

Parmanand Vs. State

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Court : Jammu and Kashmir

Decided On : Jan-17-1962

Reported in : 1962CriLJ544

Judge : J.N. Wazir, C.J.

Appellant : Parmanand

Respondent : State

Judgement :

J.N. Wazir, C.J.

1. This is an appeal filed by Parmanand who was convicted Under Section 326, R. P. C. by the Additional District Magistrate, Kathua and was sentenced to two years' rigorous imprisonment with a fine of Rs. 50/-. His appeal was dismissed by the Additional Sessions Judge and he has come up in further appeal to this Court.

2. The prosecution case, briefly stated, is as follows :

Parmanand accused is a resident of Raj Bagh, Tehsil Kathua. He suspected that his wife, Mst. Lajwanti, was unchaste and unfaithful. It is alleged that she had gone to wash her clothes at a water edge. Her husband followed her, caught hold of her by the hand, made her lie prostrate on the ground and chopped her right hand and right foot with a hatchet. One Lekh Raj came to the scene of occurrence and carried Mst. Lajwanti to the Police Station, where the first information report was

lodged. It appears that the accused also went to the Police Station and presented the chopped hand and foot to the police. He also presented the axe before the police. The police started investigation and challaned the accused before the Additional District Magistrate, Kathua. The accused was convicted Under Section 326, R. P. C. and was sentenced to two years' rigorous imprisonment with a fine of Rs. 100/-. On appeal the learned Additional Sessions Judge found that as the report sent by the police Under Section 173 of the Code of Criminal Procedure to the trial Magistrate did not contain all the particulars required by the said Section and mandatory provisions of Section 190, Cr.PC were not complied with, the entire proceedings before the trial Magistrate were ultra vires. He therefore set aside the proceedings. The accused was set at liberty and it was ordered that if the police wanted to proceed against the accused the procedure indicated in Sections 173 and 190 of the Code of Criminal Procedure ought to be followed. The police prepared a fresh challan in accordance with the directions of the learned Additional Sessions Judge and presented the same before the Additional District Magistrate, Kathua. The accused was again convicted Under Section 326, R. P. C. and was sentenced to two years' rigorous imprisonment with a fine of Rs. 50/-, as stated above.

3. In the grounds of appeal the accused has mentioned that he was previously acquitted in appeal by the learned Additional Sessions Judge and his retrial was illegal. From a perusal of the order of the Additional Sessions Judge it is clear that no order of acquittal was passed by him in appeal. On the other hand, he had clearly stated that as the challan presented by the police was not in accordance with the provisions of Sections 173 and 190, Cr.PC the entire proceedings before the trial Magistrate were ultra vires and while setting aside the conviction and sentence of the accused he observed that if the police wanted to proceed against the accused the procedure laid down in Sections 173 and 190 of the Code of Criminal Procedure ought to be followed. Because the Additional Sessions Judge had quashed the conviction and the sentence and had ordered that the accused be set at liberty it is contended that the order of the Additional Sessions Judge amounted to an acquittal and Section 403, Cr.PC was a bar to retrial.

Section 403, Cr.PC provides that a person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him, might have been made Under Section 236, or for which he might have been convicted Under Section 237. The question is whether the previous judgment of the Additional Sessions Judge in appeal from previous conviction was an acquittal of the appellant after his trial by a Court of competent Jurisdiction as contended by the appellant. The learned Additional Sessions Judge had not recorded an order of acquittal but merely on a preliminary point without going into the merits held that the trial was vitiated on account of non-compliance of the provisions of Sections 173 and 190, Cr.PC and directed the police to present a fresh challan in accordance with the provisions of the above sections. It cannot, therefore, be said that the previous order of the appellate Court was an order of acquittal on merits. If the appellate Court finds that an order of the trial Magistrate is irregular or improper and sets aside the conviction of the accused, that order would amount to an order of discharge of the accused and not order of acquittal and under the Explanation to Section 403, Cr.PC Which reads as under :

The dismissal of a complaint, the stopping of proceedings Under Section 249, the discharge of the accused or any entry made upon a charge Under Section 273, is not an acquittal for the purpose of this section

will not be a bar to fresh trial of the accused. The learned Advocate General has argued that the order of the Additional Sessions Judge setting aside the order of the trial Magistrate on the ground of non-compliance with the provisions of Sections 173 and 190, Cr.PC was not a correct order as the learned Additional Sessions Judge had not found that the accused was in any way prejudiced by such non-compliance. In support of this contention reliance is placed on H. N. Rishbud v. State of Delhi : 1955 CriLJ526 in which it is laid down :

A defect or illegality in investigation, however serious, has no direct bearing on the competence or the procedure relating to cognizance or trial. No doubt a police

report which results from an investigation is provided in Section 190, Criminal P. C. as the material on which cognizance is taken. But it cannot be maintained that a valid and legal police report is the foundation of the jurisdiction of the Court to take cognizance. Section 190, Criminal P. C. is one out of a group of sections under the heading 'Conditions requisite for initiation of proceedings'. The language of this Section is in marked contrast with that of the other sections of the group under the same heading, i.e., Sections 193 and 195 to 199. These latter Sections regulate the competence of the Court and bar its jurisdiction in certain cases excepting, in compliance therewith. But Section 190 does not. While no doubt, in one sense, Clauses (a), (b) and (c) of Section 190 (1) are conditions requisite for taking cognizance, it is not possible to say that cognizance on an invalid police report is prohibited and is therefore a nullity. Such an invalid report may still fall either under Clause (a) or (b) of Section 190(1) and in any case cognizance so taken is only in the nature of error in a proceeding antecedent to the trial. To such a situation Section 537, Criminal P. C. is attracted.

If therefore, cognizance is in fact taken on a police report vitiated by the breach of a mandatory provision relating to investigation, there can be no doubt that the result of the trial which follows it cannot be set aside unless the illegality in the investigation can be shown to have brought about a miscarriage of justice. That an illegality committed in the course of investigation does not affect the competence and the jurisdiction of the Court for trial is well settled.

Hence, where the cognizance of the case has in fact been taken and the case has proceeded to termination, the invalidity of the precedent investigation does not vitiate the result, unless miscarriage of justice has been caused thereby.

4. My attention was also drawn to an unreported ruling of this Court, *Brahmanand v. State* Cri. Ret. No. 29 of 1957 D/- 24-1-1958 (J and K) in which the entire proceedings taken by the trial Magistrate were set aside because the procedure as indicated in Sections 173 and 190, Cr.PC was not followed. But the facts of that case were absolutely different. The police report in that case did not mention the facts which constituted the offence. It was only stated in the report that the accused had committed an offence under a particular Section of the Indian Penal

Code. That report did not give any indication to the accused as to the facts on the basis of which he was being challaned for a particular, offence. Non-compliance with the provisions of Sees. 173 and 190(1) (b) by the police in presenting the report was held to have caused prejudice to the accused, resulting in miscarriage of justice. In the present case the Additional Sessions Judge had not mentioned in his order that the non-compliance with the provisions of sees. 173 and 190, Cr.PC had resulted in miscarriage of justice. Even assuming that the previous order of the learned Additional Sessions Judge was correct, it did not record any acquittal in favour of the accused but it set aside the conviction and sentence on a technical ground without going into the merits of the case. This order, in my opinion, was an order of discharge and Section 403, Cr.PC could not be attracted. In support of this view reliance may be placed on Emperor v. Miajan A.I.R. 1926 Cal 585 :

Where a Sessions Judge by his order reversed the conviction and sentence on the ground of non-compliance with the provisions of Section 360 and left the question of retrial to the District Magistrate, without discussing the evidence or recording any finding on the merits of the case.

Held; that the order is not one acquitting the accused and a re-trial of the accused is competent.

5. Now coming to the merits of the case, the prosecution has produced seven witnesses out of whom the evidence of Mst. Kahan Devi, Mani Ram and Lekh Raj is very important. Mst. Kahan Devi stated that she had gone to cut some grass when she saw the accused inflicting hatchet injuries on the person of Mst. Lajwanti his wife. She was frightened and she moved backwards. She met Lekh Raj and Man? Ram and told them about this occurrence. Lekh Raj deposed that he heard cries of a lady and he went to the scene of occurrence. He met Mst. Kahan Devi who was frightened and was weeping. She told him that the accused had inflicted injuries on his wife with an axe. He went to the place of occurrence and saw Mst. Lajwanti lying on the ground with her right hand and foot chopped off. He enquired from her as to who had caused these injuries. She replied that Jhalla was the offender. The witness explained that Mst., Lajwanti used to call her husband by the name of Jhalla.

Mst. Lajwanti has gone into the witness box. She is deaf and dumb. She tried to explain by means of signs and gesticulations and pointed out to the accused who had inflicted injuries on her. The trial Magistrate has remarked that by her signs the witness could explain fully as to how the crime was committed and who committed it. Mani Ram corroborates the evidence given by Lekh Raj. The accused had produced the hatchet and chopped hand and foot of Mst. Lajwanti before the police. He denied the charge and stated that he was falsely implicated by the prosecution witnesses due to enmity. H9 has not produced any evidence to prove enmity with the prosecution witnesses. The evidence adduced by the prosecution fully brings home the guilt to the accused. The crime was committed in a brutal manner and the accused deserved severer punishment but in view of the fact that he has gone through a protracted trial I do not propose to issue notice of enhancement. This appeal is dismissed.

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