

Prem Singh and Etc. Vs. State

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Court : Jammu and Kashmir

Decided On : May-08-1985

Reported in : 1986CriLJ251

Judge : A.S. Anand, Actg. C.J. and; G.A. Kuchhai, J.

Appellant : Prem Singh and Etc.

Respondent : State

Judgement :

A.S. Anand, Actg., C. J.

1. This judgment will govern Criminal Revision Nos. '20. 23 and 32 of 1985.
2. The petitioners in the aforesaid Criminal Revision Petitions seek reconsideration of the judgments of this Court in Duni Chand v. Smt. Nirmala Devi, 1983 Srinagar LJ 347 delivered by Shri V. Khalid, Chief Justice, as his Lordship then was, and of State v. Shafiq Ahmed, 1984 Srinagar LJ 273 : 1985 Cri LJ 628 delivered by me. That is why the petitions have been put up before this Bench.
3. In Duni Chand's case (supra) Shri V. Khalid C. J. referred to Section 30 of the Criminal Procedure Code as amended and opined that an offence under Section 494, R.P.C. for which sentence provided is 7 years could be tried by the Chief Judicial Magistrate irrespective of the fact that in the schedule to the Code an offence under Section 494 R.P.C. is exclusively triable by a Court of Session.

4. In *State v. Shafiq Ahmed* 1985 Cri LJ 628 (J & K) (supra) after referring to Sections 30 and 34 of the Code read with the second schedule to the Cr. P.C., 1 opined that the offence under Section 409, R.P.C. for which the punishment prescribed, imprisonment up to 10 years and fine, is triable by the Court of Session and that the C.J.M. could not try such an offence. Reference was made to Section 205-D, Cr. P.C. and it was held that the expression 'exclusively' used therein has to be interpreted in the light of the other provisions of the Code.

5. For what shall follow, I am of the opinion that both the aforesaid judgments have failed to take notice of certain important provisions of the Code of Criminal Procedure and if these judgments are allowed to have their full play, it would render the court of the Chief Judicial Magistrate as a non-existent court for all intents and purpose and the provisions of Section 205-D and Second Schedule to the Code of Criminal Procedure would be rendered almost nugatory.

6. Before proceeding further it would be profitable to notice certain provisions of the Code of Criminal Procedure. Section 28 of the Code of Criminal Procedure reads thus:

Offences under Ranbir Penal Code.

Subject to the other provisions of this Code, any offence under the Ranbir Penal Code may be tried:

(a) By the High Court or

(b) By the Court of Session, or,

(c) By any other court by which such offence is shown in the eighth column of the Second Schedule to be triable.

A plain reading of the aforesaid Section shows that in the hierarchical system of the courts, certain areas of their jurisdiction have been prescribed by the Code. The High Court and the Court of Session have been empowered to try any offence under the Ranbir Penal Code subject, of course, to the other provisions of the Code, while 'other courts' have been conferred jurisdiction to try such offence as is

indicated in the 8th column of the Second Schedule to the Code. A bare look at the Second Schedule shows that in column 8, it recognizes only the two courts by which various offences enumerated in the Ranbir Penal Code etc. can be tried. Those courts are the Court of Session and the court of a Judicial Magistrate.

7. Section 6-A, Cr. P.C. enumerates two classes of the Magistrates i.e. the Executive Magistrates and the Judicial Magistrates and provides that the following shall be the Judicial Magistrates:

1. Chief Judicial Magistrate,
2. Judicial Magistrates of the 1st. Class;
3. Judicial Magistrate of 2nd Class; and
4. Special Judicial Magistrate.

8. Section 10, Cr. P.C. provides that in every district the Government shall appoint an Executive Magistrate of the 1st Class who shall be called the District Magistrate and in the very district the High Court shall invest a Judicial Magistrate of First class with the powers of C.J.M. under the Cr. P.C. or other law for the time being in force. Section 17-B, Cr. P.C. lays down that the Courts of Session and the courts of Judicial and Executive Magistrates shall be criminal courts inferior to the High Court and the courts of Judicial and Executive Magistrates shall be criminal courts inferior to courts of Session. A Chief Judicial Magistrate under the Code of Criminal Procedure has the control over the other Judicial Magistrates in the district. Section 32, Cr. P.C. provides for the sentences which various Judicial Magistrates may impose and it lays down: (see Table below)

Sentences which Magistrates may pass:

The Courts of Judicial Magistrates may pass the following sentences, namely:

- a/- Court of Judicial Magistrate of 1st Class Imprisonment for a term not exceeding three years including such solitary confinement as is authorised by law. Fine not exceeding five thousand rupees.
- b/- Court of Judicial Magistrate of 2nd Class Imprisonment for a term not exceeding one year including such

solitary confinement as is autho-rised by law. Fine not exceeding one thousandrupees.c/- Omitted.

(2) The Court of any Judicial Magistrate may pass any lawful sentence combining any of the sentences which it is authorised by law to pass.

(3) Omitted.

9. The powers of punishment so far as a Chief Judicial Magistrate is concerned are contained in Section 34, Cr. P.C. Since the Schedule refers only to Sessions Courts and the Courts of Judicial Magistrates who are competent to take cognizance of various offences, the authorisation of a Chief Judicial Magistrate' to take cognizance of offences had to be specifically provided and that necessitated the enactment of Section 30, Cr. P.C. Section 30 reads thus:

Offences punishable with imprisonment not exceeding seven years:

Notwithstanding anything contained in Sections 28 or 29 a Chief Judicial Magistrate or where there is no Chief Judicial Magistrate, the Additional District Magistrate shall have the powers to try as a Judicial Magistrate all offences not punishable with death or imprisonment for life or imprisonment for a term not exceeding 7 years.

It is Section 30, Cr. P.C. which starts with a non-obstante clause that deals with such offences which are punishable with imprisonment not exceeding 7 years and empowers the Chief Judicial Magistrate to try those offences. It therefore, becomes quite obvious that but for the provisions of Section 30, Cr. P.C, the Chief Judicial Magistrate would have no authority to take cognizance of any offence and his control of the subordinate Judicial Magistrates would become illusory. Under Section 29 of the Code of Criminal Procedure the powers of the Chief Judicial Magistrate, have been equated with those of the Chief Presidency Magistrate; Presidency Magistrate, and District Magistrate and similarly for Magistrates of the 1st class we have the Judicial Magistrates of the first class. This, provision has been enacted to empower the C.J.M. to try such offences under the Central Law which C.P.Ms., D.Ms, and P.Ms, can try. In the absence of this provision, those

offences cannot be tried and the judgment in Shafiq's case 1985 Cri LJ 628 (J & K) (supra) would also create problems for trial of those offences and render Section 29 meaningless.

10. Whereas Section 32, Cr. P.C. provides that the court of any Judicial Magistrate may award such term of imprisonment as has been indicated therein, Section 34 provides the higher powers of C.J.Ms, and reads as follows:

Higher Powers of Chief Judicial Magistrate:

Notwithstanding anything contained in Section 32 the Court of Chief Judicial Magistrate or where there is no Chief Judicial Magistrate, the Additional District Magistrate may pass any sentence authorised by law except a sentence of death or of imprisonment for life or imprisonment for a term exceeding seven years.

It is by virtue of this provision that the C.J.M. or where there is no C.J.M. the Additional District Magistrate, has been authorised by law to pass any sentence, except a sentence of death or imprisonment for life or imprisonment for a term exceeding seven years in any case triable by him under the second schedule. This provision when considered and read with the language used in Section 30 of the Code, shows that the C.J.M. has been enabled and not disabled to take cognizance of such offences as are triable by him. The use of the expression 'The Chief Judicial Magistrate' is indicative of the fact that so far as the 2nd Schedule is concerned, the C.J.M. has been given the powers to try offences which but for Sections 29 and 30 he could not have tried. The interpretation, in my opinion, will also advance the object of the amended Code and will harmonise the construction so placed. The combined reading of all the aforesaid Sections and the schedule will, therefore, lead to the conclusion that the Judicial Magistrates including the Chief Judicial Magistrate shall have the power to try all such offences as are authorised by law in accordance with the second schedule to the Cr. P.C.

11. The interpretation which has been placed in Duni Chahd and Shafiq's case 1983 Srinagar LJ 347 also completely ignores the provisions of Section 205-D, Cr. P.C. as well as the Second Schedule. Section 205-D, Cr. P.C. reads thus:

Commitment of case to court of Session - When offence is triable exclusively by it. When in a case instituted on a police report or otherwise, the accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall -

- (a) commit the case to the Court of Session;
- (b) subject to the provisions of this Code relating to bail, remand, the accused to custody during and until the conclusion of trial;
- (c) send to that court the record of the case and the documents and articles, if any, which are to be produced in evidence;
- (d) notify the public prosecutor of the commitment of the case to the Court of Session.

The use of the expression 'offences triable exclusively by the Court of Session' has greater significance and definite meaning. It is only those offences which are 'exclusively' triable by the Court of Session that are required to be committed to the Court of Session and not the other offences. Where, however, an offence is triable both by the Court of Session and the Judicial Magistrate, as provided in the Second Schedule, then the same shall be triable by the Magistrates but in the matter of imposing sentence, they shall exercise the jurisdiction as given in Sections 32 and 34, Cr. P.C. Where, however, the Magistrate during the inquiry or trial finds that he cannot dispose of the case, because from the evidence recorded during the enquiry or trial, it appears to him that the case is one which should be tried or committed for trial by such other Magistrate in the district, he shall act in accordance with the provisions of Section 346, Cr. P.C. and where the Magistrate during the enquiry or trial finds at any stage of the proceedings that the case is one which ought to be tried by Court of Session or the High Court, and if he is empowered to commit for trial, he shall commit the accused and where he is not so empowered, he shall proceed under Section 346, Cr. P.C. and after staying the proceedings submit the case with a brief report explaining its nature to any Magistrate to whom he is subordinate or the Chief Judicial Magistrate as the case may be. This becomes obvious from the plain language of Section 347, Cr. P.C.

12. The interpretation which has been placed by this Court in Duni Chand's case 1983 Srinagar U 347 and Shafiq's case 1985 Cri LJ 628 (supra) on the ambit and scope of Sections 28, 30 and 34, Cr. P.C. is, therefore, not correct, because that virtually renders Section 205D Cr. P.C. and the schedule to the Cr. P.C. almost redundant and makes Section 30 as a disabling- instead of enabling provision defeating the very object for which it was enacted. Second Schedule to Cr. P.C. being a creation of Section 28 is as much a part of the Code as any other provision of the Code:

Schedules to Statutes are as much part of an Act as any other provision in the body of the Act. Similarly provision in a schedule will be construed in the light of what is enacted in the Sections.

(Maxwell on the Interpretation of Statutes, -12th Edition page 12)

13. Thus, when various provisions, as noticed above including Sections 6-A, 28, 30, 32, 34 and 205-D are read conjointly with the Second Schedule and harmoniously construed, it becomes obvious that Section 30, Cr. P.C. is only an enabling provision and not a disabling one and offences which are not exclusively triable by the Court of Session, can be tried by various Judicial Magistrates including the Chief Judicial Magistrate but the extent of the punishment which can be imposed shall be governed by their powers of punishment contained in Sections 32 and 34 of the Code and in other cases they shall be governed by Sections 346, 347, 349, Cr. P.C. etc. Again, it becomes quite apparent that an offence which is 'exclusively' triable by a Court of Session cannot be tried by any Judicial Magistrate, including the Chief Judicial Magistrate, even if the sentence for the said offence falls within the competence of the Judicial Magistrate, or the Chief Judicial Magistrate. When such a Magistrate cannot take cognizance of an offence as is 'exclusively' triable by a Court of Session, the extent of punishment cannot confer jurisdiction on the Magistrate to try the said offences.

14. Thus, for what has been said above, it is obvious that the law laid down in the aforesaid two judgments viz. Duni Chand's and Shafiq's case (supre) is not good law.

15. As a result, the revision petitions succeed and after setting aside the impugned orders, the cases are remanded to the respective courts for proceeding in accordance with the observations made in this judgment.

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