

Sonaullah Mir and ors. Vs. State

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Court : Jammu and Kashmir

Decided On : Jul-21-1976

Reported in : 1977CriLJ302

Judge : Adarsh Sein Anand, J.

Appellant : Sonaullah Mir and ors.

Respondent : State

Judgement :

Adarsh Sein Anand, J.

1. The learned Sessions Judge, Baramulla, has made this reference to this Court under the following circumstances:

In a case, State v. Sonnaullah and Ors. pending trial in the court of the learned Magistrate, the court directed the prosecution to supply copies of documents under Section 173, Criminal Procedure Code to the accused and adjourned the case to 24th March, 1975, for that purpose. The case was adjourned from time to time for the same purpose, and on 28th April, 1975, the learned trial Magistrate observed that the prosecution had failed to supply the copies of the documents to the accused; for that default of the prosecution, the learned Magistrate dismissed the case and ordered the discharge of the accused persons. It appears that on the same day after pronouncing and signing the order of discharge of the accused, the

prosecution produced the copies of the documents for supplying to the accused persons and on that, the court directed notice to be issued to the accused for their appearance and recalled the order of discharge. Aggrieved against this order of recall the accused filed a revision petition before the learned Sessions Judge, Baramulla.

2. The learned Sessions Judge, Baramulla, has made a recommendation to this Court to the effect that the first order of discharge passed by the learned Magistrate was illegal and without jurisdiction, since the learned Magistrate was required to proceed under Section 251-A of the Criminal Procedure Code on the failure of the prosecution to supply documents and dispose of the case in accordance with law. The learned Sessions Judge has recommended that the impugned order about dismissal of the case and discharge of the accused being illegal be set aside and the learned trial court be directed to proceed with the case and to dispose it of in accordance with law. Before submitting the reference to this Court an explanation was obtained from the learned trial Magistrate who in his explanation. submitted that in his opinion there was no bar to recall the order of discharge as that order did not amount to a 'judgment' within the meaning of Section 369, Criminal Procedure Code.

3. I have heard Mr. S.N. Kak, the learned Counsel for the accused and Mr. A.K. Malik, the learned Additional Advocate General for the State.

4. The first submission made by Mr. Kak is to the effect that the learned Magistrate could not review his order and that too behind the back of the accused persons. There appears to be an apparent fallacy in this argument. The bar envisaged under Section 369, Criminal Procedure Code applies only to the review of a judgment signed by a criminal court. It is provided that no. court when it has signed his 'judgment' shall alter or review the same, except to correct some clerical error. The term 'judgment' has not been defined in the Code but it has come up for discussion in various High Courts. In AIR 1939 Sind 193 : 40 Cri LJ 745 (FB) a Full Bench of the High Court held:

The word 'judgment' indicates some final determination of the case which would end it once for all, such as an order of conviction or acquittal. Hence, an order

dismissing a complaint under Section 203 or discharging an accused under Section 259 is not a judgment.

5. I am in respectful agreement with the law laid down by the Full Bench and would hold that the order of discharge, passed without consideration of the merits of the case, does not amount to a 'judgment' and consequently the learned Magistrate is not debarred from reviewing such an order.

6. It was then submitted by the learned Counsel for the accused that the learned Sessions Judge could not interfere in the case and make a recommendation to the High Court for quashing the order of discharge as no challenge had been made before him to the validity of that order and, therefore, the recommendation made by him to quash that order is without jurisdiction. I am afraid I cannot persuade myself to agree with this submission either. Section 435 of the Code of Criminal Procedure provides that the High Court or Sessions Judges may call for and examine the record of any proceeding before any inferior criminal court for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed and as to the regularity of any proceeding before any such inferior court. A bare reading of the section suggests that it is not necessary for the accused or the prosecution to challenge an order before the learned Sessions Judge and the learned Sessions Judge has suo motu powers of revision to satisfy himself about the correctness, legality or propriety of any finding, sentence or order passed by the inferior court. Since the record was before the learned Sessions Judge it was not only open to him to satisfy himself about the correctness or otherwise of the earlier order of discharge passed by the learned Magistrate but in a way he was duty bound to examine that record and determine the validity of that order. Having come to the conclusion that the order of discharge passed by the learned Magistrate was not in accordance with law, it was his duty to report to the High Court under Section 438. In this view of the matter, I do not find any wrong to have been committed by the learned Sessions Judge in making this recommendation to the High Court for quashing the earlier order of discharge without the prosecution having moved him for doing so. By recommending that the order of discharge be set aside, he impliedly upheld the order of recall, though not in express words.

7. One last question which requires to be determined in the case is whether the learned Magistrate could have passed the order of discharge in the facts and circumstances of this case, which order the learned Sessions Judge has recommended to be quashed by this Court. I have heard the learned Counsel for the parties and given my anxious consideration to this aspect.

8. The case which was pending before the learned Magistrate was for the offence under Section 379/147, R.P.C. The procedure to be followed by the Magistrate for the trial of that case was, therefore, the procedure prescribed for the trial of warrant cases as envisaged in Section 251-A, Criminal Procedure Code. Under Sub-section (2) of Section 251-A Criminal Procedure Code, the Magistrate has the jurisdiction to pass an order of discharge. Section 251-A (2) reads:

If, upon consideration of all the documents referred to in Section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge him.

9. A perusal of this sub-section shows that a Magistrate may discharge an accused person but before doing so he must record a finding that he considered the charge against the accused to be groundless. No such finding was recorded by the learned Magistrate and rightly so. Far before the learned Magistrate the charge had not as yet even been framed and the case was at a preliminary stage when he was acting under Section 251-A Sub-section (1), Criminal Procedure Code and had directed the prosecution to supply copies of the documents referred to in Section 173, Criminal Procedure Code to the accused persons. There is no provision in the Code which vests any jurisdiction in the Magistrate to discharge an accused, simply on the ground that the document referred to in Section 173, Criminal procedure Code have not been supplied to an accused person on the date fixed by the court. In the absence of any such provision, the court cannot assume this power. Whereas, the prosecution is undoubtedly required and bound down by law to supply copies of the documents referred to by Section 173, Criminal Procedure Code, the discharge of the accused for the failure of the

prosecution to supply copies of the documents on a date. fixed for the purpose, in my opinion, would amount to miscarriage of justice and can lead to startling results. The Magistrates, should, of course, ensure the compliance with their directions but should not be in haste to dismiss cases for such lapses and discharge the accused, more so when the delay in supplying the documents was not all that serious. In this view of the matter, I am of the opinion, that the learned Magistrate should not have discharged the accused for the reasons stated by him and the order of discharge of the accused was neither warranted by law nor by the facts and circumstances of the case. The same must be quashed for the aforesaid reasons in addition to the reasons given by the learned Sessions Judge.

10. In view of the above discussion, I would accept the recommendation made by the learned Sessions Judge, Baramulla, and quash the order of discharge passed by the learned Magistrate and uphold the order of recalling the order of discharge passed by the Magistrate. I direct the parties, through their learned Counsel to appear before the learned Magistrate on 6th August, 1976, who shall proceed with the trial and shall expeditiously dispose of the case in accordance with law.