
(2004) 04 CAL CK 0007
In the Calcutta High Court
Case No : C.R.R. No. 18 of 2004

Bishnu Singh

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 23-04-2004

Acts Referred:

Arms Act, 1959 — Section 25, 25(1B), 27

Criminal Procedure Code, 1973 (CrPC) — Section 161, 173(2), 173(8), 193, 209

Penal Code, 1860 (IPC) — Section 302, 307, 34

Citation : (2005) 3 CHN 397

Hon'ble Judges : Pravendu Narayan Sinha, J

Bench : Single Bench

Advocate : D. Khan, for the Appellant; S. Mallick, for the Respondent

Final Decision : Dismissed

Judgement

Pravendu Narayan Sinha, J.—This revisional application u/s 402 read with Section 482 of the Code of Criminal Procedure (hereinafter referred to as the Code) has been preferred by the petitioner praying for quashing the orders dated 3.3.03 and 19.9.03 passed by the learned Judge, 6th Bench, City Sessions Court, Calcutta in Sessions Case No. 85/01 thereby framing charge under Sections 25/27 of Arms Act against the petitioner and rejecting his application u/s 231(2) of the Code for deferring cross-examination of P.W. 3 till examination of four other witnesses.

2. Learned Advocate for the petitioner contended that against the petitioner charge-sheet u/s 302/34 of the Indian Penal Code (hereinafter referred to as the IPC) was filed after completing investigation and on 10.10.01 learned Additional Chief Metropolitan Magistrate (hereinafter referred to as ACMM) after taking cognizance of offence u/s 302/34 of Indian Penal Code, transferred the case to learned Metropolitan Magistrate, 8th Court for disposal. Copies were supplied to the accused on 19.11.01 and thereafter the learned Magistrate committed the case to the Court of Sessions i.e., before the learned Chief Judge, City Sessions

Court, Calcutta. Learned Chief Judge transferred the case to the learned Judge, 6th Bench, City Sessions Court, Calcutta and the learned Judge on 30.1.02 framed charge u/s 302/34 of Indian Penal Code, against the petitioner. Subsequently, a supplementary chargesheet under Sections 25/27 of the Arms Act was filed before the learned Metropolitan Magistrate, 8th Court and the learned Magistrate sent the supplementary chargesheet to the learned Trial Court. The original chargesheet was submitted on 10.10.01 and the supplementary chargesheet was filed on 15.5.02 i.e., after expiry of 90 days from the date of arrest of accused. Chargesheet submitted under Sections 25/27 of the Arms Act is independent charge under specific Act and it is triable by Magistrate.

3. He further contended that the Court of Sessions cannot take cognizance of any offence unless the case is committed to the Court of Sessions. Learned Metropolitan Magistrate, 8th Court did not commit the case under Sections 25/27 of the Arms Act on the basis of supplementary chargesheet. Accordingly, Sessions Court cannot take cognizance of offence under Sections 25/27 of Arms Act and framing of charge against the petitioner under the said Sections by order dated 3.3.03 is bad in law and should be set aside. The learned Sessions Judge has, therefore, no jurisdiction to take cognizance for alleged offence under Sections 25/27 of" the Arms Act and framing of charge under these Sections should be set aside.

4. Learned Advocate appearing for the State contended that at this belated stage the order dated 3.3.03 framing charge under Sections 25/27 of the Arms Act cannot be challenged and it is hit by limitation. The order dated 19.9.03 is the rejection of prayer of accused u/s 231 of the Code and challenging the said order the petitioner moved this Court and in it cleverly inserted the order dated 3.3.03. After moving this Court against rejection of application u/s 231 of the Code, the petitioner cannot challenge the order dated 3.3.03 regarding framing of charge under Sections 25/27 of the Arms Act. There is no bar for submitting supplementary chargesheet and on the basis of supplementary chargesheet learned Magistrate is empowered to take cognizance. A case cannot be committed twice and so when the case u/s 302/34 was already committed to the Court of Sessions learned Magistrate rightly forwarded the supplementary chargesheet to Court of Sessions. There is no illegality in the order and the revisional application should be dismissed.

5. I have duly considered the submissions made by the learned Advocates for the parties and perused the revisional application and the certified copy of the orders annexed therewith. It is clear that the accused petitioner was committed to the Court of Sessions i.e. to the Court of the learned Chief Judge, City Sessions Court, Calcutta by order dated 19.11.01 passed by the learned Metropolitan Magistrate, 8th Court, Calcutta. It appears that at that time charge- sheet was submitted u/s 302/34 of Indian Penal Code and the learned Magistrate committed the case to Court of Sessions for the alleged offence u/s 302/34 of

Indian Penal Code. The commitment order indicates that when the chargesheet was submitted, the Investigating Officer (hereinafter referred to as I.O.) could not collect report of arms expert and necessary sanction from the Commissioner of Police, Calcutta and so in the chargesheet Sections 25/27 of the Arms Act were not incorporated. In the chargesheet I.O. kept option open in his hand to file supplementary chargesheet against the accused petitioner. It appears that subsequently receiving report of arms expert and necessary sanction, the supplementary chargesheet was filed before the learned Magistrate on 15.5.02 and the learned Magistrate forwarded supplementary chargesheet to the Court of Sessions. It is evident that by order dated 30.1.02 charge u/s 302/34 of Indian Penal Code was framed against the accused and subsequently after receiving the supplementary chargesheet from the learned Magistrate the learned Judge by order dated 3.3.03 framed charge also under Sections 25(1B)(a)/27 of the Arms Act. It further appears that after framing the charge u/s 302/34 of Indian Penal Code learned Judge fixed date of trial from 18.3.02 onwards and before the trial commenced the charge under Sections 25(1B)(a)/27 of the Arms Act were also framed against the accused petitioner on 3.3.03.

6. Order dated 19.9.03 reveals that on the said date the accused petitioner filed an application u/s 231 of the Code for deferring cross-examination of P.W. 3 till four other witnesses are examined. After hearing the arguments of both sides learned Judge observed that P.W. 3 can be cross-examined before evidence of other witnesses mentioned in the petition and cross-examination of the other witnesses will be made at a time. Challenging the said order the petitioner moved this Court in this revisional application but, in it also added the order dated 3.3.03 by which charge under Sections 25/27 of the Arms Act were framed. It is clear that order dated 3.3.03 was not challenged within the prescribed period of limitation and it has been filed at a belated stage.

7. The question for consideration is whether a Magistrate can take cognizance on the basis of supplementary chargesheet. I am of opinion that the position of law is very clear in this respect. Section 173(8) of the Code lays down that further investigation can be made after a final report u/s 173(2) has been forwarded to the Magistrate and after such investigation the Officer-in-Charge if receives further evidence he shall forward to the Magistrate a report regarding such evidence in the form prescribed. The Sub-section (8) of Section 173 of the Code makes it clear that sending of report under Sub-section (2) does not preclude further investigation and sending supplementary report. The investigating agency can submit supplementary reports to the Magistrate even where the Magistrate has taken cognizance of the offence upon police report. Order of learned Magistrate taking cognizance on subsequent report is competent and cannot be interfered with in revision. In the instant case at the time of submitting report in final form under Sub-section (2) of Section 173 the I.O. kept open his hand regarding supplementary report mentioning in the final report that as he has not yet received report of arms expert and sanction he cannot submit the chargesheet under Sections 25/27 of the Arms Act, but he may file

supplementary. It is clear that after receiving report of arms expert and sanction he filed the supplementary report and the learned Magistrate rightly exercised his jurisdiction on the basis of supplementary report. As the case was already committed to the Court of Sessions learned Magistrate rightly forwarded the supplementary chargesheet to the Court of Sessions instead of committing the case afresh again. It is well-known that a case cannot be committed twice. If at the time of commitment of a case one accused was absconding and if the said accused is subsequently brought under arrest, there cannot be second commitment of the case and Magistrate's duty is to forward the said accused brought under arrest subsequently, to the Court of Sessions.

8. A Court of Sessions takes cognizance u/s 193 of the Code after a case is committed to it by a Magistrate under provisions of the Code. When a case is committed to the Court of Sessions in respect of an offence u/s 193 read with Section 209, the Court of Sessions takes cognizance of offence and not of the accused. It indicates that the Sessions Court takes cognizance of all the offences that may be revealed from the materials on record. In *Pandaran Mani & Ors. v. State of Kerala*, reported in AIR 1966 Kerala 1, a case was committed to the Court of Sessions u/s 307 of Indian Penal Code. Subsequently, the injured died and it was held that charge and trial u/s 302 of Indian Penal Code, is proper though commitment was u/s 307 of Indian Penal Code. Similarly, in the instant case though commitment was u/s 302/34 of Indian Penal Code, charge under Sections 25(1B)(a)/27. of the Arms Act is well-maintainable on the basis of supplementary chargesheet. The learned Magistrate made no illegality by forwarding the supplementary report under Sections 25(1B)(a)/27 of the Arms Act to the Court of Sessions as according to law he cannot commit a case twice to Court of Sessions, because the supplementary chargesheet was in connection with the same case and according to Code a case is committed to Court of Sessions and not the accused. Learned Trial Judge made no illegality by framing charge u/s 25(1B)(a) of the Arms Act and that too was framed before recording of evidence was started.

9. The above discussion makes it clear that there is no merit in the revision. There is no ground at all to interfere with the impugned order dated 3.3.03 regarding framing of charge at such a belated stage after recording of three witnesses. Moreover, the discussion made regarding position of law in this respect makes it clear that order dated 3.3.03 framing the charge under Sections 25(1B)(a)/27 of the Arms Act was proper and correct.

10. The order dated 19.3.03 cannot be challenged also as I do not find any illegality or irregularity in the said order as by mere asking cross-examination of a witness cannot be deferred. Moreover, if the nature of evidence is same there is no ground for deferring cross-examination u/s 231(2) of the Code. The accused has advantage as before commitment copies of relevant paper including statement of witnesses are supplied to him and if a witness introduces any new thing in evidence in Court the accused has liberty to take contradiction from his

statement recorded during investigation u/s 161 of the Code. As the copies are supplied before commitment the accused becomes well aware ahead that what a witness is likely to say in Court and, therefore, mere asking cross-examination of series of witnesses cannot be deferred. The impugned order dated 19.9.03 also requires no interference.

11. In the result, the revisional application having no merit fails and is dismissed. Learned Trial Court is directed to proceed with the trial as expeditiously as possible.

12. Send a copy of this order to the learned Judge, 6th Bench, City Sessions Court, Calcutta for information and necessary action.