

**In Re: Naramban and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/805175](http://sooperkanoon.com/805175)

**Court :** Chennai

**Decided On :** Feb-01-1922

**Reported in :** 71Ind.Cas.877

**Judge :** Walter Schwabe, C.J. and ;Krishnan, J.

**Appellant :** In Re: Naramban and ors.

**Judgement :**

ORDER

Walter Schwabe, C.J.

1. In this petition the District Magistrate has ordered, the committal of all the seven accused to the Sessions on a charge of dacoity. He also held that the trial of the three accused against whom the Sub-Magistrate has framed charges of theft and violence is void. He also says that ail the proceedings before the Sub-Magistrate are vitiated, because he did not record his reasons for the discharge of the accused, as is required by Section 209, Criminal Procedure Code. As regards this latter objection, as I understand, it is not the practice to record the reasons for the discharge of different accused, who are discharged during the trial until the end of the trial. This seems an unobjectionable practice and in this case apparently was going to be adopted by the Sub-Magistrate, and in fact, has now been adopted. It is true that at the time the application was made to the District Magistrate no such record existed. But that might be a ground for his calling for the record but is no ground, in my view, for saying that the whole proceedings before the Sub-Magistrate are vitiated.

2. But the really important point in this case is that the Sub-Magistrate having held that there was no case of dacoity against any of the accused, the District Magistrate has said that there is a clear prima facie case against them all. Whether, if it were so, lie had the power to commit them all on that charge to the Sessions seems a matter which may some day require argument, but, in view of the finding that this Court is about to make, that point is unnecessary for decision at the present time. The crime of dacoity is one of the most serious crimes known to the law of this country and is punishable with transportation for life or rigorous imprisonment which may amount to ten' years. That those who framed this Statute ever intended facts of the kind in this case to be included in the crime of dacoity I cannot believe. But taking the word of the Section 11 most literal sense and strongly in favour of the Crown they seem to me to point to a robbery with violence by five or more persons. Now, in this case, there is not, in my view, any evidence that five or more persons combined together to rob the complainant with violence. As far as accused Nos. 4, 5 and 6 are concerned, the case against them at the most, as I understand, is, that they stood by and encouraged accused Nos. 1, 2 and 3 who were making a sort of raid on their brother's property or what their brother claims as his property and when be tried to re-take what his brothers had taken from him (I use the word brothers to include other relatives of theirs) two of them, the younger ones, probably instigated by accused No. 4, tried to prevent the complainant from re-taking his property. I do not see a shred of evidence that accused Nos. 4, 5 and 6 were any party to any robbery, or that they could in any sense be called robbers or dacoits, and I am quite convinced that if this case came before the Sessions Judge on that charge on that evidence, he would direct the Jury to acquit all of them on the charge of dacoity. That being so, I do not agree, with the view taken by

the District Magistrate that there is a prima facie case here to commit the accused because, as I have said, I do not think there is.

3. The result is, that the order he has made should be set aside and the matter must be remitted back to him to take such steps as he thinks proper with that direction before him. It will be for him to consider again whether accused Nos. 4, 5, 6 and 7 have or have not been properly discharged by the Sub-Magistrate, and it will be for him to consider whether any and which of these accused ought to be charged and before whom.

Krishnan, J.

4. This is an application to revise an order of the District Magistrate of Chingliput directing all the seven accused in this case to be committed to the Sessions on charge of a dacoity under Section 395, Indian Penal Code. Whether, in view of the fact that the first three accused have not yet been discharged but charges have been framed against them by the Sub-Magistrate under sections 379 and 323, Indian Penal Code, and they are still under trial before him, the District Magistrate could have directed their committal to the Sessions is a point that was raised before us, but, not being fully argued, it is not necessary to give a definite opinion on it, as on other grounds I have come to the conclusion that the charges of dacoity cannot be sustained against any of them and the order of Committal must be set aside. One reason given by the District Magistrate for his order is that the Sub-Magistrate in discharging accused Nos. 4 to 7 altogether has not given any reason for his action, as required by Section 209, Criminal Procedure Code. It was rather premature, I think, to take that point, because it was open to the Sub-Magistrate to have given his reasons before the close of the trial. The trial not having been closed, the action of the Sub-Magistrate in not recording his reasons at once cannot be treated as an irregularity.

5. The District Magistrate has also stated in his order that he thinks that a prima facie case has been made out on evidence against all the accused of having committed an offence under Section 395, Indian Penal Code. He has not discussed the evidence at all and we have considered that evidence and we are unable to find any reliable evidence to justify that statement. The learned Chief Justice has dealt with this point fully and I do not think I need expatiate on it further. I agree with the learned Chief Justice that no case of dacoity is made out at all. No doubt, there is some evidence on which, if it is accepted in toto, a case of technical dacoity perhaps may be made out, but the Sub-Magistrate was not bound to make a charge of dacoity merely because there is evidence if he thought that portions of that evidence essential for such a charge were not reliable. See *Ponniah Thirumali Vandaya Thevar In re* 65 Ind. Cas. 993 : (1922) M.W.N. 13 & 45 :3 Cr.L.J. 209 : 16 L.W. 460 and *Damappa Pillai In re* 23 Ind. Cas. 741 : 15 Cr.L.J. 373. It cannot be said that the Magistrate who holds a preliminary enquiry has no kind of discretion to weigh the evidence and to discredit that evidence when it is of such a nature that it is not likely that any Court would accept it. In this case the Sub-Magistrate, in an order that he passed on the 19th September last, has given his reasons for discharging accused Nos. 4 to 7. Through those reasons might not be altogether satisfactory as justifying their discharge of all offences. I think that they are enough to show that no case of dacoity has been made out against them. When the charge of dacoity goes, the case is no longer one exclusively triable by a court of Session and there is then no necessity for a committal to the Sessions and the order of the District Magistrate should be set aside. But as to what further steps should be taken in the case, I think, it should be left to the District Magistrate to petition before him, whether he should set aside the discharge to any extent and order further enquiry as regards accused Nos. 4 to 7 and whether because of the opinion expressed by him that a major offence or robbery has been split into two minor offences of theft and simple hurt, which in my view is right, the case should not be sent to a First Class Magistrate for trial. These are matters which the District Magistrate will consider.

6. I agree to the proposed by the learned Chief Justice that the case should be remitted to the District Magistrate for further disposal according to law.