

The State Vs. S. Jaseph and anr.

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Court : Kolkata

Decided On : Sep-20-1963

Reported in : 1964CriLJ588

Judge : R.N. Dutt, J.

Appellant : The State

Respondent : S. Jaseph and anr.

Judgement :

ORDER

R.N. Dutt, J.

1. Mr. Bhoss on behalf of the State submits that the charge Under Sections 302/109 of the Indian Penal Code against the accused persons is unsustainable and an entry should be made to that effect Under Section 273 of the Criminal Procedure. Perused the evidence on the basis of which the commitment has been made. Perused the statements of the relevant witnesses recorded by the Police Under Section 161 of the Code. I agree with Mr. Bhose that the charge Under Sections 302/109 of the Indian Penal Code against the accused persons is clearly unsustainable. Make an entry to that effect Under Section 273 of the Code and the accused are discharged in respect of that charge.

2. Mr. Bhose further submits that the only over charge that remains for trial is a charge Under Sections 273 of the Indian Penal Code against the accused persons. He argues that since this by itself is not triable by the High Court Sessions, the commitment should be quashed and the Chief Presidency Magistrate should be directed to proceed with the trial of the accused persons Under Sections 323/34 of the Indian Penal Code. Mr. Jyotish Chandra Bose for accused Joseph submits that once a commitment is made, this Court cannot quash the commitment. A Commitment can be made to this Court only when there is an offence triable by this Court. The commitment in this case was made because of the alleged offence Under Sections 302/109 of the Indian Penal Code. We are all agreed that the charge in respect of this offence is unsustainable. Since the charge in respect of this offence goes, it must be said that the Magistrate had no jurisdiction to make the commitment for the offence Under Sections 323/34 of the Indian Penal Code. The commitment in respect of the offence Under Sections 323/34 of the Indian Penal Code must therefore, be deemed to have been without jurisdiction and is thus liable to be quashed. But, has this Court the power to quash the commitment Section 215 of the Code gives power to the Court to quash illegal commitments made Under Section 213 or the Code. When the Code of Criminal procedure was amended and Section 207A was added, Section 215 was not amended to include commitments Under Section 207A (10). This is rather unfortunate, but so long as Section 215 is not amended, it must be said that this Court cannot quash this commitment under that section as this is a commitment Under Section 207A (10) of the Code. But this Court has the inherent power Under Section 561A of the Code to quash this commitment maybe Motherly J. has held in State v. Baieswar Mulia 1962 W Cri U 655 (Cal) that this Court has the inherent power Under Section 561A of the Code to quash illegal commitments not covered Under Section 215. He has followed a Bombay and a Mysore decision. With respect, I agree with his views. An offence Under Sections 323/34 of the Indian Penal Code is triable by any Magistrate. It would look ridiculous and it would be an abuse of the Processes of the Court if such an offence is tried by this Court with nine special Jurors. It is, therefore, just and proper that the commitment in respect of the offence Under Sections 323/34 should be quashed.

3. A Full Bench of this Court has held in. Emperor v. Girish Chandra ILR 57 Cal 1042 : AIR 1929 cal 756 (FB) that this Court while quashing a commitment can direct the Magistrate to proceed with the trial of the offence i' accordance with law, and the Magistrate shall' proceed 10 try the offence in accordance with law. The commitment of the accused persons to this Court for trial of the alleged' offence Under Sections 323/34 of the Indian Penal Code is, in the circumstances, quashed and the Chief presidency Magistrate is directed to proceed with the trial of the accused persons Under Sections 323/34 of the Indian Penal Code in accordance With law. Let the¹ accused persons be produced from Jail custody before the Chief Presidency Magistrate on September 21,1963 for an order of their release on bail to his satisfaction pending their trial there.

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