Pappa Rao Vs. the State

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Court : Kolkata

Decided On : Oct-08-1984

Reported in : 1985CriLJ546

Judge : Anil K. Sen and ;G.N. Ray, JJ.

Appellant : Pappa Rao

Respondent : The State

Judgement :

Anil K. Sen, J.

1. This revisional application is directed against the appellate order dated July 19, 1983 passed by the learned Sessions Judge, Andaman and Nicobar Islands in Criminal Appeal No. 22 of 1982. By the order impugned the learned Sessions Judge has affirmed an order dated October 5, 1982 of conviction under Section 304A and Section 279 ' of the I.P.C. passed by the learned Judicial Magiatrate, Ist Class, Mayabundar in G. R. Case No. 276 of 1978. The accused is the petitioner before us in this revisional application.

2. According to the prosecution, the accused petitioner while driving a motor truck on July 12, 1978 at 10.30 A.M. ran over a boy named Tannis Dung Dung aged about 4 years at Bijdera on his way from Panchbati to Rangat. The boy died instantaneously. Such death according to the prosecution was due to rash and

negligent driving on the part of the accused petitioner. The petitioner was arrested on the same day and on completion of investigation the police drew up the chargesheet on Sept. 13, 1978. That chargesheet, however, was not filed before the learned Magistrate earlier than April 9, 1979 on which date the learned Magistrate took cognizance. At the trial the prosecution adduced evidence including the evidence of certain eye witnesses and the learned Magistrate convicted the accused petitioner under both sections and sentenced him to undergo rigorous imprisonment for six months. In doing so the learned Magistrate recorded a finding to the effect that the prosecution had duly proved the commission of the offence by the accused petitioner as he was charged for. The accused petitioner preferred an appeal but the learned Sessions Judge in dismissing the appeal upheld the order of conviction and sentence. Hence the present revisional application.

3. Mr. Sardul Singh appearing in support of this revisional application has raised three points. In the first place, he has contended that the chargesheet having been filed beyond 180 days from the date of arrest the learned Magistrate could not have taken cognizance on such a chargesheet in view of Section 167(5) of the Cr.P.C. and the entire trial based on such cognizance is liable to be set aside. Reliance has been placed on the decisions in the cases of Ram Kumar v. The State reported in 1981 Cri LJ 1288 (Call) Jay Shankar Jha v. The State, reported in 1982 Cri.LJ 744 (Cal) and Ram Briksh v. State of West Bengal reported in 1983 Cri LJ 39 (Cal). Secondly, it has been contended by Mr. Singh that on the evidence adduced the learned Magistrate should have held that the death was entirely accidental and was not due to any rash and negligent act on the part of the accused petitioner. Lastly reliance has been placed by Mr. Singh on Section 360 of the Cr.P.C. in contending that in any event considering the fact that this was the first offence committed, the accused petitioner should have been released on probation of good conduct.

4. The learned Public Prosecutor, appearing on behalf of the State, has strongly contested the first and the second points raised by Mr. Singh. In his usual fairness the learned Public Prosecutor has left the third point raised by Mr. Singh to the discretion of this Court. In contesting the first point it has been contended by the

learned Public Prosecutor that in this case investigation was completed well within 180 days from the date of arrest when the chargesheet was drawn up on Sept. 13, 1978 and hence there was no breach of Section 167(5) of the Cr.P.C. He has conceded that there was some delay in the matter of actual filing of the chargesheet before the learned Magistrate. But that according to him would not constitute infringement of Section 167(5) of the Cr.P.C. So far as the second point raised by Mr. Singh is concerned, it has been contended by the learned Public Prosecutor that same raises a question of fact and in view of concurrent findings of the two courts below this Court should not interfere with such a finding in exercise of its revisional power.

5. So far as the first point raised by Mr. Singh is concerned that in our opinion is a point of law. Section 167(5) of the Cr.P.C. provides as follows :

If in any case triable by a Magistrate as a summons case, the investigation is not concluded within a period of six months from the date on which the accused was arrested, the Magistrate shall make an order stopping further investigation into the offence unless the Officer making the investigation satisfies the Magistrate that for special reasons and in the interest of justice the continuation of the investigation beyond the period of six months is necessary.

6. Though it is somewhat debatable as to whether every breach of the provision would render the subsequent proceeding void or not, it has now been held by this Court that leave to continue the investigation beyond 180 days from the date of arrest in summons cases should be taken before the expiry of the said period. It has further been held that no Magistrate can proceed to try an accused on a chargesheet submitted as a result of investigation continued in breach of this provision. That is the view expressed by this Court in the decisions relied on by Mr. Singh. We are bound by these decisions, however much we may entertain some doubt on the point as to why the Magistrate cannot condone the breach in a case where sufficient grounds have been made out for continuance of the investigation even beyond 180 days only because leave to continue the investigation had not been taken before the expiry of the period. Terms of Sub-section (5) of Section 167 of the Cr.P.C. may not be read to be so mandatory as to

rule out all scope for such condonation amounting to grant of leave retrospectively. We would however, proceed on the view earlier taken by this Court namely, if the investigation is not completed within 180 days from the date of arrest, no Court can take cognizance on a chargesheet submitted as a result of any investigation continued beyond 180 days from the date of arrest.

7. On the terms of Sub-section (5) as set out herein before the investigation has to be concluded within 180 days from the date of arrest and a failure in that regard alone would constitute breach of this provision. The pertinent question which has arisen for consideration in this case is when does the investigation conclude. While according to Mr. Singh it does not conclude until the chargesheet is actually filed before the learned Magistrate, according to the learned Public Prosecutor it concludes when as a result of investigation made the Investigating Officer forms an opinion that a sufficient case has been made out to place the accused before the Magistrate for trial and he draws up the chargesheet accordingly. For deciding this controversial issue the previous decisions of the court referred to and relied on by Mr. Singh are of no help to us because in none of those cases the specific point now under consideration did really arise for consideration. In all those cases it was found as a fact that the investigation itself was not concluded within the period of 180 days nor was the chargesheet drawn up within the said period. In all those cases investigation continued beyond 180 days and chargesheet was filed only as a result of such continued investigation. In such circumstances this Court held that thereby the provision of Sub-section (5) of Section 167 of the Cr.P.C. was infringed. The facts of the present case stand on different footing. Here we find that the chargesheet was (sic) from the date of the arrest. Though it is contended by Mr. Singh that merely drawing up a chargesheet does not lead to conclusion of the investigation we are unable to agree with him on the point. If we look to the terms Section 173 Sub-section (2) of the Code of Criminal Procedure we find that the Investigating Officer is to forward a report as soon as the investigation is complete. This report is either a final report where no case has been made out or is chargesheet where a prima facie case has been made out. This provision in our opinion clearly indicates that investigation concludes at a stage prior to forwarding such a report to the Magistrate and is an act antecedent to such filing. Strong reliance, however, has been placed by Mr. Singh on the observations of the

Supreme Court in the case of H.N. Rishbud v. State of Delhi reported in 1955 Cri LJ 526. In that case the Supreme Court was not really called upon to consider any question as we are considering in the present case. There, no doubt it was observed that investigation consists of five steps enumerated and the fifth one referred to by the Supreme Court is :

Formation of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial and if so taking the necessary steps for the same by filing a chargesheet under Section 173.

This observation again has been quoted with approval in subsequent two decisions also relied on by Mr. Singh. Relying on this observation it has been sought to be contended by Mr. Singh that filing of the chargesheet under Section 173 is a part of actual investigation which does not conclude until the filing. We are, however, unable to read the observation of the Supreme Court in the light suggested by Mr. Singh. That in our opinion will not be consistent with the clear implications following from the terms of Sub-section (2) of Section 173, or the definition of the term as in the Code itself. We have pointed out that on the terms of Section 173 it is only when the investigation is completed and the report is drawn up that the said report is forwarded to the learned Magistrate. The act of investigation concludes when the Investigating Officer forms his opinion and draws up the report. Forwarding the same to the Magistrate is a statutory obligation which follows the same. The observation of the Supreme Court relied on by Mr. Singh must be read in the context of what the Supreme Court was considering in that case. There the Supreme Court was considering what an Investigating Officer is required to do as part of his statutory obligations. The Supreme Court in that case was neither called upon nor decided the question as to when actually the investigation concludes. That at least for the purpose of Section 167(5) of the Cr.P.C. filing of the chargesheet does not constitute a part of investigation, is well-established by a subsequent decision of the Supreme Court strongly relied on by the learned Public Prosecutor. This is the case of Hussainara Khatoon v. State of Bihar reported in 1979 Cri LJ 1036 (SC). Our attention has been rightly drawn by the learned Public Prosecutor to the observation made in para 8 of the judgment. Referring to the provision of Sub-section (5) of Section 167 of the Cr.P.C. the

Supreme Court observed :

It is clear from this provision that if in any case triable by a Magistrate as a summons case the investigation is not concluded within a period of six months from the date on which the accused was arrested, the Magistrate must make an order stopping further investigation into the offence, unless the officer making the investigation satisfies the Magistrate that for special reasons and in the interest of justice, the continuation of the 'investigation beyond the period of six months is necessary. With a view to securing compliance with this provision we directed that if, in a case triable by a Magistrate as a summons case it is found that investivation has been going for a period of more than six months without satisfying the Magistrate that for special reasons and in the interest of justice, the continuation of the investigation beyond the period of six months is necessary, the State Government will release the under-trial prisoners, unless the necessary orders of the Magistrate are obtained within a period of one month. The reason for giving this direction was that in such a case the Magistrate is bound to make an order stopping further investigation and in that event,only two courses would he open : either the police must immediately proceed to file a chargesheet it the investigation conducted till then warrants such a course, or if no case for proceeding against the under-trial prisoners is disclosed by the investigation, the under-trial prisoner must be released forthwith from detention.

This direction of the Supreme Court just in consonance with the provision of Section 173(2) of the Cr.P.C. makes it very clear that actual filing of the chargesheet before the Magistrate is not a part of the investigation for the purpose of Section 167(5) of the Cr.P.C. We are, therefore, unable to accept the first point raised by Mr. Singh and we uphold the view taken by the learned Sessions Judge that in the present case the chargesheet having been drawn up well within 180 days from the date of arrest there was due compliance with the requirement of Section 167(5) of the Cr.P.C. and the delay in the matter of filing the chargesheet before the Magistrate would not constitute any breach of the said provision.

8. We next proceed to consider the second point raised by Mr. Singh. It must be pointed out at this stage that before the Court of appeal below the finding of the

learned Magistrate to the effect that death of the child was due to an act of rash and negligent driving by the accused was not challenged at all. We too have carefully considered the finding recorded by the learned Magistrate in the light of evidence on record. The learned Public Prosecutor is right in contending that this Court should not lightly interfere with a finding of fact in a revision petition. Even so we have looked into the evidence. In our view the finding recorded by the learned Magistrate is fully justified on the evidence on record. The evidence including the evidence of eye witnesses go to show that the child was run over at a place away from the metalic part of the road on the right out flank. It is also clear on the materials on record that the place of the occurrence was clearly visible to the driver from a long distance. It is further established that the child was not merely knocked down but was so run over that the entrails of the child came out of the belly. These circumstances clearly establish the fact that the accused had been driving the truck so recklessly that he had no control over it. Moreover the eye witnesses have uniformly given evidence to show that the truck was being run recklessly and at high speed which is corroborated by the attending circumstances. That apart the learned Magistrate is right in observing that when approaching the place with a child near about, the accused was required to be more careful and absence of such care is an act of negligence. It was suggested by Mr. Singh that it was a case of accident. According to Mr. Singh when the accused had been proceeding towards Rangat at the place of occurrence, he had to swerve towards right to save another child on the road and that led to the accident. That, however, was not the specific suggestion given to the witnesses including the eye witnesses. Though reliance has been placed by Mr. Singh on the statement of the accused, such statement does not support any such case. In his statement the accused sought to make out a case that there were two boys on the road ; just when one of them had crossed the road, the other suddenly came over and was run over. This statement, in our opinion, is not consistent with the suggestion put forward by Mr. Singh before us nor is it consistent with the fact that the boy was run over at a place on the right out flank. Taking into consideration the entire evidence on record we are clearly of the opinion that the finding of the learned Magistrate with regard to rashness and negligence on the part of the accused petitioner is fully justified The second point raised by Mr. Singh therefore

fails and is overruled. So far as the third point raised by Mr. Singh is concerned Section 360 of the Cr.P.C. has left it to the discretion of the Court as to when an accused convicted of an offence in the circumstances pointed out by the provision itself can be released on probation instead of being sentenced to undergo any other punishment. Considering the facts and circumstances of the present case we are unable to hold that any case of exercise of such discretion has been made out. In our opinion, it was an act of gross negligence and rashness and the accused petitioner does not deserve to be released on probation although the offence committed by him might have been the first one. We, therefore, override the third point raised by Mr. Singh.

9. As all the points raised in support of the revisional application fail, the application fails and the rule is discharged. The accused petitioner is now directed to surrender to his bail bond and serve out the sentence.

10. Mr. Singh, appearing on behalf of the accused, prays for certificate under Article 134 of the Constitution for further appeal to the Supreme Court. In our opinion, though one of the points raised is a question of law since we have decided the point on the basis of decision of the Supreme Court we do not find that any case for grant of certificate has been made out. The prayer is accordingly refused.

G.N. Ray, J.

11. I. agree.