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State Vs. Matu and ors.

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Court : Rajasthan

Decided On : Mar-29-1960

Reported in : 1961CriLJ422

Judge : D.S. Dave, J.

Appellant : State

Respondent : Matu and ors.

Judgement :
ORDER

D.S. Dave, J.

1. These two references come on the report of the learned Sessions Judge, Jhunjhunu, dated 26-5-1959, and arise in the following circumstances:

2. In village Dheendhwas Bichla a dispute arose about a field Khasra No. 129 between two parties. According to the prosecution, one Lala Khati was the owner of the said field and before his death he sold it to Chandra Jat, who began to cultivate it. After Lala's death, Ladu Khati asserted his son Pala's title over the said property on the ground that Pala was adopted by Lala prior to his death. The story goes that on 10th August, 1957, a number of persons, who sided with the two parties, referred above, assembled at the disputed field and there was a clash between the two.

It is alleged that deadly weapons were used by members of both the parties, with the result that several persons were injured and Dhanna belonging to Chandra's party and Ladu Khati belonging to the other party were done to death. After investigation, the police put up separate challans against each party for offences under Sections 302, 148, 302/149 and 447 I.P.C. In one case, which is Sessions Case No. 2 of 1959, Chandra and 11 others were challaned, while in the other, which is Sessions Case No. 3 of 1959, Matu and 6 others were prosecuted, in the court of Magistrate First Class, Chirawa. Before the said magistrate started preliminary inquiry in these cases, Narain son of Ladu Khati filed a complaint involving 7 accused besides the 12, who Were challaned by the police.

In other words, he wanted that in Sessions Case No. 2 of 1959, 19 persons should be convict-ed. Similarly, Lachhman filed a complaint involving 15 more accused besides the seven, who were challaned by the police in Sessions Case No. 3 of 1959, i.e., his complaint was against 22 accused. The Magistrate conducted separate inquiries in both the cases but he consolidated in each case the enquiry with regard to the complaint with the challan put up by the police. Eventually, he committed 19 accused in Sessions Case No. 2 and 22 accused in Sessions Case No. 3 in the court of the learned Sessions Judge, Jhunjhunu.

3. The learned Sessions Judge has reported that the committing court ought not to have consolidated the inquiry emanating from the complaint with the inquiry proceeding on the police challan in each case and that since he has committed this illegality, his committal order in both the cases should be quashed and he should be directed to split up the inquiries and proceed separately with the private complaint and in the police challan in each case.

4. Shri C. C. Chatterji appearing for accused Matu and others in Sessions Case No. 3 opposes the reference. It is urged by him that the Magistrate has not committed any illegality in consolidating the inquiry on the basis of complaint with the inquiry arising out of the police challan. It is further contended that the Magistrate has proceeded to inquire into the matter under Section 208 of the Code of Criminal Procedure and, therefore, his clients have not been prejudiced. It is also pointed out by him that if the Magistrate is ordered to make a fresh and

separate 'inquiry in the same matter, his clients would be unnecessarily harassed, that they do not feel any prejudice on account of the consolidation of inquiry made by the committing Magistrate and therefore the references should be rejected.

3. Nobody has cared to appear in this Court on behalf of accused Chandra and others in Sessions Case No. 2 of 1959.

6. Learned Deputy Government Advocate supports the references in view of the decision of a division bench of this Court in Gopal v. The State . I have gone into the said case and I think it is clearly distinguishable from the present one. In Gopal's case only one accused Radhey Sham was prosecuted by the police for an offence under Section 307 I.P.C. The complainant Panchu later on filed a complaint in which he involved 5 more persons besides Radhey Shyam for the same offence.

The magistrate consolidated the two proceedings and proceeded under Section 207A Cr. P.C. An application was presented before him on behalf of one of the accused Gopal that the inquiry against him could not be held according to the procedure laid down in Section 207A, because he was not challaned by the police. His objection was turned down by the Magistrate but on a reference by the learned Sessions Judge it was upheld by the learned Judges of this Court

It would be clear from what has been stated above that in the said case Gopal was not challaned by the police and therefore the Magistrate could not proceed to inquire into the matter against him under Section 207A Cr. P.C. Section 207A lays down a procedure which should be adopted in proceedings instituted on police report. For proceedings instituted on a complaint the procedure is laid down in Section 208 Cr. P.C. The Magistrate was thus obviously in the wrong in adopting the procedure under Section 207A against Gopal.

In the present cases it appears that the Magistrate has adopted the procedure laid down in Section 208 Cr. P.C. & therefore, none of the accused can make a valid complaint on account of the consolidation of the complaint with the police challan in each case. Learned Deputy Government Advocate has drawn the attention of this Court towards the following observation appearing in Gopal's case ILR :

In our opinion the initial mistake lay in consolidating the police challan with the complaint. According to the amended Criminal Procedure Code the procedure for enquiry in cases triable by the court of session on police report has been simplified and by tagging the police challan with the complaint the very purpose of expediting trial is frustrated.

It would suffice to say that this observation was made in the context of the facts and circumstances of the said case. I do not think that the learned Judges meant to lay down that in no case the enquiry on a police report can be consolidated with the one on complaint. For instance, if the police challans 5 persons for a certain offence or offences and the complainant also files a complaint against the same accused for the same offence or offences,

I see no reason why the magistrate should conduct two inquiries separately at the same time.

If separate inquiries are made in such cases, the accused would be put to great harassment. The witnesses Will also be put to trouble, since they will have to appear twice. Moreover, the court will have to examine the evidence over again and it would be an anomaly if the same accused are committed by the same court for the same offence twice at different times. The procedure laid down in Section 207A is shorter as compared to one laid down in Section 208 Cr. P.C.

In a case where the police has challaned one or more accused for a particular offence or offences, a complaint would not ordinarily be filed by the complainant in the court of the enquiring magistrate for the same offences against the same accused. But if, per chance, any such complaint is filed, then the course, to my mind is first to make an inquiry under Section 207A Cr. P.C. on the basis of the police report.

If the court commits the accused under Section 207A, no further inquiry would be necessary on the basis of a private complaint. In such a case the complaint may be later on simply filed with the record of the inquiry with a note to the said effect. If the court finds that from the inquiry on the police report no case is made out and the accused should be discharged but the complainant insists that he has

additional evidence to produce, then the order in the first inquiry may be reserved and an appropriate order should be passed after an inquiry based on the complaint is conducted in the manner provided under Section 208 Cr. P.C.

There is no express provision in the Code of Criminal Procedure for consolidation of an inquiry proceeding on a police report with an inquiry commencing on a private complaint. At the same time, there is no express bar either against consolidation in an appropriate case like the one stated above. If the two inquiries are consolidated, the Magistrate should proceed under Section 208 Cr. P.C. because it lays down a longer procedure which is more beneficial to the accused than the one laid down in Section 207A Cr. P.C.

The consolidation should, however, be avoided as far as possible, because the very purpose of providing Section 307A is to expedite the inquiry and that purpose should not be allowed to be frustrated. Generally, a complaint is made in cases challaned by the police either when the complainant wants that some persons in addition to those challaned by the police should be punished or when the complainant thinks that the police has not challaned the accused for certain offences and they should be charged with more offences, than those for which they have been prosecuted by the police.

The ratio decidendi of Gopal's case , as I understand, is that the Magistrate should conduct an inquiry under Section 207A against those accused, who have been challaned by the police, so that the said inquiry may be expedited. In most of the cases, it would be found that complaints are filed against those accused who are not challaned by the police, in order to be vindictive. The inquiry against the additional accused has to be made separately under Section 208 Cr. P.C., because the procedure laid down in Section 207A cannot apply to them, It would be in very rare cases that the Magistrate would find the necessity of committing persons other than those challaned by the police, on the basis of a private complaint. In those cases in which inquiry is made under Section 208 Cr. P.C. if some more accused have to be committed, the commitment should be made as far as possible before the trial of the accused committed under Section 207A has commenced, so that two separate trials may be avoided.

7. Now, in the present cases, it has already been pointed out that the Magistrate has consolidated the inquiry on the police report with the one based on the complaint but he has adopted a more elaborate procedure provided by Section 208 Cr. P.C. and committed the accused. I, therefore, see no sense in splitting up enquiries now since this would only tend to harass the accused. In Badri Prasad v. The State ILR (1959) 9 Raj 600 the police had filed a challan against 3 persons. A complaint was also made before the Magistrate. The Magistrate consolidated the two cases and followed the procedure as provided for the trial of the complaint case.

It was contended on behalf of the accused that the two cases should have been tried separately, but this argument was repelled and it was held by a learned Judge of this Court that in view of the fact that the Magistrate had followed a more elaborate procedure, the accused could have no grievance-against the order of amalgamation passed by the Magistrate. I entirely agree with this view and it seems that this case was not brought to the notice of the learned Sessions Judge, otherwise he would not have made these references.

8. Both the references are rejected accordingly. The files be sent back to the learned Sessions Judge with direction that both the cases have already become very old and therefore their trial should be expedited.

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