

Emperor Vs. Jogeshwar Passi

Emperor Vs. Jogeshwar Passi

SooperKanoon Citation : sooperkanoon.com/850955

Court : Kolkata

Decided On : Aug-11-1903

Reported in : (1904)ILR31Cal1

Judge : Banerji and; Handley, JJ.

Appellant : Emperor

Respondent : Jogeshwar Passi

Judgement :

Banerji and Handley, JJ.

1. This is a reference under Section 432 of the Code of Criminal Procedure by the Presidency Magistrate of the Northern Division of Calcutta in which he has submitted for the opinion of this Court the following question, namely, whether he has jurisdiction to proceed with the enquiry into the case of a person accused of an offence punishable under Section 304A of the Indian Penal Code after the Coroner of Calcutta has drawn up an inquisition under Section 24 of the Coroners' Act, IV of 1871, bound down the witnesses under Section 25 of that Act and committed the accused to prison under Section 26.

2. That is the main question that arises for determination upon the Presidency Magistrate's reference; and there are the following subsidiary questions also submitted by the Magistrate in his reference for our opinion, namely, (i) whether

the order for bail passed by him in the case of the accused Jogeshwar Passi is still operative, or whether the Magistrate is at liberty, if he considered it to be necessary, to pass a fresh order for bail; (ii) if after enquiry into the case he acquits Jogeshwar Passi or discharges him, would that order be effective by its inherent force as in ordinary cases tried or inquired into by the Magistrate; and (iii) is the Crown entitled to ask the Magistrate to commit Jogeshwar Passi for a second time, when one of the two commitments, if what has been done by the Coroner has the effect of a commitment, must be superfluous.

3. The questions that arise for determination in this reference are not altogether free from doubt and difficulty. The Coroners Act which is a special enactment is, as Section 1 of the Code of Criminal Procedure provides, unaffected by that Code. On the other hand there is nothing in the Coroners' Act which affects the jurisdiction of the Presidency Magistrate under the Code of Criminal Procedure. And the result may be, as we think it is in this case, the existence of two concurrent jurisdictions one in the Coroner and the other in the Presidency Magistrate, to deal with the same matter, though in modes somewhat different in certain respects. This simultaneous exercise of two concurrent jurisdictions may lead to conflict and anomaly such as have been indicated in the Magistrate's reference, and to avoid this the view which the Magistrate is apparently inclined to take, is, that he is ousted of his jurisdiction after the inquisition is drawn up by the Coroner and the accused is taken into custody or released on bail, if the drawing up of the inquisition by the Coroner against the accused person is to have the effect of a commitment of the accused to the High Court in the exercise of its Original Criminal Jurisdiction.

4. The first question then for consideration is whether the inquisition drawn up by the Coroner has that effect. We feel bound to answer this question in the affirmative in view of the provisions contained in Sections 24 to 27 and 29 of the Coroners Act, IV of 1871, and of Section 11 of the Prisoners Act, III of 1900 which contemplates commitment of an accused person by a Coroner for trial by the High Court in the exercise of its Original Criminal Jurisdiction; and in view also of an unreported decision of this Court to which our attention was called by the Standing Counsel, in which it was held by Mr. Justice Hill that an inquisition drawn up by a

Coroner was a valid commitment of the accused, though at the same time it so happened that nothing came out of that commitment, the learned Standing Counsel for the Crown not having offered any evidence and the Jury being thereupon directed to return a verdict of not guilty. But though an inquisition drawn up by the Coroner may have the effect of a valid commitment of the accused for trial by the High Court in the exercise of its Original Criminal Jurisdiction, it is contended by the learned Standing Counsel that that does not necessarily oust the Presidency Magistrate of his jurisdiction to inquire into the case, or even to try the case, if the offence in respect of which the accusation is made, is one that is triable by the Magistrate. No doubt this contention is apparently opposed to the principle that an inferior Court is ousted of its jurisdiction to try or to inquire into a case, whilst a superior Court has seisin of it. But the contention is sought to be reconciled with the principle in this way, namely, that as a matter of practice for a long series of years the inquisition of the Coroner has not been acted upon as a commitment, and what has been acted upon has almost, invariably been a commitment by the Magistrate. And where, as in the unreported case above referred to, the inquisition drawn up by the Coroner has not been followed by a commitment by the Magistrate, the officers of the Crown have declined to offer any evidence and the accused has been either acquitted or discharged, though it has been contended the High Court could act upon the Coroner's inquisition notwithstanding the order of discharge by the Magistrate. The practice has no doubt been as has been stated above. Several reasons have also been advanced in favour of the view that the drawing up of an inquisition by the Coroner should not be held to have the effect of ousting the Magistrate of his jurisdiction.

5. In the first place it is pointed out that the inquiry before the Coroner is primarily an inquiry into the cause of death irrespective of the question whether it was caused by the criminal act of any person, whereas in an inquiry before the Magistrate the primary question for determination is who is the person who has caused the death of the deceased or whether the person accused should be proceeded against. Then in the second place it is pointed out that the inquiry before the Coroner may be, as it very often is, in the absence of the accused; whereas that before the Magistrate proceeds in his presence; and if the inquiry before the Coroner is to oust the Magistrate of his jurisdiction, the result would be

that the accused would be deprived of the opportunity that he may have of showing by the cross-examination of the witnesses for the prosecution that there is no ground for proceeding against him, and that he ought not to be put on his trial before the High Court.

6. We are of opinion that there are strong reasons for our accepting as correct the contention of the learned Standing Counsel that the drawing up of an inquisition by the Coroner does not of itself oust the Magistrate of his jurisdiction to inquire into or try the case of an accused person. But to reconcile this view with the principle that a person of whose case a superior Court has seisin cannot be dealt with by an inferior Court, we must hold that an inquisition drawn up by the Coroner, though it may have the effect of a valid commitment upon which the High Court in the exercise of its Original Criminal Jurisdiction may act, has not that effect until it has been accepted by the High Court, and the Officers of the Crown have drawn up a charge in accordance with it.

7. We may add that the view we take is not in conflict with Section 215 of the Code of Criminal Procedure which refers only to commitments under Sections 213, 214, 477 or 478 of the Code. We may also add that the view we take receives some support from Sub-section (2) of Section 213 which gives the Magistrate power to cancel the charge and discharge the accused after hearing the witnesses for the defence. This is an advantage of which the accused must be wholly deprived if the Magistrate is to be held to be ousted of his jurisdiction by reason of the Coroner drawing up his inquisition. The view we take is in accordance with that taken by the Bombay High Court in the case of *Queen-Empress v. Mahomed Rajudin* (1890) I.L.R. 16 Bom. 159.

8. If in any case the accused person objects to the Magistrate's proceeding with the case against him on the ground of his being already committed for trial to the High Court in the exercise of its Original Criminal Jurisdiction by virtue of the inquisition drawn up by the Coroner, an inquisition which has the chance of being accepted as a valid commitment, and which if so accepted, might subject him to a second trial notwithstanding that the 'Magistrate might try and acquit him; the difficulty raised would be one that could be solved, we apprehend, only by a

proper application to this Court, which, having regard to the circumstances of the individual case, will make such order as it thinks fit, as to whether the commitment by the Coroner is to be acted upon, or whether it is proper for the Magistrate to proceed with the case.

9. Practically however such objections must be rare as it will be to the advantage of the accused, as we have pointed out above, that the inquiry before the Magistrate, should go on. The truth is that the co-existence of the two concurrent jurisdictions namely those of the Coroner and of the Magistrate must occasionally give rise to difficulties that may be solved in individual cases by application to this Court, but they can be removed only by the Legislature stepping in and making necessary changes in the law.

10. It remains now to answer the three subsidiary questions stated at the outset, namely, first, that relating to bail which involves a difficulty having regard to the provisions of Section 11 of the Prisoner's Act, III of 1900, under which the Superintendent of Jail in which the prisoner is, is required to produce the prisoner before the Court to which he is committed and not before any other Court. Here again it is only by the intervention of this Court that the accused can be released on bail and brought before the Magistrate. In the case before us we make that order and under Section 498 we direct that the accused Jogeshwar Passi be admitted to bail, the amount to be fixed by the Presidency Magistrate.

11. As to the second subsidiary question we think it has already been in effect answered by the observations we have made, which go to show that until the High Court has accepted the inquisition drawn up by the Coroner as a commitment, the Magistrate is not ousted of his jurisdiction, and any order of acquittal or discharge that he may make will be operative, subject of course to the discretion of this Court, when the time comes for it to consider, whether it should take action upon the Coroner's inquisition as an effective commitment.

12. The third subsidiary question, in the view we have already expressed, must be answered in the affirmative, the practice as pointed out above, being to take action upon the commitment by the Magistrate rather than upon the inquisition drawn up by the Coroner.

13. With the expression of our opinion embodied in the foregoing observations the reference will be sent back to the Presidency Magistrate.

14. Before concluding we should add that in view of the difficulties pointed out above, the Legislature should step in and make such changes in the law relating to inquests by Coroners as may be deemed necessary or expedient, to avoid any conflict between the two jurisdictions, namely, those of the Coroner and the Magistrate, which in our opinion co-exist.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com