

(1977) 02 KAR CK 0028
In the Karnataka High Court

Hukamichand Devkisen Sarda and Others

APPELLANT

Vs

Ratanlal Rupchand Heda and Others

RESPONDENT

Date of Decision : 22-02-1977

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 244, 397, 398
Penal Code, 1860 (IPC) — Section 420

Citation : (1977) CriLJ 1370

Hon'ble Judges : D.B. Lal, J

Bench : Single Bench

Judgement

D.B. Lal, J.—This revision is directed against the order of the Additional Sessions Judge, Belgaum reversing on revision the order of discharge made by the Judicial Magistrate, First Class of that district in a case u/s 420 of the I. P. Code and directing that a charge toe framed under that count against the accused. The prosecution case was that the accused No. 1 (A. 1), the accused No. 2 (A. 2) and the accused No. 3 (A. 3) along with the accused No. 4 (A. 4) entered into a joint business of purchasing and selling sarees, although the said business was to exist in the account books only in the name of A. 4. Since the complainant was known to A. 1 to A. 3 he believed their representation and supplied sarees worth more than Rs. 4.000/- to A. 1 to A. 4. The katha was opened in the name of A. 4. It was further stated that on 13-2-1974, when the complainant approached A. 1 to A. 4 to make some payment, Rs. 500/- was paid in cash and 2 post dated cheques were got issued by A. 1 to A. 3 which were subsequently dishonoured. The said cheques were signed by A. 4, because the business was in his name. Thereafter on 10-3-1974, the complainant again approached the accused who assured him that the balance of the mount would be paid. Finally, on 16-4-1974. the complainant again approached A. 1 to A. 3, but the latter replied that they were not responsible and that the complainant was at liberty to proceed against them. On these allegations made in the private complaint submitted to the Magistrate, the accused was said to have committed an offence u/s 420, I. P. Code.

2. The learned Magistrate issued process against A. 1 to A. 3. The case against A. 4 is stated to be split up and as such he may be proceeded against in another proceeding. After summoning the accused, since it was a complainant's case, u/s 244 of the Cr. P. C. the evidence on behalf of the prosecution was recorded. As many as 8 witnesses were produced. The learned Magistrate after considering the statements as well as the case made out in the complaint, was of the opinion that no case against the accused was made out which, if unrebutted, would warrant their conviction. Accordingly, he discharged A. 1 to A. 3 u/s 245 of the Code. Against that order of discharge, the complainant filed a revision Under Sections 397 and 398 of the Cr. P. C. before the Sessions Judge. The learned Sessions Judge, however, considered that the order of discharge was improper and he passed the impugned order directing the Magistrate to frame a charge u/s 420 of the I. P. Code. Being aggrieved by that order of the learned Sessions Judge, A. 1 to A. 3 have come up to this Court in revision.

3. The learned Counsel for the petitioners argued in the foremost that in view of the observations made by the Supreme Court in *Pakalapati Narayana Gajapathi Raju and Others Vs. Bonapalli Peda Appadu and Another*, the power of a Sessions Judge to interfere with the order of discharge was very much restricted. In revision filed by a private complainant against the order of acquittal the Supreme Court observed, that the revisional jurisdiction of the High Court could only be exercised in exceptional cases where the interest of public justice required interference for the correction of manifest illegality or the prevention of gross miscarriage of justice. The learned Counsel, therefore, argued that unless a case of manifest illegality or gross miscarriage of justice was made out, the learned Sessions Judge could not interfere with the order of discharge. It was contended on behalf of the complainant that the observation made by the Supreme Court in the aforesaid case referred to the revisional jurisdiction exercised by the High Court in a case of acquittal. That state of law may not be relevant to a case of discharge made by the Magistrate for which the revisional powers are exercised by the Sessions Judge u/s 398 of the Code. There is an obvious force in the argument of the learned Counsel. It was submitted that in a police case if it results in acquittal an appeal by State is entertainable. That being so the revisional jurisdiction of the High Court where no such appeal is filed is obviously much restricted, and whatever observation the learned Judges made in the aforementioned case should not strictly be applied to the present case, where the learned Sessions Judge was exercising his revisional powers u/s 398 of the Code. The question however before the Court is, as to whether the learned Sessions Judge even u/s 398 of the Code could exercise his revisional powers merely upon asking by the complainant. We have to refer to Section 397 and it is clear that powers u/s 398 could be exercised by the Sessions Judge in order to assess the legality, correctness or propriety of the order made by the Magistrate. The learned Sessions Judge was no doubt exercising his revisional powers and he was circumscribed to exercise that power inasmuch as he could only interfere provided there was a manifest error in the order of discharge made by the

Magistrate. If the evidence adduced on behalf of the prosecution taken at its face value would have proved the facts alleged or in other words if the evidence on behalf of the prosecution, remaining unrebutted, would have warranted the conviction of the accused, the order of discharge made by the Magistrate was incorrect and the decision of the learned Magistrate would be interfered with, on the ground of its correctness, legality or propriety. Therefore, the learned Sessions Judge was required to go into the question with reference to Section 245 and after considering the evidence referred to in Section 244 of the Code he could give his opinion that a case against the accused was made out which if unrebutted would warrant his conviction and as such he could set aside the order of discharge. The learned Sessions Judge while exercising his power in revision u/s 398 of the Code could enter into that enquiry. In his opinion, such a conclusion could not be drawn by the learned Magistrate and he could interfere with the order of discharge.

4. The learned Counsel for the petitioners then contended that on the facts mentioned in the complaint as well as in the statements of witnesses, a prima facie Case was not made out against the accused. It is, however, contended that the learned Sessions Judge has not discussed the evidence and as such he could not arrive at the conclusion that the accused never deserved to be discharged. But, in the judgment of the learned Sessions Judge, he did refer to all the relevant evidence adduced on (behalf of the prosecution. It is significant that the learned Magistrate-while discussing evidence at one stage observed in the following terms :

So under these circumstances as, con-tended toy the accused, there raises a doubt about the overt acts of A-2 and A-3 in the course of the incident alleged.

The above observation by the learned Magistrate deals with the case against A-2 and A-3 and as rightly urged by the learned Counsel for the complainant, that even if a doubt was raised in the mind of the learned Magistrate as to the commission of offence by A-2 and A-3, these accused could not be discharged. The learned Magistrate was only required to consider the evidence prima facie with the pointed view before him. as to whether the evidence, if remained unrebutted, would result in conviction. He was not required to consider the entire pros and cons of the evidence which was yet to be adduced inasmuch as the witnesses were to be produced for further cross-examination and perhaps defence witnesses might also be examined. The learned Magistrate, it appears, balanced the entire evidence as if he had reached at a final stage in the trial. He was not recording an order of acquittal as if the trial was over. He was merely required to consider the case u/s 245 to find if the accused could be discharged or not and if a charge against them was to be framed u/s 24 of the Code. The learned Magistrate decidedly fell into an error while considering the case of the accused for acquittal which he could only do after the trial was over.

5. In the complaint, a case u/s 420 of the Code was prima facie made out. The allegations made in paras 2 and 3 of the complaint stated about the conjoint

action of A-1 and A-3 and also referred to four material dates which are 9-1-1974, 13-2-1974, 10-3-1974 and 16-4-1974. Certain overt acts were committed by all the accused with reference to these dates. As stated by P. W. 1 the complainant, A-1 to A-4 very much approached him on 9-1-1974 and made certain representations which were proved to be false. According to him they also deprived him of a valuable property. For the incidence of 9-1-1974 the two witnesses P. W. 2 and P. W. 6 stated before the Court. For the incident of 13-2-1974, P. W. 1 similarly stated. The two cheques were signed by A-4 but the same were delivered by the remaining accused to the complainant. In respect of the date 10-3-1974, both P. W. 1 and P. W. 6 stated in favour of the prosecution. The part assigned to A-1 to A-3 was deposed to by the witnesses. It was stated that the two cheques were given by A-1 to A-3 although these cheques were dishonoured. Assurances were made by A-1 to A-3 on 10-3-1974 which were not fulfilled. On 16-4-1974 again A-1 to A-3 refused to help the complaint. They asked him to take whatever steps he preferred in the matter. All this evidence, according to the learned Sessions Judge decidedly indicated the necessary ingredients for the offence u/s 420 of the Code. At any rate, it cannot be stated, that this evidence if remains un rebutted would not warrant conviction. Therefore, the learned Magistrate was clearly in error in recording the order of discharge.

6. As the learned Counsel for the complainant submitted Section 398 of the Code conferred jurisdiction upon the learned Sessions Judge to interfere with the order of discharge and to ask for further enquiry into the complaint. In the instant case, the learned Sessions Judge instead, directed that a charge u/s 420 of the Code be framed against A-1 to A-3. To that extent the order of the learned Sessions Judge need be set aside. The re-vision is therefore, dismissed with the modification that the order of the learned Sessions Judge is set aside and the case is remanded to the learned Magistrate to reconsider it on merit u/s 245 I. P. Code and after making such further enquiry either he may discharge the accused or he may frame a charge against them for any offence that may be prima facie made out upon evidence on the record.