
(1961) 01 SC CK 0022
In the Supreme Court Of India
Case No : Cr.A. No. 153 of 1959

Gopal Das Sindhi and Others

APPELLANT

Vs

The State of Assam and Another

RESPONDENT

Date of Decision : 20-01-1961

Acts Referred:

Constitution of India, 1950 — Article 227
Criminal Procedure Code, 1898 (CrPC) — Section 130(1), 145, 156(3), 190, 192
Penal Code, 1860 (IPC) — Section 147, 323, 342, 448

Citation : (1961) 01 SC CK 0022

Hon'ble Judges : Rao, J;Imam, J;Dayal, J

Bench : Full Bench

Advocate : Ram Lal Anand and D.N. Mukherjee, for the Appellant; Naunit Lal, for Respondent No. 1, Achhru Ram and Naunit Lal, for the Respondent

Final Decision : Dismissed

Judgement

Imam, J.—This is an appeal by special leave against the decision of the Assam High Court dismissing the Appellants' petition u/s 439/561-A of the Code of Criminal Procedure read with Article 227 of the Constitution.

2. The Appellants alleged that they were tenants of Respondent Rameshwar Lal Bazaz, owner of the premises in Holding No. 56 of Ward 6 of the Gauhati Municipal Board. A dispute had arisen between the Appellants and Respondent Rameshwar Lal Bazaz concerning this holding which led to criminal and civil proceedings. The civil suit filed by the Respondent Rameshwar Lal Bazaz was Title Suit No. 21 of 1958, and the civil suit filed by the Appellants was Title Suit No. 78 of 1957. One of the criminal proceedings was u/s 145, which was compromised on 24-5-1957, resulting in a Hath Chitha in favour of the Appellants fixing a monthly rent of Rs. 125 for the first floor of the holding in question. The ground floor was already leased out to the Appellants at Rs. 325 per month. By this compromise of 24-5-1957, the Respondent Rameshwar Lal Bazaz had undertaken to erect a structure on the 1st floor. The total rent for the

ground floor and the 1st floor was fixed at Rs. 450 per month. It appears, however, that inspite of the compromise there was trouble between the Appellants and the Respondent Rameshwar Lal Bazaz, resulting in a complaint being filed on 3-8-1957, before the Addl. District Magistrate against the Appellants under Sections 147, 323, 342 and 448 of the IPC. On 2-9-1957, at the instance of the Respondent Rameshwar Lal Bazaz, a second proceeding u/s 145 of the Code of Criminal Procedure (case No. 232 of 1957) was started. Title Suit No. 21 of 1958, filed by the Respondent Rameshwar Lal Bazaz, was, for ejectment of the Appellants and Title Suit No. 78 of 1957, filed by Appellants, was for specific performance of the contract between them and the Respondent Rameshwar Lal Bazaz and for executing a formal deed of tenancy. In this appeal we are not concerned with the proceedings u/s 145 (case No. 232 of 1957), which were dropped on 9-4-1958. Nor are we concerned with the Title Suits Nos. 78 of 1957 and 21 of 1958 filed by the Appellants and Respondent Rameshwar Lal Bazaz respectively. The criminal case with which we are concerned is G.R. Case No. 1403 of 1957 against the Appellants for an offence alleged to have been committed by them u/s 448 of the IPC.

3. As already stated, the Respondent Rameshwar Lal Bazaz filed his complaint on 3-8-1957, before the Addl. District Magistrate against the Appellants for offences alleged to have been committed by them under Sections 147, 323, 342 and 448 of the IPC. On this complaint the Addl. District Magistrate made the following endorsement;

To Shri C. Thomas, Magistrate 1st Class for disposal.

4. Mr. Thomas on receiving the complaint directed the Officer Incharge of Gauhati Police Station "To register a case, investigate and if warranted submit charge-sheet by 23-8-1957." The police, after investigation, on 10-10-1957, submitted a charge-sheet against the Appellants u/s 448 of the IPC only to the Addl. District Magistrate. On receiving the charge-sheet, the Addl. District Magistrate, on 23-10-1957 recorded the following order in the order sheet of G.R. Case No. 1403 of 1957 (State v. Gopal Das and two Ors.):

C.S. received against accused (1) Gopal Das (2) Bulchand (3) Khemchand u/s 448, IPC, who are on police bail. To Shri R. Goswami, Magistrate, for favour of disposal please.

5. On 25-11-1957, Mr. Goswami framed a charge purporting to act u/s 251-A of the Code of Criminal Procedure. A petition for revision to the Addl. District Magistrate was dismissed on 27-11-1957. Thereafter, the appellants moved the Assam High Court under Sections 439/561-A of the Code of Criminal Procedure and Article 227 of the Constitution which was dismissed by the High Court on 12-5-1959.

6. On behalf of the Appellants it was contended:

(1) that the Magistrate Mr. Thomas acted without jurisdiction in directing the

police to register a case, to investigate it and thereafter to submit a charge-sheet, if warranted:

(2) the Magistrate Mr. Goswami acted illegally in framing a charge u/s 448 under the provisions of Section 251-A of the Code of Criminal Procedure as the provisions or the said section applied only to warrant cases whereas Section 448 of the IPC was triable as a summons case ; and

(3) the case against the Appellants should be quashed as the dispute was of a civil nature.

7. In support of the first submission it was urged that the Addl. District Magistrate had on 3-8-1957, transferred u/s 192 of the Code of Criminal Procedure the complaint to Mr. Thomas for disposal. In these circumstances, it must be assumed that the Additional District Magistrate had taken cognizance of the offences mentioned in the complaint and Mr. Thomas had no authority to refer the case to the police for investigation. He was bound to have examined the complainant on oath and then proceeded in accordance with the provisions of the Code of Criminal Procedure which applied to disposal of complaints. Mr. Thomas had no authority in law to send the complaint u/s 156(3) to the police for investigation. It was urged that Section 190 of the Code of Criminal Procedure sets out how cognizance may be taken of an offence. Section 130(1)(a) authorizes a Presidency Magistrate, District Magistrate or a Sub-Divisional Magistrate and any other Magistrate specially empowered in this behalf, to take cognizance of an offence upon receiving a complaint stating facts which constitute such offence. Once a complaint is before a Magistrate empowered to take cognizance of an offence he was bound to take cognizance and the word 'may' in this Sub-section must be read as 'shall'. Thereafter the proceedings with reference to the complaint must be under Ch. XVI and the procedure stated in the various sections under that Chapter must be followed. Consequently, it was not open to Mr. Thomas to direct the police to investigate the case u/s 156(3) of the Code.

8. The real question for determination is whether the Addl. District Magistrate took cognizance on 3-8-1957, of the offences mentioned in the complaint filed before him. The transfer of a case contemplated u/s 192 is only of cases in which cognizance of an offence has been taken. If the Addl. District Magistrate had not taken cognizance of any offence on 3-8-1957, when the complaint was presented to him, his sending the complaint to Mr. Thomas for disposal would not be a transfer of a case u/s 192. We have already quoted the order passed by the Addl. District Magistrate on 3-8-1957, on the complaint presented to him. That order, on the face of it, does not show that the Addl. District Magistrate had taken cognizance of any offence stated in the complaint. He sent the complaint to Mr. Thomas by way of an administrative action, presumably because Mr. Thomas was the Magistrate before whom ordinarily complaints should be filed.

9. When the complaint was received by Mr. Thomas on 3-8-1957, his order,

which we have already quoted, clearly indicates that he did not take cognizance of the offences mentioned in the complaint but had sent the complaint u/s 156(3) of the Code to the Officer Incharge of Police Station Gauhati for investigation. Section 156(3) states "Any Magistrate empowered u/s 190 may order such investigation as above mentioned". Mr. Thomas was certainly a Magistrate empowered to take cognizance u/s 190 and he was empowered to take cognizance of an offence upon receiving a complaint. He however, decided not to take cognizance but to send the complaint to the police for investigation as Ss. 147, 342 and 448 were cognizable offences. It was, however, urged that once a complaint was filed the Magistrate was bound to take cognizance and proceed under Ch. XVI of the Code. It is clear, however, that Ch. XVI would come into play only if the Magistrate had taken cognizance of an offence on the complaint filed before him, because Section 200 states that a Magistrate taking cognizance of an offence on complaint shall at once examine the complainant and the witnesses present, if any, upon oath and the substance of the examination shall be reduced to writing and shall be signed by the complainant and the witnesses and also by the Magistrate. If the Magistrate had not taken cognizance of the offence on the complaint filed before him, he was not obliged to examine the complainant on oath and the witnesses present at the time of the filing of the complaint. We cannot read the provisions of Section 190 to mean that once a complaint is filed, a Magistrate is bound to take cognizance if the facts stated in the complaint disclose the commission of any offence. We are unable to construe the word 'may' in Section 190 to mean 'must'. The reason is obvious. A complaint disclosing cognizable offences may well justify a Magistrate in sending the complaint, u/s 156(3) to the police for investigation. There is no reason why the time of the Magistrate should be wasted when primarily the duty to investigate in cases involving cognizable offences is with the police. On the other hand, there may be occasions when the Magistrate may exercise his discretion and take cognizance of a cognizable offence. If he does so then he would have to proceed in the manner provided by Ch. XVI of the Code. Numerous cases were cited before us in support of the submissions made on behalf of the Appellants. Certain submissions were also made as to what is meant by "taking cognizance". It is unnecessary to refer to the cases(sic) cited. The following observations of Mr. Justice Das Gupta in the case of Superintendent and Remembrancer of Legal Affairs Vs. Abani Kumar Banerjee, .

What is taking cognizance has not been defined in the Code of Criminal Procedure and I have no desire to attempt to define it. It seems to me clear however that before it can be said that any Magistrate has taken cognizance of any offence u/s 190(1)(a), Code of Criminal Procedure, he must not only have applied his mind to the contents of the petition but he must have done so for the purpose of proceeding in a particular way as indicated in the subsequent provisions of this Chapter-proceeding u/s 200 and thereafter sending it for inquiry and report u/s 202. When the Magistrate applies his mind not for the purpose of proceeding under the subsequent sections of this Chapter, but for

taking action of some other kind, e.g., ordering investigation u/s 156(3), or issuing a search warrant for the purpose of the investigation, he cannot be said to have taken cognizance of the offence.

were approved by this Court in *R.R. Chari Vs. The State of Uttar Pradesh*, . It would be clear from the observations of Mr. Justice Das Gupta that when a Magistrate applies his mind not for the purpose of proceeding under the various sections of the Ch. XVI but for taking action of some other kind, e.g., ordering investigation u/s 156(3) or issuing a search Warrant for the purpose of investigation, he cannot be said to have taken cognizance of any offence. The observations of Mr. Justice Das Gupta above-referred to were also approved by this Court in the case of *Narayandas Bhagwandas Madhavdas Vs. The State of West Bengal*, . It will be clear, therefore, that in the present case neither the Additional District Magistrate nor Mr. Thomas applied his mind to the complaint filed on 3-8-1957, with a view to taking cognizance of an offence. The Addl. District Magistrate passed on the complaint to Mr. Thomas to deal with it. Mr. Thomas seeing that cognizable offences were mentioned in the complaint did not apply his mind to it with a view to taking cognizance of any offence; on the contrary in his opinion it was a matter to be investigated by the police u/s 156(3) of the Code. The action of Mr. Thomas crimes within the observations of Mr. Justice Das Gupta. In these circumstances, we do not think that the first contention on behalf of the a Appellants has any substance.

10. Regarding the second contention, it is true that after the amendment of the Code of Criminal Procedure an offence u/s 448 is triable as a summons case and Mr. Go-swami adopted the procedure prescribed for a case triable as a warrant case. We are, however, of the opinion that this irregularity does not vitiate the proceedings and is curable by the provisions of Section 537, as no prejudice to the accused has been established in the case.

11. As to the third submission, in our opinion, this is not the stage to express any opinion on it. A charge u/s 448, IPC, had been framed by Mr. Goswami and it will be for the court trying the Appellants to decide whether any offence had been committed and whether the matter is merely in the nature of a civil dispute rather than an offence having been committed under the IPC.

12. The appeal is accordingly dismissed.