'preliminary inquiries are therefore, being dispensed with in cases triable by a Court of Session'. It must however be further noted that this observation was qualified by the further observation as under:

'However to perform certain preliminary functions like granting of copies, preparing the records, notifying the Public Prosecutor etc., provision is being made that the Magistrate taking cognizance of the case will perform these preliminary functions and formally commit the case to the Court of Session, As regards private complaints in cases triable exclusively by a Court of Session, the enquiry into the complaint by the Magistrate under the existing Section 202 will serve the purpose of a preliminary enquiry. (Emphasis supplied). These observations read as a whole make it quite clear that though the scope of inquiry preparatory to the commitment of a case to the Court of Session is minimal under the new Code, it can scarcely be disputed that whatever is left to be done by the Magistrate in that behalf still falls within the definition of 'inquiry' as given in Section 2(g) of the new Code.

21. For all these reasons, I have no doubt whatever that after the learned Magistrate took cognizance of the offence in the instant case upon receipt of the police report on December 23, 1980, the entire proceedings taken by him for the formation of the opinion that the offence is exclusively triable by the Court of Session and the discharge by him of his functions under Section 207 of the new Code squarely fall within the purview of 'inquiry' as defined in the new Code. The learned Magistrate is still and will remain seized of such 'inquiry' till he makes the order of commitment.

22. Now that the learned Magistrate is seized of the 'inquiry' into an offence, he has power under Section 319 of the New Code to proceed against Shyam Behari for the offence which appears from the evidence to have been committed by him. The term 'evidence' as used in Section 319 includes statements recorded under Section 161 and the documents submitted with the charge sheet filed under Section 173 of the New Code. 'Evidence', as defined in Section 3, Evidence Act includes not merely statements of witnesses recorded in the court, but also 'all documents produced for the inspection of the court'. The statements recorded by the police under Section 161 and other documents collected during the investigation and filed along with the police report under Section 173 of the New Code are undoubtedly all documents produced for the inspection of the court, and as such are 'evidence' as contemplated by Section 319 of the New Code. It is

therefore, open to the committal Magistrate under Section 319 to proceed against a person, not sent up as an accused as per charge-sheet submitted under Section 173, if on perusal of the police report and accompanying documents it appears to him that such person has committed the offence and could be tried together with the accused already sent up by the police.

23. Apart from Section 319, Section 204 of the New Code is also available to the learned Magistrate to issue process against Shyam Behari, for it has already been shown that the learned Magistrate had taken cognizance of the offence on Dec, 23, 1980, and thereafter he found sufficient ground on the basis of the police report and the documents accompanying it for proceeding against Shyam Behari in addition to the accused against whom the charge-sheet had been submitted by the police. This is a situation squarely covered by Section 204, and the learned Magistrate was, thus, clearly within his jurisdiction and power under that section to issue the warrant for causing Shyam Behari accused to be brought before him for proceedings preparatory to his commitment to the court of session for trial of the offence,

24. In view of the foregoing discussion, I find no force in point (iii) of Mr. Tyagi's arguments.

Point (iv)

25. This point stands concluded against the petitioners in view of my decision on point (iii) above. The record reveals that the learned Magistrate remanded the accused to jail custody from time to time by warrant according to law and such remands became necessary as the enquiry had to be adjourned from time to time for reasons which were duly recorded. There is, thus, no force in this point and the same is therefore rejected.

Point (v)

26. The learned Magistrate who has taken cognizance of the offence against the accused petitioners and who is now seized of the 'enquiry' has ample power under Section 309(2) of the New Code to adjourn the enquiry from time to time for

reasons to be recorded by him, I have examined the record and find that he adjourned the inquiry from Dec. 23, 1980 to Jan. 3, 1981, and thereafter to other dates on Jan. 17, 28, 29, and 30, Feb. 13, 18 and 25, Mar. 11 and 25, April 8 and 22 and May 6 and 25, 1981, for reasons recorded on all these dates. Most of these adjournments were occasioned because the warrant of arrest issued against accused Shyam Behari could not be executed in spite of efforts by the police. One may or may not agree regarding the adequacy of the reasons for such adjournments, but the mere fact that this Court may take a different view of the matter is no ground for interfering with the orders of adjournment on the ground of inadequacy of such reasons and strike them down in proceedings on applications such as are now before this Court. This point also therefore fails.

Point (vi)

27. It is common ground between the parties that most of the accused in this case belong to the Scheduled Castes and that the State Government of Rajasthan, in consultation with the High Court of Judicature for Rajasthan, has established for the local area in which this case belongs a special court of judicial Magistrate of the first class under Section 11(1) of the New Code to try all cases in which one or more of the accused belong to the Scheduled Castes or Scheduled Tribes. Section 11(1) of the New Code reads as under:

11. (1). In every district (not being a metropolitan area), there shall be established as many courts of Judicial Magistrate of the first class and of the second class, as at such places, as the State Government may, after consultation with the High Court, by notification specify:

Provided that the State Government may after consultation with the High Court, establish, for any local area, one or more Special Courts of Judicial Magistrate of the first class or of the Second Class to try any particular case or particular class of cases, and where any such Special Court is established no other court of Magistrate in the local area shall have jurisdiction to try any case or class of cases for the trial of which such Special Court of Judicial Magistrate has been established.' It is also admitted that the Magistrate who has taken cognizance of the offence in the instant case and who is now seized of 'inquiry' preparatory to

commitment of the accused to the court of session is not a Special Magistrate of the first class appointed in accordance with the proviso to Section 11(1). The question which falls for determination therefore is whether the said Magistrate who is admittedly not a special Magistrate under the proviso is divested of his jurisdiction to take cognizance of the offence merely because he is not a special Magistrate as aforementioned and as such is not competent to try the case. The answer to this question must obviously be in the negative. A reference to the provisions of Section 190 of the New Code which deals with 'cognizance of offences by Magistrates' would at once show that the power of a Magistrate to take cognizance of an offence is not dependent upon his power to try it. The section makes it clear in terms, that a Magistrate has power under this section to take cognizance of any offence including of course an offence not triable by him. If it appears to the Magistrate who has taken cognizance of the offence that it is not triable by him and that it is exclusively triable by a court of session, he is required under Section 209 to commit the case to that court. The mere fact that a special Magistrate of the first class has been appointed under proviso to Section 11(1) to try cases involving one or more of the accused belonging to Scheduled Castes or Tribes is no ground for holding that by such appointment his power to try offences is enlarged and equated with the powers of a court of session as shown in the First Schedule of the New Code, His power to try still remains limited to offences as shown in the First Schedule. The offence involved in the present case is not triable by the Special Magistrate. It is exclusively triable by a court of session. Hence the Magistrate who is now seized of the case will be competent to commit this case to the court of session.

28. Even assuming for the sake of argument that the Special Magistrate appointed in accordance with the proviso to Section 11(1) of the New Code has exclusive jurisdiction to try this case, the Magistrate having local jurisdiction in the area will not, by that token alone, be debarred from taking cognizance of the offence under Section 190 of the New Code, for as already explained, the jurisdiction of a Magistrate to take cognizance of an offence is not conterminous with his jurisdiction to try it. If a Magistrate is competent to take cognizance of an offence exclusively triable by a court of session, which, it is admitted, he is certainly competent to do so, it does not stand to reason to be told that he is not competent

to take cognizance of that offence if the same happens to be exclusively triable by some court other than a court of session.

29. For all these reasons, I am of opinion that notwithstanding the establishment under Section 11(1) proviso of the New Code of the court of a Special Magistrate of the first class in the local area concerned with exclusive power to try cases involving one or more of the accused belonging to Scheduled Caste other Magistrates having local jurisdiction in the area do not become divested of their power to take cognizance of offences other than those exclusively triable by the Special Magistrate. As already held, the offence involved in this case is not triable by the special Magistrate at all. On the other hand, it is exclusively triable by a court of session. Hence the learned Judicial Magistrate Sangod has jurisdiction to take cognizance of the offence.

Point (vii)

30. The findings recorded under points (i) to (vi) above would show that the committal proceedings pending against the accused before the learned Judicial Magistrate Sangod and the warrant issued by him for the arrest of Shyam Behari accused are valid.

31. Turning now to prayer of the accused - petitioners for bail under Section 439 of the New Code it will be seen that a similar application made on behalf of Chauthmal, Bhaga, Chitter, Kalu, Kalia, Madan and Bhagwati had been dismissed on merits by Kasliwal J. on April 29, 1981. I see no reason to take a different view. It will be recalled that two persons, namely Gordhan and Gajanand, were killed in the course of this transaction. These seven accused were refused bail probably because they participated in the assault on the two victims, armed with weapons like kuntia, iron angle, gandasi and sticks. Those who were granted bail by Kasliwal J. are said to have been unarmed at the time of the commission of this double murder.

32. In conclusion, I would dismiss both the applications and direct Chauthmal, Bhaga, Chhitter, Kalu, Kalia, Madan and Bhagwati to surrender themselves to the judicial custody in the court of Judicial Magistrate Sangod on January 28, 1982.

The learned Magistrate shall take prompt steps to get Shyam Behari arrested and then dispose of the 'enquiry' pending before him without any further delay.

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