

Harbans Singh Chohan Vs. the State

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Court : Kolkata

Decided On : Sep-15-1959

Reported in : AIR1960Cal722,1960CriLJ1577

Judge : J.P. Mitter, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 207A, 207A(4), 215, 435 and 439; ;[Evidence Act, 1872](#) - Section 24

Appeal No. : Criminal Revn. No. 1124 of 1959

Appellant : Harbans Singh Chohan

Respondent : The State

Advocate for Def. : S.M. Bose, Adv. General and ;P.B. Burman, Adv.

Advocate for Pet/Ap. : S. Banerjee, ;A.K. Dutt, ;N.C. Banerjee, ;S.K. Das and ;N.C. Talukdar, Advs.

Judgement :

ORDER

J.P. Mitter, J.

1. This Rule is directed against an Order of commitment upon charges under Ss. 420 and 436 of the Indian Penal Code. The petitioner, who is in a large way of

business, is alleged to have set fire to his godown said to contain a huge quantity of milk powder and to have realised from the insurance company, with which the goods had been insured, a sum of Rs. 3 lakhs by falsely representing the fire to have been accidental.

2. The commitment is sought to be quashed on two grounds, namely, (a) there was a breach of the procedure laid down in Section 207A of the Code of Criminal Procedure, and (b) there was no prima facie case.

3. The learned Advocate-General for the State has contended that the opinion of the Magistrate that the accused should be committed for trial is not justiciable. He has contended further that Section 215 of the Code of Criminal Procedure not having been amended to include a commitment under Section 207A, this Court has no jurisdiction to quash a commitment, which can only be done on a point of law.

4. In support of the first point, Mr. Advocate-General has invited me to contrast the language of Sub-section (6) of Section 207A with that of Sub-section (1) of Section 209, as also the language of Sub-section (7) of Section 207A with that of Sub-section (1) of Section 210. In my view, the difference in the language concerned cannot affect the scheme of the section which, taken as a whole, requires a prima facie case for commitment. Mr. Advocate-General has conceded that the absence of a prima facie case is a ground for quashing a commitment. In my view, to say that the opinion of a Magistrate that an accused should be committed is not justiciable is to make nonsense of the several provisions of the Section, regarded individually or collectively. Sub-section (6) of Section 207A empowers a Magistrate to discharge an accused, if the evidence and documents referred to in the preceding sub-sections disclose no grounds for commitment. The sub-section further requires the Magistrate to record his reasons for such discharge. True, Sub-section (7) does not say that the Magistrate must record his reasons for committing an accused, but Sub-section (10) expressly requires the Magistrate to record briefly the reasons for such commitment. Section 207A, as a whole, ensures that there is no capricious discharge or commitment. The facts of the case of *Powell v. Apollo Candle Co.* 1885-10 AC 282 were different. There the action of

the Governor was made dependent upon the opinion of the Collector and naturally the Governor's action could not be questioned by showing that the opinion of the Collector was erroneous. Sections 435 and 439 give this Court ample powers to interfere with any order of discharge or of commitment under Section 207A. In my view, Section 215 remained untouched through oversight. In any case, Section 215 cannot affect the re-visional powers of this Court under Ss. 435 and 439. In my view, the true purport of Section 207A of the Criminal Procedure Code was succinctly put in the case of *Panchanan Bailav v. The State*, : AIR1959 Cal207 .

5. As to Mr. Banerjee's contention that the procedure laid down in the latter part of Sub-section (4) of Section 207A was not followed. It seems to me clear that the Magistrate must apply his mind to the question whether or not it is necessary in the interests of justice to take the evidence of any one or more of the other witnesses for the prosecution. Whether he should in fact take such evidence is another matter.

6. Turning now to the facts, the fire in question took place in August, 1955. The enquiries which followed revealed the cause of the fire to have been accidental. The damage to the goods was assessed at over RS. 3 lakhs. The petitioner's claim was ultimately settled at Rs. 3 lakhs which he received from the Insurance Company. In September, 1957, that is, two years later, a complaint was made to the Deputy Commissioner of Police, Detective Department, Calcutta, alleging fraud against Chauhan Industries Limited, but there was no allegation of arson or cheating against the petitioner. Shortly thereafter, the police examined 28 witnesses. In due course, the present enquiry before the learned Magistrate began.

7. It is not disputed that the documents referred to in Section 173 were furnished to the petitioner. It is said that the statements of witnesses recorded by the Manicktala police in connection with the fire were lost or destroyed and, therefore, not made available to the petitioner. Be that as it may, of the innumerable witnesses examined by the police, only one named Biswesar Sharma was called before the Magistrate.

8. The prosecution relied upon an alleged confessional statement made by the petitioner's durwan Jayraj Bari to a learned Magistrate on 17-10-1958. I have not

only read every word of the vernacular statement but also the English translation thereof and am Surprised that the learned Magistrate regard-ed the statement as a confession. It is admittedly an exculpatory statement and cannot possibly affect the, petitioner. The learned Magistrate's finding that Jayraj sprinkled turpentine oil over the goods, is wholly wrong and is referable to his ignorance of the Hindi language. The official translation of the relative portion of the statement is as follows:.

'Then turpentine oil was sprinkled over the lot. I enquired of my master as to why turpentine oil was sprinkled over the packets of bad milk powder'.

As Jayraj did not implicate himself, either directly or indirectly, his statement could not be regarded as a confession and nothing in the statement could, therefore, affect the petitioner. It is pointed out that in a petition to the Magistrate filed on his behalf Jayraj admitted his guilt. This petition cannot also be regarded as a confession affecting the petitioner. Moreover, in a signed petition from jail, dated June 23, 1959, Jayraj not only retracted whatever statement he had made but charged the police with having forced him to make a false statement. In any event, the statement concerned, even though it was true, could not in law be ,used against the petitioner. The prosecution called one Bisweswar Sharma, but the witness stated that he knew nothing about the fire. Thereafter, the prosecution filed a petition stating that they had no witness to the actual commission of the offence alleged and did not propose to call any other, but would be content to invite the Magistrate to consider the documents referred to in Section 173 of the Code of Criminal Procedure for the purpose of committing the accused for trial.

9. As far as I can see, the documents referred to in Section 173 of the Criminal Procedure Code which have been placed before me disclosed that the petitioner had hired a godown at Cossipore and removed some goods from Daspara godown some five days prior to the occurrence. It must be observed that the investigations as to the cause of the fire by the Fire Services and the Insurance Company as well as by others did not disclose any foul play. I have also perused the documents concerned, but cannot find any material which can be said to disclose a prima facie case against the petitioner. It should be remembered that in

considering evidence which may be regarded as circumstantial the learned Magistrate must have regard to the principles which govern circumstantial evidence. It is no good saying that there is a body of circumstantial evidence unless it is clear that the circumstantial evidence refers unerringly to the guilt of the accused. The requirement of a prima facie case being inherent in Section 207A of the Code of Criminal Procedure and no such case having been made out either in the documents referred to in Section 173 of the Code of Criminal Procedure or in the oral evidence called, I am obliged to hold that the order of commitment was bad.

10. I must accordingly quash the order of commitment and make the Rule absolute.

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