

(1961) 02 GUJ CK 0021
In the Gujarat High Court
Case No : Criminal Appeal No. 428 of 1960

Apabhai Hemabhai Patel and Others

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 16-02-1961

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 173, 190, 207A(6), 437, 494
Penal Code, 1860 (IPC) — Section 307, 326, 34

Citation : AIR 1962 Guj 218 : (1963) CriLJ 119 : (1962) GLR 14

Hon'ble Judges : J.M. Shelat, J;A.R. Bakshi, J

Bench : Division Bench

Advocate : Nanavaty, for the Appellant; Choksi, Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Shelat, J.

* * * * * 5. The question arising in this application is whether the learned Sessions Judge had Jurisdiction u/s 437 of the Code of Criminal Procedure to direct the Magistrate to commit the three applicants to the Court of Session on a charge u/s 307 read with Section 34 Of the Penal Code.

6. Section 437 inter alia provides that when, on examining the record of any case u/s 435 or otherwise, the Sessions Judge considers that such case is triable exclusively by the Court of Session and that an accused person has been Improperly discharged by the inferior Court, the Sessions Judge may cause him to be arrested, and may thereupon instead of directing a fresh inquiry, order him to be committed for trial upon the matter of which he has been, in the opinion of the Sessions Judge improperly discharged. There are two provisos to Section 437, but we do not propose to cite them here as they are not relevant for the purposes of this inquiry.

7. Mr. Nanavatty appearing for the applicants contended--

(1) that an accused cannot be said to be improperly discharged on a mere refusal by a committing Magistrate to commit him to the Court of Session;

(2) that if an accused is charged of two distinct offences, and if the Magistrate were to frame a charge or commit him in respect of one offence only to the Court of Session, then there would be a discharge in respect of one offence. But if an accused is charge-sheeted for a certain offence and on the same facts and evidence the Magistrate frames a charge in respect of a lesser offence, there would be no discharge of such an accused as the accused is not released or set at liberty, but has still to stand a trial;

(3) that Section 437 of the Code must be read in conjunction with Section 207A(6), and if so read the word "discharge" in both these sections must be given the same meaning. The word "unless" in Section 207A(6) and Section 209(1) indicates that discharge must mean a total discharge of an accused from an offence which can only be accomplished by setting him at liberty in respect of that offence. Therefore, so long as the Magistrate frames a charge though on a lesser offence, as the learned Magistrate has done in this case, there would be no discharge within the meaning of Section 437 much less an improper discharge;

(4) that the word "discharge" used at various places in the Code must have and be given the same meaning;

and lastly,

(5) that Section 347 shows that the Magistrate can, even after he proceeds to try an accused on a lesser offence change his mind and commit even at that stage the accused to the Court of Session for a graver offence indicating that framing a charge on a lesser offence and refusing to commit him to the Court of Session in respect of a graver offence does not amount to discharge.

8. Section 437 of the Code of Criminal Procedure has come up for interpretation on a number of occasions before several High Courts. There has however been a difference of opinion between the High Courts of Allahabad and Calcutta on the one hand and the High Courts of Madras, Nagpur, Lahore, Andhra and Patna on the other. In support of his contentions Mr. Nanavatty besides relying upon the words in Section 437 and Section 207 A (6), has leaned heavily upon a decision of the Full Bench of the Allahabad High Court in *Nahar Singh Vs. The State*, where the High Court has taken the view that where a person is accused of a major offence u/s 304 of the Penal Code and the court frames a charge for a minor offence u/s 304A, it would not amount to discharge and therefore a court of revision would not be competent u/s 437 of the Code to direct commitment. Of the accused to the Court of Session in respect of such a major offence. As we have said, a contrary view has been taken in *In Re: Nalla Baligadu and Others*, by a Full Bench of the High Court of Madras following the view taken by that High Court in certain earlier decisions. The other High Courts having taken one or the other view, and some of these decisions having been discussed at some length in these two decisions of the High Courts of Allahabad and Madras, it will not be

necessary for us to discuss those cases again.

9. But before we go to these decisions, it would be expedient to turn to some of the sections of the Code and in particular to Section 437 to ascertain the meaning of the words "improperly discharged" in the context in which they are used there. It is obvious that the foundation of the jurisdiction of a court of revision to direct a magistrate to commit an accused to the Court of Session is dependent on these words. It would, therefore, be necessary to ascertain the exact connotation of the words "improperly discharged." in doing so, we have fortunately the benefit of the views expressed in the two aforesaid decisions of the Allahabad and the Madras High Courts.

10. Now, the first question that arises on an interpretation of the words ""improperly discharged" as used in Section 437 is, what is it that an accused is improperly discharged of? in this connection, it must be borne in mind that Section 437 of the Code talks of a case triable exclusively by the Court of Session, and not an offence triable exclusively, and in the latter part of the section the Legislature uses the word "matter" of which in the opinion of the Sessions Judge, the accused is improperly discharged. It would seem that the words "case and matter" used in this section carry a far wider connotation than the word "offence" or "charge". It cannot be said that when the Legislature conferred revisional jurisdiction under this section on a Court of Session, it used these words either loosely or accidentally.

11. As we have said, the first question is that when Section 437 talks of an accused being improperly discharged, what is it that the accused is discharged of? Section 437 itself furnishes the answer, viz., that he is improperly discharged in a case and not of an offence, exclusively triable by the Court of Session, and the Sessions Judge, if he comes to that conclusion, would direct the Committing Magistrate that such an accused should be committed for trial upon the "matter" of which he has been improperly discharged.

11a. Though the Code uses the word "discharge" at various places, it does not give the definition of that word. The High Court of Allahabad in *Nahar Singh Vs. The State*, has set out the dictionary meaning of the word "discharge" as--

"The act of freeing from obligation, liability or restraint; release, exoneration, exemption: exoneration from accusation or blame; exculpation, acquittal, excuse; release from custody liberation," etc.

In Archbold's Criminal pleading. Thirty-fourth Edition, para 618. under the head "Discharge of prisoners", it is stated as follows:

"Every prisoner charged with or indicted for any felony, or with or for any misdemeanour, or as an accessory thereto, before any court of criminal jurisdiction in England and Wales, against whom no bill of indictment shall be preferred and signed, or who on his or her trial shall be acquitted, or who shall be discharged by proclamation for want of prosecution, shall be immediately set

at large without payment of any fee or sum of money, for or in respect of such discharge, to the sheriff, gaoler or keeper of the gaol or prison, from whence he shall be so discharged and set at liberty, or to the clerks of the court or for their appearance to the indictment or information, or for allowing them to plead thereto, or for recording the appearance or plea, or for discharging any recognisance taken by him or by any sureties for himn....""

Discharge of a prisoner thus takes place; (1) when no bill of indictment is preferred; (2) who on a trial is acquitted; (3) who is discharged by proclamation for want of prosecution. Thus, the word "discharge" has a variety Of meanings depending upon the context and situations in which it is used.

12. it was, however, said by Mr. Nanavatty that when a word is used in a statute at various places, the court should give the same meaning to that word and, therefore the word "discharge" used in the Code must be given the same or identical meaning whenever it occurs in the Code. But it is a well settled principle of construction that from the presumption that the legislature has used the same word with the same meaning has not much weight. "Maxwell on Interpretation of Statutes, Tenth Edition at page 322 it has been observed that though it is reasonable to presume that the same meaning is implied by the use of the same expression in every part of an Act, the presumption is not of much weight, and the same word may be used in different senses in the same statute, and even in the same section. This is more clearly brought out in Crates on Statute Law". Fifth Edition at page 159, where it is said that the presumption that the same words are used in the same meaning is very slight and ft is proper, if sufficient reason can be assigned, to construe a word in one part of an Act in a different sense from that which it bears in another part of an Act. This rule of construction is now recognised even by legislative bodies, since it is now usual in the interpretation clause of every Act to insert the words "unless a contrary intention appears", or "unless the context otherwise requires"" or other similar words cutting down the general application of the definition. The proper rule of construction, therefore, is to look at the section itself and find out the meaning of a word in question from the context in which it is used, though it would be permissible to find out its meaning from the other sections, where the same word is used, it it is not possible to do so, from the section itself. But it is clear also that the same word might carry different meanings when used in different parts of the statute depending upon the context in which it is used. Indeed, cases are not lacking where the same word would carry different meanings, even though used in the same section. When we look to the various sections of the Code of Criminal Procedure, we find that the word "discharge" has been used not in the same meaning, and one has therefore to ascertain its meaning from the context in which it is used, keeping in mind the situation also in respect of which it is used. As we have pointed Out, the words "improperly discharged", have been used in Section 437 in relation to or in the context of the words "case" and "matter" and not in connection with or relation to the word "offence," though, no doubt the "case" or the "matter" must be in relation to or concerning an offence

exclusively triable by the Court of Session, Nevertheless, discharge as contemplated in that section is from the case or matter in respect of which the Sessions Judge directs the magistrate to commit an accused person to the Court of Session.

13. Section 207A(1) provides that when, in any proceeding instituted on a police report the Magistrate receives the report forwarded u/s 173, he shall, for the purpose of holding an inquiry under this section, fix a date etc. Then follows the procedure that he has to follow in that proceeding, namely the taking of evidence, cross-examination, examination of the accused, etc. Sub-section (6) of Section 207A then provides that when evidence has been taken and the Magistrate has considered all the documents referred to in 5. 173, and has, if necessary examined the accused for the purpose of enabling him to explain any circumstances appearing in the evidence against him and given the prosecution and the accused an opportunity of being heard, such Magistrate shall, if he is of opinion that such evidence and documents disclose no grounds for committing the accused person for trial, record his reasons and discharge him, unless it appear; to him that such person should be tried before himself or some other Magistrate, in which case he shall proceed accordingly. It seems clear from these provisions that the words "discharge him" mean discharging an accused from that proceeding and exonerating him from the obligation to make his appearance and to make his plea in connection with that proceeding under Chapter XVIII. Section 209(1) provides the same procedure in respect of an inquiry again under Chap. XVIII arising, not from a police report but from a proceeding instituted otherwise, for example a complaint by a private individual.

14. Chapter XXI of the Code deals with the trial of warrant cases by Magistrates and lays down the procedure applicable to such cases. Section 251A deals with the procedure to be adopted in cases instituted on a police report Section 253 refers to a case instituted otherwise than on a police report, and provides that when an accused appears - or is brought before him, the Magistrate, should proceed to hear the complainant and take all such evidence as may be produced in support of the prosecution. Section 253 deals with the discharge of an accused and provides that if, upon taking all the evidence referred to in Section 252, and making such examination, if any, of the accused as the Magistrate thinks necessary, he finds that no case against the accused has been made out, which, if unrebutted, would warrant his conviction, the Magistrate shall discharge him. It would seem that u/s 253, the discharge of an accused person would be from the offence, for which a complaint has been filed. Section 494 deals with the effect of withdrawal from prosecution, and provides that any Public Prosecutor may, with the consent of the court in cases tried by jury before the return of the verdict, and in other cases before the judgment is pronounced, withdraw from the prosecution of any person, either generally or in respect of any one or more of the offences for which he is tried, and upon such withdrawal, if it is made before a charge has been framed, the accused shall be discharged in respect of such offence or offences. u/s 494, the discharge thus is not a total one from the

proceeding or trial but only to the extent of the offence or offences in respect of which the prosecution, against the accused is withdrawn. Thus, it is clear, that the word "discharge" has been used in the Code in different contexts and to meet different situations, and has, therefore different connotations depending upon where it is used. It would be consequently erroneous to contend that the word "discharge" should be given the same meaning whenever and wherever it occurs in the Code Section 494 also shows that there can be a partial discharge.

15. The next question then is what happens when a Magistrate omits to commit an accused to the Court of Session, on a graver offence and frames a charge on a lesser offence and proceeds to try the accused himself on such a charge. It was the contention of Mr. Nanavatty that in such a case, there is no discharge of an accused person as he is not released but in fact is made to stand his trial in respect of a charge for the lesser offence. In dealing with this contention, it is necessary to see what exactly does the Magistrate do when he frames a charge on a lesser offence and proceeds to try an accused in respect of such a lesser offence. Mr. Nanavatty laid considerable Stress upon the word "unless" occurring in Section 207A(6) and Section 209(1). His contention was that the word "unless" should be read in conjunction with the words "discharge him" previously occurring in these two sections, and if read, the word "unless" would indicate that there is no discharge of an accused. At first flush, it would appear, as if there is some force on the construction suggested by Mr. Nanavatty. But an examination of some of the other sections of the Code would reveal the fall in the suggested construction. Chapter XIV of the Code deals with information to the police and their powers to investigate. Section 173 in that Chapter deals with the obligation of an investigating officer to forward his report to a Magistrate empowered to take cognizance of the offence set out in the police report. When such a report is made and forwarded to the Magistrate, the Magistrate under; Section 190 takes cognizance of such offence. This is done either under a police report or upon receipt of a complaint of facts which constitute such an offence, or even upon information received from any person other than a police officer, or even upon the Magistrate's own knowledge or suspicion that such an offence has been committed. It is clear from the reading of Section 190 of the Code that upon such cognizance only, a proceeding is said to be initiated. After the Magistrate takes cognizance of an offence and a proceeding is thus initiated, he has then to consider whether it is an offence triable by him or by some other Magistrate, as the case may be, or whether it is a case triable exclusively by the Court of Session, in which event, the proceeding which is already initiated by him, is conducted under the provisions Of Chapter XVIII. If the case is triable by him, and he tries it as a warrant case, such a proceeding would be governed by the provisions of Chapter XXI. It is necessary to bear in mind that as soon as a Magistrate takes cognizance, whether on a police report or a complaint, a proceeding is at once initiated. It is then a matter of procedure whether such a proceeding is to be dealt with under Chapter XVIII or Chapter XXI. If the proceeding is concerned with an offence exclusively triable by the Sessions

Court, the Magistrate has to follow the procedure laid down in Chapter XVIII, and u/s 207, he has to follow the procedure specified in Section 207A, where the proceeding is initiated on a police report or under Section 209 when it is initiated otherwise than on a police report. . Under Sub-section (6) of Section 207A, the Magistrate has then to consider the evidence recorded by him under Sub-section (4), the documents referred to in Section 173 and the examination of the accused, if any and if he then comes to the conclusion that the evidence and documents disclose no grounds for commitment, he has to record reasons and discharge him, "unless" it appears to him that such a person should be tried before himself or some other magistrate, in which case he shall proceed accordingly. The scheme of Section 207A(6) and Section 209(1) is clear. Sub-section (6) of Section 207A, which is similar to Section 209(1), falls into two parts: The first part deals with the refusal to commit and then to discharge and the second part deals with his proceeding to try the case which is not exclusively triable by the Sessions Court but which is triable by him. The first part of Sub-section (6) of Section 207A deals with and is concerned with the proceeding under Chapter XVIII which terminates upon the finding by the Magistrate that there are no grounds for commitment and the second part deals with the proceeding under Chapter XXI which commences on the termination of the previous proceeding under Chapter XVIII, Unless the proceeding under Chapter XVIII terminates, the second proceeding under Chapter XXI, which until then was not even in existence, cannot be deemed to have been commenced. If the meaning of the word "unless", contended by Mr. Nanavatty, were to be accepted it leads to an anomalous position, viz, that the proceeding which commenced u/s 173 " and the offence revealed thereunder was taken cognizance of u/s 190 by the Magistrate, does not terminate but remains in existence undisposed of, and yet side by side with it, the Magistrate initiates a second proceeding on the same facts and evidence under Chapter XXI. Surely, such a result could not have been contemplated by the Legislature while using the word "unless" in subsection (6) of Section 207A and Section 209(1). The word "unless" therefore, cannot be construed in the same way as Mr. Nanavatty wants us to do. That word must mean that if the Magistrate after discharging an accused from the previous proceeding under Chapter XVIII finds that he should be tried of a lesser offence before himself or before some other Magistrate, which lesser offence is revealed by the same facts and evidence, he shall proceed accordingly. In this view, Section 207A(6) must be construed to mean that the proceeding which, was initiated under Sections 173 and 190 comes to termination, and the accused is discharged for reasons to be recorded by the Magistrate from such a proceeding. In other words, the effect of such a discharge would be to exonerate or release such an accused from having to make an appearance and from having to make his plea in respect of the offence for which the proceeding was initiated under Sections 173 and 190 and conducted in accordance with the procedure laid down in Chapter XVIII. Yet, such a discharge of the accused is not total as the accused has still to make his attendance in so far as the Magistrate initiates the proceeding against him for a lesser offence triable by him under the provisions of

Chapter XXI.

16. We find support for this reasoning in the meaning given to the word "unless" by the Shorter Oxford English Dictionary, III Edition, at page . 2306 where that word has been given the meaning "except or except when." So construed, Section 207A(6) would mean that if the Magistrate is of the opinion that such evidence and documents disclose no grounds for committing the accused person to the Court of Session, he shall record his reasons and discharge him, "except when it appears to him that such an accused should be tried before himself or some other Magistrate, in which case, he shall proceed accordingly." it is by reason of the fact that the Legislature has used the word "unless" immediately after the words "discharge him" that the Magistrate is enabled to try such an accused person after his discharge on his finding that he should be tried either before himself or some other Magistrate on a lesser offence. If the word "unless" had not been inserted after the words "discharge him" the Magistrate would have become functus criticio on his refusal to commit the accused for the offence of which he is accused of, and in that event, he would not have been able! to try an accused of a lesser offence even though he finds that on the facts and evidence before him, there is a prima facie case against such an accused in respect of the lesser offence. The word "unless" thus has been deliberately inserted by the Legislature in Sub-section (6) of Section 207A immediately after the words "discharge him."

17. The learned Magistrate, in the case before us, has not recorded his reasons but has simply declined to commit the accused to the Court of Session and has framed a charge u/s 326 read with Section 34 of the Penal Code, which would enable him to proceed against the accused. It is not, however, necessary that there need be any express order Of discharge and it would be sufficient if what he has done amounts in effect to discharge. In our view, on an examination of the scheme of the Code of Cri. Procedure, and the result that follows from the action taken by the learned Magistrate, it is clear that there was a discharge of the accused in respect of the inquiry or the proceeding going on before him under Chapter XVIII, as that proceeding was brought to a termination on the refusal by the learned Magistrate to commit him before the Court of Session Such a refusal can only be on the grounds given in Section 207A(6), viz., that on a consideration by him of the evidence and the documents, there were no grounds for committing him for trial before the Court of Session u/s 307 read with Section 34 of the Penal Code. In other words, that proceeding, which commenced under Sections 173 and 190 of the Code and conducted under Chap. XVIII, come to an end, and in respect of that proceeding, and the accusation, against him therein, the accused was no longer required to make his appearance or to plead. Therefore, the accused in such an event, is exonerated from the obligations placed upon him in respect of that proceeding under the provisions of Chapter XVIII of the Code. There was thus a discharge of the accused so far as that proceeding or inquiry was concerned, which inquiry or proceeding was in respect of a case exclusively triable by the Court of Session, even though the

Magistrate decided to try him for an offence u/s 326 read with Section 34, which could be hied by him. The discharge, therefore, would not be a total discharge in the sense that the accused was set at liberty or released, because the accused has still to attend the court and give his plea on the offence which the Magistrate wants to try him for. But in a sense, the discharge is total in respect of the case or matter Which was exclusively triable by the Court of Session, as that case or matter was terminated by the finding of the Magistrate that there were no sufficient grounds to commit the accused to the Court of Session. When, therefore, a Magistrate declines to commit an accused to the Court of Session he brings to termination the proceeding or inquiry, which he was until then trying under Chapter XVIII and continences a separate and a distinct proceeding under a different Chapter of the Code, and for which a different procedure is laid down by Chapter XXI. One proceeding ends and the: other begins. It is true that the evidence so far recorded by the learned Magistrate and the documents produced before : him, Which are referred to in Section 173, may be used by the learned Magistrate for the purpose of the proceeding under Chapter 21, and on which he would be entitled to frame a charge for the lesser offence. But that is permissible on the ground of expediency so that the evidence has not to be taken all over again but that is done without affecting the position that the proceeding, which he takes under Chapter 21, is a proceeding which is distinct and separate from the one which he was taking under the provisions of Chapter 18 of the Code. In, this sense, it can be said that the accused is discharged, and if in the opinion of the Sessions Judge, the accused is improperly discharged, the Sessions Judge would have jurisdiction u/s 437 of the Code to interfere and direct the Magistrate to commit the accused to the Court of Session. It is thus clear why the Legislature did not use in Section 437(1) the word "offence" or "charge" but has advisedly used the word "case" or "matter" in relation to the accused being improperly discharged.

18. Coming now to the decisions referred to in the course of the arguments, the High Court of Allahabad in AIR 1952 All 231 (FB) has held that where a person was accused by the complainant for a major offence, in that case u/s 304 of the Penal Code, ana the Magistrate framed a charge for a minor of-fence, namely u/s 304A it did not amount to a discharge, because the case was proceeding against him on the same facts, ana the Court of revision wag not competent tinder Section 437 to direct commitment of the accused to the Sessions Court in respect of the major offence. The Full Bench there laid down that even if the Magistrate could be said to have proceeded in respect of the lesser offence, as laid down in Chapter XXI. He could not be said to have, discharged the . applicant within the meaning of Section 253 for the reason that he found some case against him. In a warrant trial an accused would be discharged u/s 253 only if no case of any kind, which would warrant his conviction, was made out. What kind of case was made out would not matter in the least. So long as any kind of case which would warrant conviction was made out in the view of the Magistrate, there could be no discharge. In the main judgment of the Full Bench delivered by

Desai, J. the learned Judge after examining the various dictionary meanings of the word "discharge" observed;

"The applicant was not exonerated from accusation Or blame, exculpated or excused. He was not freed from any liability. He was being tried for the act and he was being tried notwithstanding the fact that he was being tried for a less severe offence than that for which he was put on trial, that he was being tried before the learned Magistrate himself instead of before a Sessions Court, and that" the maximum punishment to which he was liable was less than the maximum punishment to Which he would have been liable if committed."

The learned Judge was of the view that so long as the accused was not released from custody or liberated, he could not be said to have been discharged by the Magistrate. With great respect to the learned Judge, who decided the case of Nahar Singh, it is somewhat difficult to appreciate the reasoning contained in the above quoted passage. When a proceeding is conducted under Chapter XVIII of the Code on an accusation against an accused of an offence, for example, an offence u/s 302, and the Magistrate trying such a proceeding declines to commit him to the Court of Session and frames a charge in respect of a lesser offence, such as the one u/s 325, such an accused must be said to have been exonerated, exculpated or excused in respect of the accusation against him, of the offence of murder. When the Magistrate declines to commit him to a Court of Session on a charge of murder, such an accused must be said to have been exonerated or exempted or relieved from the accusation of murder and the obligation to face a trial for that offence and make a plea therein on such a charge. In support of their reasons, the learned Judges, at page 235 of the Report, have relied upon the decision of their Lordships of the Privy Council in *Kishan Singh v. Emperor* ILR All 722: (AIR 1928 PC 254). In the first place, it is difficult to appreciate as to how that decision can possibly be invoked for the reasoning in the Full Bench decision. That decision had nothing to do with Section 437 or Section 207A or Section 209(1) of the Code of Criminal Procedure. In *Ganga Putta v. Emperor* AIR 1936 Nag 87, Gruer J. In fact used the very same Privy Council decision as furnishing an useful analogy for the interpretation to be put on the word "discharge" in Sections 437 and 207A(6). He held that where a Magistrate deliberately frames a charge on the minor section instead of on the major section on which the case starts, his action is equivalent to a discharge with regard to the major offence, and further inquiry can be Ordered by the Sessions Court u/s 436 of the Code of Criminal Procedure. The learned Judge there reasoned that in the Privy Council decision reported in ILR All 722: AIR 1928 PC 254), the accused was convicted by a Sessions Judge u/s 304 of the Penal Code having been charged u/s 302, and their Lordships of the Privy Council held that this finding amounted to an acquittal on the charge of murder, although no acquittal was actually recorded. Gruer, J. observed that by analogy, just as failure to convict amounts to an acquittal, failure to charge would amount to a discharge, and in that view, he held that the Sessions Court had jurisdiction to order a further inquiry where the Magistrate omitted to frame a charge on a major offence and

framed a charge under a minor section.

19. As against the view taken by the Allahabad High Court, a Full Bench of the High Court of Madras in *In Re: Nalla Baligadu and Others*, took the view that where u/s 209 (1) a Magistrate finds that there are no sufficient grounds for committing the accused for trial and directs such person to be tried before himself or some other Magistrate, the revisional powers u/s 437, can be exercised before the conclusion of the trial before such a . Magistrate. They also held that when a Magistrate discharges an accused in respect of an offence exclusively triable by a Court of Session and proceeds to try him himself for an offence within his jurisdiction, on the language of Section 437 it would be open to the District Magistrate to direct the committal of the accused for trial "upon the matter of which he has been, in the opinion of the District Magistrate, improperly discharged". The Full Bench there held that the word "matter" used in Section 437 was elastic enough to comprehend a single charge or a plurality of charges, a single offence or a plurality of offences, a part of a case or the whole of a case, and the word was also appropriate enough to cover cases where the same act is punishable under two or more sections of the Code. In the main judgment of the Full Bench delivered by Balakrishna Ayyar, J., the learned Judge dealt with in extenso the reasoning adopted by the Allahabad High Court in *Nahar Sing's* case and declined to follow the reasoning there adopted. Dealing with the construction to be put on the word "unless" appearing in Section 207A, Sub-section (6) and Section 209(1) of the Code of Criminal Procedure, he negatived the construction submitted before the Full Bench. The construction suggested there was the same as the one, suggested before us by Mr. Nanavatty. At page 803 of the Report, the learned Judge observed that the word "unless" did not create any difficulty, and that all that Section 209(1) told the Magistrate was:-- "If you find that there are not sufficient grounds to commit the accused for trial, you will exonerate him and send him away from Court, but you are not bound to do that if you decide that he should be tried before you or before another magistrate." Section 209(1) did not contain anything more than that. Chandra Reddy, J. who was party to this decision dealing with the question of the construction of the word "unless" stated that the Clause "unless it appears, etc....." in the context in which the words were used, only meant "and then proceed to try him for other offences". In our view, however, it is not necessary, to substitute the words "and then" for the word "unless" contained in this section. The dictionary meaning of the word "unless", which we have already cited above, is reconcilable with the context in which that word has been used in these two sections. On the dictionary meaning of the word "unless" it is clear that on discharging the accused, the Magistrate can proceed to try him for the lesser offence, if he finds that there is a prima facie case for such an offence on the facts and evidence before him.

20. Reference, was made by Mr. Nanavatty to *Sambhu Charan Mandal v. State* 60 CWN 708 , where a Division Bench of the High Court of Calcutta followed the decision in *Nahar Singh Vs. The State*, and held that the omission or refusal to

frame a charge in respect of an offence triable by the Court of Sessions does not amount to discharge, and in such cases the Sessions Judge has no jurisdiction to direct commitment in respect of that offence u/s 437 of the Cods. The learned Judges there held that as the accused would have still to face a trial, though on a charge for a lesser offence, there would be no discharge, and, therefore the Court of revision would have no jurisdiction to direct the Magistrate to commit him to the Court of Session. There is, however, in that decision no discussion as to the meaning to be attached to the word ""discharge" as used in Sections 207A (6) and 437, There is also no discussion as regards the result that follows on the termination of the inquiry before the magistrate under Chapter XVIII, and no discussion as to what is to happen to the accusation made against the accused in respect of the graver offence. We find, however, that the view adopted by the High Court of Madras in *In Re: Nalla Baligadu and Others*, was accepted by the Patna High Court in *Rambalam Pd. Singh and Others Vs. State of Bihar*, in the sense that one of the learned Judges constituting the Division Bench accepted the view of the High Court of Madras that there can be an implied discharge, and the other learned Judge accepted in toto the reasoning contained in the decision of the Madras High Court.

21. We also find that in *Khanu v. Emperor* AIR 1925 Sind 190, *In Re: Nalla Baligadu and Others*, the reasoning was the same as is to be found in *In Re: Nalla Baligadu and Others*, . The High Court of Andhra, expressly followed the Madras decision and held that when a Magistrate finds that there are not sufficient grounds for committing the accused for trial and directs such person to be tried before himself, the revisional powers u/s 437 can be exercised even before the conclusion of the trial before such Magistrate.

22. Thus the consensus of opinion amongst the various High Courts, except of course the High Courts of Allahabad and Calcutta, seems to be in favour of the view expressed in *In Re: Nalla Baligadu and Others*, . The conclusion that we have arrived at thus is supported not only by the words used in Section 437 and Section 207A (6), but also by ample authority of several High Courts.

23. in our view, therefore, the learned Sessions Judge had jurisdiction to direct the learned Magistrate to commit the three applicants to the Sessions Court on a charge u/s 307 read with Section 34 of the Penal Code.

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