

Debnu Vs. State

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Court : Himachal Pradesh

Decided On : Jul-15-1954

Reported in : AIR1954HP79

Judge : Ramabhadran, J.C.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 28, 30, 526 and 526(1); ;[Indian Penal Code \(IPC\), 1860](#) - Sections 34, 149, 194, 201 and 302

Appeal No. : Criminal Misc. Petn. No. 13 of 1954

Appellant : Debnu

Respondent : State

Advocate for Def. : B. Sita Ram, Government Adv.

Advocate for Pet/Ap. : C. Rai, Adv.

Judgement :

Ramabhadran, J.C.

1. This is a petition under Section 526 (1) (e). Criminal P. C., wherein I am requested to direct that a case against the petitioner and seven others under Section 201, read with Sections 194, 149 and 34, I. P. C., pending in the Court of Mr. Chandel, Magistrate first class, exercising Section 30 powers, at Nahan) be committed to the Court of Sessions. The petition, as originally filed, was on behalf

of Debnu alone. Subsequently, learned counsel for the petitioner filed his power for the remaining accused persons.

2. The petition arises under the following cir-cumstances: Debnu, petitioner, is being prosecuted in another case under Section 302, I. P. C. That case has been committed to the Sessions on the 26th-of the last month, vide a certified copy of the commitment order on the record. The prosecution case was that one Ajba murdered Lachmi Singh, and Mt. Kukmi and Debnu, in his turn, murdered Ajba. Debnu and the remaining accused persons removed the bodies of Lachmi Singh and Rukmi-and hid them in the jungle.

3. Learned counsel for the petitioner argued his case from two points of view, (a) Firstly, that the Magistrate had no jurisdiction to try the case under Sections 194 and 201, read with Sections 149 and 34, I. P. C. His contention is that although Mr. Chandel, Magistrate first class, Nahan, is invested with powers under Section 30, Criminal P. C., nevertheless, he does not become a Court of Sessions. He pointed out that under Schedule II to the Criminal Procedure Code, an offence under the first part of Section 194, I. P. C., is punishable with transportation for life, or rigorous imprisonment for ten years and is triable by a Court of Sessions. It is, therefore, urged that Mr. Chandel has no jurisdiction to try the case. The learned Government Advocate, in reply, has rightly pointed out that under Section 28, Criminal P. C., offences enumerated in Schedule II are triable by the Courts specified in column 8 of that Schedule, 'subject to other provisions of the Code'. In other words, Section 28 has to be read along with Section 30 which says that the Provincial Government may invest the District Magistrate or any Magistrate of the first class, with power to try as a Magistrate, all offences not punishable with death. An offence under the first part of Section 194, I. P. C., is not punishable with death and, therefore, a Magistrate empowered under Section 30, Criminal P. C., like Mr. Chandel, is certainly competent to try the case.

If any authority is needed to support this view, please see-- 'Emperor v. Prithinath', AIR 1938. Nag 56 (A), wherein Gruer, J., pointed out:

'The next contention is that Section 30 does not overrule the Schedule to the Criminal Procedure Code, according to which certain offences are triable

exclusively by the Court of Session. Stress is laid on the words in Section 30 'notwithstanding anything contained in Section 29' and it is argued that as Section 28 has not been mentioned it is only Section 29 (which refers exclusively to offences under any other law, not under the Penal Code) which is affected by Section 30.

The answer to this is that the Schedule to the Code and Section 28 must obviously be read together, and Section 28 is subject to the other provisions of this Code, that is, it is subject to Section 30. The reference to Section 29 which occurs in Section 30 is explainable historically. Section 29, previous to the Act of 1923, used to read 'subject to provisions of Section 447, etc.'; now it reads 'subject to the other provisions of this Code.' Thus a reference to Section 29 was previously necessary in Section 30, and this reference seems to have been retained, although as a matter of fact owing to the above amendment, it would appear now to be 'otiose'. Section 30 speaks of 'all offences not punishable with death' and must include those that would normally go to the Sessions Court.'

Thus, this contention fails.

(3A) (b) In the second place, it is argued that it would be just and convenient that the two cases should be heard and disposed of simultaneously by the same Court. Learned counsel pointed out that the evidence in both cases would, more or less, be the same and the witnesses would also be common. It is urged that unless this course is adopted, there is a risk of conflict of decisions.

Learned counsel for the petitioner cited, 'inter alia', (1)--'Krishnaji Prabhakar v. Emperor', AIR 1929' Bom 313 (B). There, a Magistrate declined to commit a case under Section 124-A, I. P. C., to the High Court Sessions on the ground that there was congestion of work in the latter Court. It was held by the Bombay High Court that, having regard to the seriousness of the offence, the case was of public importance and the accused was entitled to be tried before the High Court Sessions. The facts of that case are different from those of the present case. This ruling, in my opinion, therefore, does not help the petitioner.

4. (2) 'Kanhailal v. Baijnath Mahesri', AIR 1933 Nag 78 (C). There, Grille, A. J. C., observed:

'Though there is nothing contrary to law in a trial being conducted in one Court and an in-inquiry into an accusation arising out of the same facts in another Court, such a procedure is highly inconvenient and, where the evidence is bound to be the same, there is a possibility of the two Courts independently arriving at a different estimate of the evidence. Hence it is better that both are conducted in the Court which has jurisdiction to consider both.'

In the present case, in view of the order, which I propose to pass, there will be no risk of conflicting decisions being arrived at.

5. (3) 'Emperor v. Ghulam Hussain Manik', AIR 1943 Sind 112 (D). There, it was held by Davis, C. J.:

'Though ordinarily a Magistrate should try a case which he is competent to try and which he can adequately punish, it is desirable and advantageous that when a case is committed to sessions, the counter case should also be committed and tried by the Court of Session, though the Magistrate himself is competent to try the counter case and inflict adequate punishment.'

There, a case under Sections 148, 436, 323 and 324 as well as a counter case under Sections 147, 323 and 149, I. P. C., were committed to the Court of Session. The Additional Sessions Judge of Sukkur recommended that the commitment order in respect of the latter case be quashed on the ground that the Magistrate was empowered to try that case himself.

Davis, C. J., felt that the Magistrate had not acted illegally in committing both the cases to the Court of Session and the interests of justice did not require that the committal order be quashed in respect of one of them. His Lordship referred to-- 'Lakshminarayana v. Suryanarayana', AIR 1932 Mad 502 (E), wherein Walsh J., while holding that a case and a counter case arising out of that case should ordinarily be tried by the same Court, observed that this was not a rigid and unalterable rule.

6. (4) 'Emperor v. Ujagar Singh', AIR 1933 Lah 500 (F). There, four cases in which evidence was the same were committed to the Sessions Court by a Magistrate exercising Section 30 powers. Two of the accused were triable by the Magistrate himself. The High Court, however, refused to quash the commitment order on the ground that the Magistrate might have thought that the sentence of seven years, which he was competent to inflict, would not be sufficient.

(7) Each case has to be decided on its own merits. The learned Government Advocate has cited (a) --'Emperor v. Nathu', AIR 1932 Lah 168 (G). Therein, Tek Chand, J., observed that:

'An apparent connection of a case under Section 326, Penal Code, with a case under Section 302 is no ground whatsoever for committing it to the Sessions Court, when the offence involved is triable and can be adequately punished by a first class Magistrate or one exercising powers under Section 30, Criminal P. C. If the object of the Magistrate is to avoid possible conflict of decisions, it can be achieved by awaiting the result of the Sessions trial in the case under Section 302.'

8. (b) 'Kesar v. Emperor', AIR 1932 Lah 263 (H), wherein Dalip Singh, J., held that:

'An unnecessary committal is an error of law which would justify the quashing of commitment order. It is extremely undesirable that a case which can be adequately dealt with by a Magistrate himself should be committed to the Sessions.'

9. (c) 'Emperor v. Karam Singh', AIR 1930 Lah 312 (I). Therein, Shadi Lal, C. J., pointed out that:

'A case triable by a Magistrate and not exclusively triable by a Court of Sessions, should not be committed to the Court of Sessions, merely to avoid a possible conflict of decisions and proper course in such cases is to await the result of the Sessions trial.'

10. (d) 'Emperor v. Mir Alam', AIR 1934 Lah 95 (J). Therein, Jai Lal, J., observed that:

'The commitment of the accused, who have been charged of the offence of rioting under Section 148 only, to the Court of Sessions is prima facie illegal as such an offence is triable by a Magistrate and where the commitment is made for sake of convenience, if the ground on which it is made ceases to exist, the commitment becomes bad in law.'

11. Applying the 'ratio decidendi' of the rulings quoted above to the facts of the present case., I am unable to hold that a case is made out for directing the Magistrate to commit the case under Section 194, read with Sections 201, 149 and 34, I. P. C., to the Court of Session. It may not be out of place to mention that in the case under Section 302, I. P. C., there is only one accused person, i.e., Debnu. In the other case, there are 8 accused persons including Debnu. To avoid, however, the risk of conflict of decisions, I propose, in conformity with the observations of Shadi Lal, C. J., in--'AIR 1930 Lah 312 (I), to direct the Magistrate to stay further proceedings in the case pending before him, till such time as the case, which has been committed to the Court of Session, is decided.

12. The result is that, while I decline to direct the Magistrate to commit the case under Section 194, read with Sections 201, 149 and 34, I. P. C., to the Court of Session, I direct him to stay proceedings in that case, until such time as the case under Section 302, I. P. C., against Debnu, is disposed of by the Sessions Judge of Sirmur.