

State Vs. Dilla Ram and ors.

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Court : Himachal Pradesh

Decided On : Jul-25-1975

Reported in : 1976CriLJ392

Judge : D.B. Lal, J.

Appellant : State

Respondent : Dilla Ram and ors.

Judgement :

ORDER

D.B. Lal, J.

1. This is a reference made by the learned Sessions Judge, Simla to this Court presumably under Section. 488 of the Code of Criminal Procedure. One Shrimati Lakshmi owned 19.12. bighas of land in village Prathar (Kandaghat). Dilla Ram accused thought of a device to deprive Shrimati Lakshmi of that land. With that object, on 24-12-1970 he obtained a certified copy of Jamabandi and on 5-1-1971 he went along with the other two accused Narain Dass and Dhani Ram to Kandaghat where he purchased the requisite stamp paper for execution of a sale-deed by Shrimati Lakshmi in his own favour. He further purchased a stamp for execution of special power of attorney by Lakshmi in favour of one Vasudeva sarpanch. Before the stamp vendor Narain Dass and Dhani Ram identified one Shrimati Munna and impersonated her for Shrimati Lakshmi. On the same day the

two documents were written by the petition-writer and Shrimati Munna signed as Lakshmi. Thereafter the three accused presented Shrimati Munna before the Sub-Registrar and got these documents registered. Subsequently on 12-1-1971 Vasudeva represented Lakshmi in the mutation proceeding. Dhani Ram signed as a witness. Dilla Ram was present and mutation was effected in his name, On these facts the police investigated the case under Sections 419, 467 and 468 of the I. P. Code. A police report was submitted and the Magistrate took cognizance and framed charges. Shrimati Munna was charged under Sections 419, 467 and 468, while the other three accused Dilla Ram, Narain Dass and Dhani Ram were charged under Sections 467 and 468 read with Section 109 of the I. P. Code. The four accused were committed by the learned Magistrate to the Court of Session. At that stage revisional proceedings started before the learned Sessions Judge and he found that the charge under Section 419 was not prima facie made out against Shrimati Munna. He further found that the police could not investigate for the offences under Sections 467 and 468 which were non-cognizable and specific order of a Magistrate was not obtained for investigation under Sub-section (2) of Section 155 of the Code of Criminal Procedure. Accordingly he has recommended for the quashing of the charges as well as the commitment order.

2. A bare reading of the charge framed by the Court under Section 419 against Shrimati Munna discloses that she committed the offence of cheating with reference to Lakshmi, and it is obvious under Section 415 of the I. P. Code she neither deceived nor fraudulently or dishonestly induced her to deliver any property, nor to do or to omit to do anything which she would not have done or omitted had she been not deceived. Therefore, the charge [with reference to Lakshmi under Section 416 read with Section 419 was prima facie incorrect. The learned Advocate-General stated that Shrimati Munna did commit that offence with reference to the stamp-vendor and the Sub-Registrar whom they induced fraudulently and dishonestly to execute and¹ register the documents, which act was likely to cause damage or harm in their mind or to their reputation. The learned Counsel further submitted that Section 226 of the Code of Criminal Procedure could entitle the court to correct the erroneous charge. But there is one difficulty in this course inasmuch as the charge under Section 416 or 419 is being tried along with the other two charges under Sections 467 and 468, and for the

reasons to be stated valid cognizance was not taken by the Magistrate for the other two charges. That being the position, it would not be possible to separate the charge under Section 419 and proceed with the trial simply under that count,

3. As regards the charges under Sections 467 and 468, I. P. Code, the two offences were clearly non-cognizable and under Section 155 (2) of the Code of Criminal Procedure unless an order of the Magistrate was obtained, no investigation could be taken up by the police. In this view of the matter, a valid report within the meaning of Section 190 (1) (b) could not be stated to be instituted and a clear infraction of Sub-section (2) of Section 155 had taken place. In *H. N-Rishbud v. State of Delhi* : 1955 CriLJ526 it was no doubt held by their Lordships that a defect or illegality in investigation, however serious, has no direct bearing on the competence or the procedure relating to cognizance or trial. As such it cannot be maintained that a valid and legal police report is the foundation of the jurisdiction of the Court to take cognizance. While no doubt in one sense, Clauses (a), (b) and (c) of Section 190 (1) are conditions requisite for taking of cognizance, it is not possible to say that cognizance, on an invalid police report is prohibited and is therefore a nullity. But their Lordships drew a clear distinction between a case where the trial is over and the conviction is sought to be set aside on any such ground, and a case where the defect or illegality in investigation is pointed out at the very threshold of the trial. In the former contingency, as held by their Lordships, the irregularity is curable under Section 537 of the Code of Criminal Procedure, unless a miscarriage of justice has been caused thereby. In the latter contingency, the mandatory provision of Sub-section (2) of Section 155 cannot be done away with so lightly and the stage of the trial can be set right by ordering re-investigation or by permitting the magistrate to take cognizance otherwise than on a police report. In the instant case, the defect or irregularity during investigation is pointed out at the very threshold of the trial. The police report submitted has been in direct negation of Sub-section (2) of Section 155, and the cognizance of the Magistrate was decidedly illegal. That being the position, the case must go back to the Magistrate either for according permission to investigate so that a proper police report is filed or for taking cognizance other wise than on a police report within the meaning of Section 190. In such a contingency, the charge under Section 419 of the I. P. Code cannot be isolated and will be redrafted by the

Magistrate or the trial Court under Section 226 of the Code of Criminal Procedure as and when that may be necessary.

4. In Abdul Halim v. State of West Bengal : AIR1961 Cal257 it was held that the provisions of Section 155 (2) cannot be rendered nugatory by regarding police report as a valid report under Section 190 (1) (b), and that view has to be sustained especially in a case where the defect is pointed out at the very threshold of the trial. The learned Counsel for the accused, however, pointed out Ram Gopal Neotia v. State of West Bengal : AIR1969 Cal316 and attempted an argument that re-investigation cannot be ordered in the case once the same is completed and a police challan has been submitted. When the entire investigation is set at naught and the committal order is quashed and even the charge under Section 419 is quashed there can be no difficulty in even resorting to fresh investigation if that is the decision by the magistrate. At any rate, nothing can be forestalled and the Magistrate has been rightly directed by the learned Sessions Judge to proceed in accordance with law. So the Calcutta decision (supra) will not be of any avail to the learned Counsel,

5. In this view of the matter, I accept the recommendation made by the learned Sessions Judge and quashing the charge under Section 419 of the I. P. Code and also quashing the commitment order, remand the case back to the learned Magistrate for fresh proceedings in accordance with law.