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Court : Kolkata

Decided On : Mar-30-1982

Reported in : 1983CriLJ40

Judge : N.C. Mukherji and ;N.G. Chaudhuri, JJ.

Appellant : The State and Etc.

Respondent : Shyamal Kr. Dev and ors. Etc.

Judgement :

N.C. Mukherji, J.

1. G.R. Case No. 1535 of 1978 was registered in the Court of the Sub-divisional Judicial Magistrate, Howrah, under Sections 399/402 I.P.C. and 25/27 of the Arms Act and under Section 6(3) of the Indian Explosives Act. The learned Sub-divisional Judicial Magistrate committed the case to the Court of Session. The learned Sessions Judge transferred the case to the court of the Assistant Sessions Judge. The learned Judge framed charge under Section 395/402 and also under Sections 25(1)(a) and 27 of the Arms Act. The plea of the accused was taken. It appeared to the learned Judge subsequently that commitment of this case to the Court of Session was without jurisdiction in so far as H involves the offence punishable under Sections 25(1)(a) and 27 of the Arms Act and the order of the Court in relation to the framing of charges under those Sections of the Arms Act against accused Shyamal Dev and his taking of plea thereunder was also without

jurisdiction. The learned Judge on 2-2-82 passed a long order quoting several Sections of the Criminal P. C. and the Schedule of the Code. The learned Judge is of opinion that the offences under Sections 25 and 27 of the Arms Act are exclusively triable by a Magistrate and as such accused Shyamal Kr. Dev could not have been committed to the Court of Session to face his trial under Sections 25 and 27 of the Arms Act. The learned Judge refers Section 26(b) of the Code which provides that 'subject to the other provisions of this Code any offence under any other law shall, when the court is mentioned in this behalf in such law, be tried by such court and when no court is so mentioned, may be tried by (i) The High Court or (ii) any other court by which such offence is shown in the first schedule to be triable.' The learned Judge then points out that punishment under Sections 25 and 27 of the Arms Act is less than 7 years and in the Arms Act there is no provision as to which court will try the offences. In the schedule of the new Code offences for which punishments are up to 7 years can be tried by a Magistrate of First Class. The Court of Session which appeared in the Schedule of old Code for trying such offences has been omitted from the Schedule of the new Code. As such according to the learned Judge, when the accused has also been charged under Sections 25 and 27 of the Arms Act the case so far as these offences are concerned could not have been committed to the Court of Session and the learned Sessions Judge also could not have taken cognizance and framed charges under Sections 25 and 27 of the Arms Act and should not have taken the plea of the accused. Mr. Dilip Kr. Dutta supports all the reasonings of the learned Judge.

Mr. Dutta refers to a Full Bench decision reported in : AIR1959 Cal500 Jiban Banerjee v. The State. In this case, it was held 'The correct position in law is that the provisions as regards joint trial as provided in Section 235 and Section 239 will have application only if the court concerned has jurisdiction under other provisions of law to try the offences sought to be tried together. Thus if under other provisions of the Criminal P. C. or any other law a Magistrate has jurisdiction to try offences A, B and C, these offences may be tried together if they come within the provisions of Section 235 or 239; if, on the other hand, of these offences A, B and C the Magistrate has under other provisions, jurisdiction to try offences A and B but not the offence C, only offences A and B can be tried together but not the offence C. 'It was, of course suggested by their Lordships that to remove lacuna in law,

amendment of Sections 235 and 239 should be made introducing suitable words to provide that a Magistrate having jurisdiction to try any of the offences which may be tried together will have jurisdiction to try all of them. Mr. Dutta next refers to a decision reported in : 1964 CriLJ606 (State of Uttar Pradesh v. Sabir Ali). In this case the accused was charged with offence under Section 15(1) U. P. Private Forests Act, 1948. Such offence required to be tried by Magistrate of Second or Third Class. The offence was tried by a Magistrate of the First Class. It was held that 'As jurisdiction of the Magistrate of the First Class is excluded by Section 29, Criminal P. C., the trial is void under Section 530(p), Criminal P. C.' There is no doubt that as the Schedule now stands, under the new Criminal P. C., if a person is charged under Sections 25 and 27 of the Arms Act he will have to be tried by a Magistrate of the First Class and not by the Court of Session.

The point for our consideration is if a person is also charged with other offences along with these offences and if the other offences cannot be tried by a Magistrate but must be tried by a Court of Session whether such a case can be tried by a Court of Session. Mr. S. Mukherjee, learned Public Prosecutor, submits that Section 26 should not be read in isolation and the said Section should be read along with Sections 220 and 223 of the Code. Section 220 provides for a trial for more than one offence. This Section provides that 'if in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with and tried at one trial for, every such offence. Section 223 provides for when more than one person can be charged and tried together. Mr. Balai Ch. Roy supports the learned Public Prosecutor and submits that Section 26 is required to be read with Sections 220 and 223 of the Code. Mr. Roy points out that the provisions of Section 193 of the Code which provides that the Court of Session has no other option but to take cognizance of an offence when the case is committed to it by a Magistrate. Mr. Roy puts emphasis on the word 'case'. The entire case has been committed to the Court of Session. True along with Sections 397 and 402 the accused has also been charged under Sections 25 and 27 of the Arms Act. But Mr. Roy submits that the Magistrate could not have split up two portions of the case and sent some portion of the case to the Court of the Session. The Magistrate is only required to see whether the case is such which can be committed to the Court of Session. Mr.

Roy points out that for the offence under Section 304 only the Court of Session has been mentioned in the Schedule. But for the offence under Section 317 for which the punishment is up to 7 years the Court of Session has been excluded and only the Court of the Magistrate of First Class has been shown in the Schedule. But, according to the provisions of Section 26 of the Code all offences under the Penal Code can be tried by a Court of Session. Mr. Roy also refers to the provisions of Section 202 of the Code which also provides that if it appears to the Magistrate that the offence is triable exclusively by the Court of Session he can commit the case to the Court of Session. True that some of the offences were triable by the Court of Magistrate, but the other offences of the Penal Code were triable exclusively by the Court of Session and as such, the Magistrate had no other option but to commit the case to the Court of Session. Mr. Roy in course of his argument takes support from a decision, reported in : AIR 1962 AP267 (B, C. Chenna Reddy v. State of Andhra Pradesh). Here, the learned Judge committed the case to the Court of Session framing charge against the accused under Section 367 which is exclusively triable by the Court of Session along with the main offences under Sections 325 and 326 I.P.C. It was held that 'the offence under Section 367 I.P.C. being triable only by a Court of Session could not be tried by a Magistrate. Consequently, the committal by the Magistrate was justified and was not liable to be quashed and the case did not call for interference under Section 561-A'.

The next case referred to by Mr. Roy has been reported in AIR 1946 All 365 : 1946-47 Cri LJ 804 (Emperor, through Bachan Lal v. Subedar Singh). In this case, it has been held that 'the effect of Section 28 is that a Court of Session has jurisdiction once a case has properly come before it, that is on a legal order of commitment, even in matters of offences not ordinarily triable by it.' Mr. Roy next refers to a decision reported in (1897) ILR 24 Cal 429 (Queen Empress v. Kayemullah Mandal). In this case, it has been held that 'the Magistrate is quite competent to commit a case to the Court of Session for offences which are exclusively triable by the Court of Session along with the offences which are exclusively triable by the Magistrate.

Lastly, Mr. Roy very much relies on a decision reported in : 1961 CriLJ728 (Purushottamdas Dalmia v. State of West Bengal). In this case, it has been held that the Court having jurisdiction to try the offence of conspiracy, has also jurisdiction to try an offence constituted by the overt acts which are committed in pursuance of the conspiracy beyond its jurisdiction. Their Lordships observed 'The desirability of the trial, together, of an offence of criminal conspiracy and of all the overt acts committed in pursuance of it, is obvious. To establish the offence of criminal conspiracy, evidence of the overt acts must be given by the prosecution. Such evidence will be necessarily tested by cross examination on behalf of the accused. The Court will have to come to a decision about the credibility of such evidence and on the basis of such evidence, would determine whether the evidence of criminal conspiracy has been established or not. Having done all this, the court could also very conveniently record a finding of guilty or not guilty with respect to the accused said to have actually committed the various overt acts. If some of the overt acts were committed outside the jurisdiction of the court trying the offence of criminal conspiracy and if the law be that such overt acts would not be tried by that Court, it would mean that either the prosecution is forced to give up its right of prosecuting those accused for the commission of those overt acts or that both the prosecution and the accused are put to unnecessary trouble inasmuch as the prosecution will have to produce the same evidence a second time and the accused will have to test the credibility of that evidence a second time. The time of another court will be again spent a second time in determining the same question. There would be the risk of the second court coming to a different conclusion from the first court...

In making such observation, their Lordships overruled the Full Bench decision reported in AIR 1959 Cal 500 : (1959 Cri LJ 965), relied on by Mr. Dutta. The same reasonings apply to the facts of the present case. Giving our anxious consideration to the position of law as enunciated by the decisions, referred to above and also the several provisions of the Criminal P. C. we are of the opinion that when a Magistrate cannot, try a case as some of the offences are exclusively triable by a Court of Session, he cannot split up the case and commit a part of the same to the Court of Session. A Magistrate is required to commit the entire case to the Court of Session. That is exactly what has been done in the present case. We

are of the opinion that the learned Magistrate acted legally in committing the case to the Court of Session and the Court of Session was also right in taking cognizance on commitment and framing charges and taking the pleas of the accused. The learned Assistant Sessions Judge is directed to proceed with the trial in accordance with law. The reference is, thus, disposed of.

(Criminal Revision 257 of 1982).

2. In this case, the petitioners and others were charged under Sections 148, 149/ 302 of the Penal Code. The petitioners were also charged under Section 6(3) of the Indian Explosives Act in Sessions Trial No. XXX(1) of 1980 pending before the Sessions Judge, Howrah. The petitioners have come to this Court for quashing the charge framed against them under Section 6(3) of the Indian Explosives Act. Firstly, it has been urged that the punishment under the Indian Explosives Act being less than 7 years the learned Sessions Judge has no jurisdiction to try the said offence and it is only a Court of Magistrate which can try such offence. This point has been dealt with by us in the Criminal Reference just now disposed of. Next, it has been contended that Section 6(3) of the Indian Explosives Act having been omitted by the Amendment Act of 1978 the framing of charge under this Section by the learned Sessions Judge against the petitioners is untenable and cannot be sustained and should be quashed. We find much substance with regard to this contention. In the charge, it has been mentioned that the accused persons committed the offence under Section 6(3) of the Indian Explosives Act on 5th March, 1979, that is after the amendment of the Indian Explosives Substances Act, 1978. By the said amendment Section 6(3) has been omitted. In such circumstances, we agree with Mr. Dutta that no charge can be framed against the petitioners under Section 6(3) of the Indian Explosives Act.

3. In the result, this Rule in made absolute. The charge under Section 6(3) of the Indian Explosives Act framed against the accused petitioners is quash-ed. The learned Sessions Judge is, however, directed to proceed with the Sessions Trial in respect of other charges framed against the petitioners and other accused.

N.G. Chaudhuri, J.

4. I agree.

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