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

Paritosh Khan and ors. Vs. the State

Paritosh Khan and ors. Vs. the State

SooperKanoon Citation : sooperkanoon.com/871490

Court : Kolkata

Decided On : Jun-06-1958

Reported in : AIR1958Cal709,1958CriLJ1480

Judge : N.K. Sen, J.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 173, 173(4) and 251A

Appeal No. : Criminal Revn. No. 870 of 1957

Appellant : Paritosh Khan and ors.

Respondent : The State

Advocate for Def. : Anil Kumar Sen, Adv.

Advocate for Pet/Ap. : J.M. Banerjee and ;Somendra Chandra Bose, Advs.

Judgement :
ORDER

N.K. Sen, J.

1. This Rule is directed against an order passed by the Sessions Judge of Midnapore whereby he ordered further enquiry into a case which ended in an order of discharge under Section 251-A of the Code of Criminal Procedure by a Magistrate at Midnapore.

2. It appears that on the 16th December, 1956 there was a first information report by one Radha Gobinda Sing against the petitioners alleging that they had unlawfully entered upon the land which was Plot No. 176 of mouza Aulara, police station Salbani, in the district of Midnapur, and cut away and removed the paddy grown thereon by the informant Radha Gobinda Singha. Afterinvestigation the police submitted a charge sheet under Sections 143 and 379 of the Indian Penal Code against the petitioners. The learned Magistrate after examining the documents and statements made by the witnesses before the police and after hearing the Court Sub-Inspector and defence lawyer discharged the petitioners under Section 251-A of the Code of Criminal Procedure, being of the opinion that there was no prima facie case under Sections 143 and 379 of the Indian Penal Code, against any of the petitioners as the statements and documents indicated that the petitioners were in possession of the land in dispute.

3. The learned Magistrate referred to the statements of three persons who were boundary men who stated before the Investigating Officer that the petitioners were in possession of the land in dispute. They, however, made another statement that in the previous year the father of the informant Radha Gobinda Singha had possessed the land. The police recorded the statements of three other witnesses who were labourers of relatives of the informant. The learned Magistrate relying upon their statements and upon a consideration of all the documents and statements made before the police was of the view that the dispute was entirely of a civil nature and it was no use framing a charge against the petitioners. In this view he passed an order of discharge. Against this order of discharge the complainant moved the Sessions Judge who set aside the order of discharge and directed a further enquiry into the case. The grounds which prevailed with the learned Judge were that the learned Magistrate should not have relied upon any statement or document produced by the accused persons as they were, in the opinion of the learned Judge, not such documents as were contemplated under Section 173(4) of the Code. The learned Judge thereafter thought that although the witnesses had stated that the land in question was in the possession of the petitioners, they had also stated that in the previous year the father of the informant was in possession. In this view it was the opinion of the learned Judge that witnesses should have been examined in the Court in order that it might be

ascertained whether the complainant had grown the paddy in question and whether the petitioners had forcibly cut away the same. The learned Judge further held that the statements of witnesses who were close relatives should not have been discarded on that ground alone. In this connection he referred to a decision of the Supreme Court.

4. Mr. T.M. Banerjee, on behalf of the petitioners, has drawn my attention to the fact that in the first place it must be observed that the petition before the Sessions Judge was by the informant and not by the State. On the other hand the petition made before the Judge was contested on behalf of the State by the Public Prosecutor.

5. The State has entered appearance in this Court but did not adopt the same attitude as was adopted before the learned Sessions Judge. Mr. Anil Kumar Sen on behalf of the State opposed this application and wanted to support the order of the learned Sessions Judge. Later on having realised the incongruity of his position he mentioned that the object of the appearance of the State in this case was to place the law on the subject for the consideration of this Court. He argued that if the learned Magistrate had referred to any written statement filed by the father of the complainant he was wrong inasmuch as Section 173(4) of the Code did not contemplate the use of any such document. In support of this contention he referred to an un-reported decision of this Court in the case of Tanu Molla v. The State, Criminal Revn. No. 287 of 1957(A) wherein Mitter and Debabrata Mookcrjee JJ. held that a Magistrate while making the order of discharge cannot refer to and rely upon other papers and documents which are not referable to the documents mentioned in Section 173 of the Code. Mr. Sen also points out that both the Courts below were under a misapprehension in referring to the document as a written statement whereas the papers mentioned in the charge sheet state that the document was only a petition of Khudiram Singha. Mr. Sen has, therefore, very fairly conceded that the learned Sessions Judge was not right in the view that he took that this document must be excluded from consideration.

6. Mr. Banerjee on behalf of the petitioners argued in the first place that the learned Judge was under a misapprehension of the law as laid down in Section

251-A of the Code. This section in no way contemplates that witnesses were to be examined before framing a charge or before the discharge of the accused persons. It only requires that all documents referred to in Section 173 of the Code should be considered and that an opportunity should be given to the prosecution and the accused of being heard. Section 173(4) of the Code enumerates the documents that need be furnished to the accused and these documents refer to those on which the prosecution proposed to rely. Since the documents upon which the prosecution proposed to rely were the documents that were before the learned Magistrate he was not in any way in error in referring to those papers.

7. In the next place Mr. Banerjee submitted that the learned Judge has observed that before recording an order of discharge it has to be found that the charge against the accused is 'groundless'. The learned Judge's interpretation of the word 'groundless' is that there is no legal evidence in support of the charge. Mr. Banerjee has commented on this reasoning of the learned Judge and has submitted that all legal evidence need not necessarily be reliable. The learned Magistrate found that the evidence proposed to be offered by the prosecution taking at its highest was not reliable. The object of framing a charge is not to prosecute the accused persons by any means but to make them face a trial which may reasonably lead to a conviction. The word 'groundless' would certainly mean the absence of reasonable ground to expect a conviction. It is important to note that the object of the new procedure laid down in the conduct of warrant cases initiated on police report is to avoid unnecessary delay and harassment to the accused persons and for this purpose the statement and documents are placed before the Magistrate to enable him to consider whether he will be justified in framing a charge or whether he would pass an order of discharge. It may be observed that while committing a person for trial in the Court of Session the Committing Court is not to sift and weigh evidence but to leave the question of fact to be decided by the jury. The object of commitment is, therefore, fundamentally different from framing a charge. The learned Sessions Judge has proceeded on the view that in the course of the trial after framing of the charge, the witnesses who have made different statements before the police may yet in their evidence in Court explain why thev had said so and the Court will then be in a position to ascertain whether what appears to be apparent is or is not really so. It must be

borne in mind that a Magistrate has to decide both Questions of law and fact and it was for him to consider whether the statements of witnesses were to be believed for the purpose of framing a charge.

8. I have been taken through the statement of all the witnesses and I find it impossible to say that from these statements the learned Magistrate should have framed a charge in this case.

9. It is significant to observe that the Public Prosecutor appearing before the learned Judge was also of the view that no charge should be framed in this case, In this view, I think it was inexpedient in the interest of justice to direct any further enquiry into the matter. The remedy of the informant, if any, lay in the Civil Court.

10. I would, therefore; set aside the order of the learned Sessions Judge and restore the order passed by the learned Magistrate.

11. The Rule is, accordingly, made absolute.

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