
(1959) 07 CAL CK 0019

In the Calcutta High Court

Case No : Criminal Revision Case No. 352 of 1959

Jahar Lal Chandra and Others

APPELLANT

Vs

State of West Bengal and Another

RESPONDENT

Date of Decision : 30-07-1959

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 435, 435(1), 436

Citation : AIR 1960 Cal 58 : (1960) CriLJ 59

Hon'ble Judges : S.N. Guha Ray, J

Bench : Single Bench

Advocate : A.K. Dutt and Dilip Kumar Dutt, for the Appellant; J.M. Banerjee and Benoy Chandra Sen, for the Respondent

Judgement

S.N. Guha Ray, J.—This petition by Jahar Lal Chandra, Benoy Kumar Chandra and Bejoy Kumar Chandra who were summoned u/s 342 and 384 of the Indian Penal Code by the Magistrate on the orders of the Sessions Judge for further enquiry u/s 436 of the Cr. P. C. is directed against the order of the learned Sessions Judge and also the order passed by the learned Magistrate on the basis of the order of the learned Sessions Judge. The facts briefly are that Rabindra, the opposite party No. 2 filed before the Magistrate at Sealdah on 30-10-1958, a complaint against four persons, the present three petitioners and another Jagadananda Chandra alleging that he was the Cashier of the firm of Messrs. P. C. Chandra of which the three petitioners and their brother, Jagadananda were the proprietors and that as such on 17-7-1958 he as usual at the end of the day's work made over the entire cash balance including a sum of Rs. 3,000/- to Jahar Lal at about 9-30 or 10 P.M., that on the 20th July at about 10-30 or 11 A.M. Rabindra was sent for from his residence by the proprietors through two of their durwans and that when he went to their residence at P-24, C.I.T. Road, Entally he was taken to the first floor by the durwans and was kept- confined in a room and abused by them and he was questioned as to where he had kept the sum of Rs. 3,000/-. His definite case was that all the four brothers were in the room and two of the durwans guarded the door of the room. It was further alleged that Benoy

brought out revolver from another room and Bejoy brought a dagger and they threatened to murder the complainant and that Jahar Lal and Jagadananda also threatened him and they compelled him to write out a certain statement on a piece of paper admitting that he had abstracted the sum of Rs. 3,000/- which was alleged to have disappeared from the cash box. It was further alleged that he was wrongfully confined in that room up to 3 P.M. that day. The learned Magistrate after the complainant was examined on oath ordered a search warrant for the tokcha-khata and then on seeing the return on the search warrant said that the story needed testing and ordered a judicial enquiry by another Magistrate. During the judicial enquiry a number of witnesses was examined on behalf of the complainant including himself. On the question as to what actually happened on 20-7-1958 in the residence of the accused petitioners the evidence of the- complainant and only two of his witnesses, namely, Nabani and Satyaban is material. The evidence of Nabani and Satyaban does not corroborate that of the complainant that he was threatened by two of the accused persons with a dagger and a revolver, respectively. One of these witnesses Nabani, in his evidence, speaks of a conversation between the complainant on the one hand and the proprietors on the other, in the course of which Rabindra is alleged to have told Jahar Lal and Benoy Babu, "Why are you getting so furious? You are speaking of money, I shall pay the money," Then Jahar Babu stated, "Why should you pay the money if only I ask you to do so?" and Rabindra said, "you are my employer, I am doing your work, I shall have to pay the money if you ask me to do so," and he stated further, you have asked me to deposit the money, I shall do so. If I am to do your work I must abide by what you say"; and then Jahar Babu stated, "if you want to pay the money do it here and now." Then Rabindra said where he would get the money at that time and as that place and Jahar Babu suggested that Rabindra could bring ornaments from his house and make payments then and there and that Jahar Babu stated further that Rabindra could give a written document in case he failed to pay the money then and there and Rabindra replied that he had nothing to write in the matter. Then Jahar Babu and Benoy Babu or both or either of them pressed Rabindra to come to a decision on the spot and they insisted that Rabindra must do something then and there. The fact that neither Satyaban nor Nabani speaks of any threat by any of the opposite parties, to Rabindra at the point of a dagger or a revolver and that neither of them speaks of any durwan being present either inside or just outside the room would at once go to show that probably there is a good deal of embellishment in Rabindra's story. The learned Judge says that although there is no corroborating of Rabindra's evidence on this point Rabindra's evidence itself may furnish prima facie materials for the issue of processes against the accused petitioners. In other words, although the learned Magistrate felt disinclined on the examination of the complainant on oath to issue processes without further scrutiny of his case and although on judicial enquiry it transpired that there was no evidence to corroborate him on this point and the learned enquiring Magistrate as well as the Magistrate who considered the enquiring Magistrate's report and the arguments advanced on behalf of the complainant by his lawyer

could not persuade themselves to issue processes against the petitioners, the learned Judge by a mere stroke of the pen got rid of that disinclination on the part of the Magistrate who heard the witnesses and the Magistrate who acted on the report of the enquiring Magistrate after hearing the lawyer for the complainant by merely saying that Rabindra's evidence furnishes enough prima facie materials for the issue of processes. The question that now arises is whether the learned Judge in exercise of his revisional powers is entitled to do so. The points on which Rabindra's statement is uncorroborated by his own witnesses Satyaban and Nabani are first, the threatening of Rabindra by two of the petitioners at the point of a revolver and a dagger and, secondly, the presence of two durwans. These two are both of vital importance in connection with the allegations of extortion and wrongful confinement and if they cannot be accepted because Rabindra's own witnesses are silent thereon, a good deal of the foundation of Rabindra's charges against the petitioners is bound to be knocked out and then the question to be considered would be how far the residue of the evidence, were it fully accepted, would go to make out a prima facie case against the petitioners.

2. Before proceeding to deal with this question, it is necessary first of all to dispose of the question whether in exercise of his revisional jurisdiction the learned Judge is entitled to substitute his own conclusion on a question of fact for that of the Magistrate and, if so, in what circumstances. Section 435 (1) of the Code when it provides that the High Court or the Sessions Court may call for and examine the records of any proceeding before an inferior Criminal Court "for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order" prescribes the limits of the revisional jurisdiction. Section 436 which deals with the revision of orders of dismissal of complaints or of discharge of accused persons opens with the words "On examining any record u/s 435 or otherwise" and empowers the High Court and the Sessions Court to order further enquiry. It is noticeable that in the case of the dismissal of a complaint or of the discharge of accused persons, where further inquiry is called for, this may be decided by the Sessions Judge himself without a reference u/s 438. The question arises what is the true scope of the Court's jurisdiction u/s 436 of the Code of Criminal Procedure. When the orders challenged under this section are passed without any evidence, the revising Court has to satisfy itself if on the materials before the Court, the petition of complaint, the initial statement of the complainant and the report, if any, of an inquiry in the case of a dismissal of the complaint and the same and other materials in the case of an order of discharge, make out a case where further inquiry is called for. In a case, however, where there has been a judicial inquiry into a complaint, and all the evidence tendered by the complainant has been taken, there is hardly any occasion for further inquiry except when an essential point has been left obscure by the evidence adduced. What then are the limits of the jurisdiction of the revising Judge u/s 436 of the Code of Criminal Procedure? The section, as already stated opens with the words "On examining any record u/s 435 or

otherwise". These opening words indicate that the exercise of the powers u/s 436 may be occasioned by an examination u/s 435 or by any other fact. When it is occasioned by the first the scope of the revisional powers must necessarily be the same as u/s 435. If that is so, it follows that if it is occasioned otherwise, the scope of the revisional powers cannot be more or less than those when it is occasioned by an examination u/s 435. In other words, the revising Judge has, whether acting under Sections 435 or 436, to satisfy himself as to the correctness, legality or propriety of a finding or order. The question of the Magistrate's order being illegal does not arise in this case. What the learned Judge, therefore, had to satisfy himself about in this case was whether the Magistrate's finding and his order were correct and proper. Any finding which is correct on the evidence must necessarily be held to be proper and the order of dismissal which follows the finding must be held to be both correct and proper if the finding on which it is based is itself correct and proper. No finding can be said to be either correct or proper when the materials on which it is based cannot possibly lead any reasonable man to arrive at that finding and in such a case, it will be open to the revisional Court to set it aside and to replace it by what according to it would be the legitimate finding on the evidence. When, however, the materials are such that a reasonable man might cogently take either of two views thereon, then either of the views has to be held to be correct or proper or, in other words, neither view in such a case may be said to be either incorrect or improper. In such a case, therefore, the revisional Court entitled to interfere only in the event of the incorrectness or impropriety of a finding or order must be held to be without the power of interference.

3. If the findings and the orders of the learned Magistrate and the learned Judge be tested in the light of these principles, it will be obvious at once that the learned Magistrate was on a somewhat firmer ground when he refused to accept the uncorroborated part of the complainant's story than the learned Judge who found in this uncorroborated version sufficient prima facie evidence. Consequently, it is not merely impossible to say that the Magistrate's view was incorrect or improper but one can possibly go further and say that this view is likely to be more correct than that of the Judge.

4. Now, if the complainant's story that he was threatened by two of the petitioners at the point of a revolver and a dagger and that there were two durwans there be discarded as it must, because Nabani and Satyaban do not support these statements, there is really nothing to indicate that the complainant was kept confined in the room against his will. There is not even a hint in the complainant's evidence that his freedom of movement was in any way obstructed. The tone of the conversation between the complainant and one of the petitioners, as reported by Nabani, hardly suggests the complainant having been frightened in any way. There is thus no case u/s 342 of the Indian Penal Code at all.

5. The rejection of the complainant's story of threats to him at the point of a

revolver and a dagger by two of the petitioners and of the presence of the durwans considerably weakens the foundation of the charge u/s 384 of the Indian Penal Code also. All that the evidence of the witnesses, Nabani and Satyaban can justify one in holding is that if they were telling the truth the statement made by the complainant in writing was not a voluntary one. If the story that the complainant was threatened at the points of a revolver and a dagger goes there is nothing else which would go to show that the complainant was actually put in fear of injury to his person or his mind. It is argued on behalf of the opposite party that the mere facts that the complainant was taken upstairs to a room, that he was detained there for a number of hours and that he was required to write out a statement would be enough to show that he was being put in fear of some injury to himself in body, mind or reputation. The complainant himself does not say, apart from his being threatened at the points of a revolver and a dagger, that he was being put in fear of any such injury. He has nowhere even said that he did not go into the room of his own free will, that he was compelled to go there and that when he wanted to leave the room he was detained or obstructed by anybody. On the materials on record if the story of the complainant that he was threatened at the points of a revolver and a dagger and the further story that the two durwans were sitting; by the door of the room is discarded, as it must be on the evidence of Nabani and Satyaban, there is nothing whatever to indicate that he was actually detained in the room under compulsion or that when he wrote out the document he was actually being put in fear of any injury although, as I have already indicated, if the evidence of Satyaban and Nabani can be believed, one can hold on the basis of that evidence that the statement which the complainant was made to write out was not voluntary, but that is not the same thing as saying that the statement was extorted from the complainant or that he was induced to write it out under threats of injury to body, mind or reputation. In that view, the learned Judge was not justified in setting aside the order of the learned Magistrate and directing further enquiry.

6. In the view I have taken on the question whether the learned Judge was on the evidence justified in setting aside the orders of the learned Magistrate it is hardly necessary for me to discuss in detail the other point raised by Mr. Dutt on behalf of the petitioners, namely, that it is not open to a Judge in exercise of his powers u/s 436, Cr. P. C. to order further enquiry in a case where the complainant has examined all the witnesses he wanted to examine because in that case if the Judge is of the opinion that a prima facie case had been made out, all he is entitled to do is to refer the matter to the High Court which alone is entitled to order issue of processes against the accused. In this case what the learned Judge has done is to express in unmistakable terms that a prima facie case has been made out against the present petitioners under Sections 384 and 342, I. P. C. and still to order further enquiry because Section 436 of the Criminal Procedure Code entitles him only to do that and not to order issue of process. In other words, what he has done is to comply with the letter of Section 436 though

not its substance and what the learned Magistrate did on receipt of his order was to direct issue of process straightaway without holding anything like a further enquiry. Mr. Banerjee on behalf of the opposite party referred to the case of Annakali Debi and Others Vs. Gyanendra Chakravarty, , in which it was held that after the complaint was dismissed by the Magistrate without any judicial enquiry the learned Judge on being moved by the complainant for a direction for a further enquiry straightaway ordered issue of summons on the accused persons. In this case their Lordships held that although the learned Judge's order was not correct, if the Magistrate in the exercise of his own discretion chose to issue a summons immediately instead of wasting time over a possibly useless enquiry, he was quite at liberty to do so and their Lordships, therefore, ordered the learned Magistrate to make a further enquiry indicating, however, that if the learned Magistrate in his own discretion chose to issue a summons immediately he was entitled to do so. But this case does not really support the proposition that where on a judicial enquiry a Magistrate dismisses the complaint and then there is no indication that there is any further evidence to be offered by the complainant it is open to the learned Judge to direct a further enquiry. Mr. Dutt on behalf of the petitioners relies on the Full Bench Case of Hari Dass Sanyal v. Saritulla ILR 15 Cal 608. In this case their Lordships were considering the question where a Sessions Judge can interfere with an order of discharge of an accused person when that order was made after an enquiry or an evidence. The same reasons would be applicable to an order of dismissal after a judicial inquiry also. Although the Criminal Procedure Code has been substantially amended after that date, the provisions of law dealing with the powers of revision have not been altered at all since then. Consequently the same principles still govern the courts. Their Lordships in that case observe as follows:

"The Court of Sessions or the District Magistrate has jurisdiction on any sufficient ground to set aside an order of discharge, and direct either an additional investigation of the facts, or a reconsideration of the evidence, by the Magistrate whose order is set aside, or a new enquiry before another Magistrate; and among such sufficient grounds are the omission to take evidence which ought to have been taken, the discovery of fresh evidence, mistakes of law, illegality or irregularity in the proceedings, and the incorrectness of the first finding. I agree with the view taken in the Bombay High Court in Queen-Empress v. Dorabji Hormasji ILR 10 Bom 131 and to a great extent with that taken by the Full Bench of the Allahabad Court in Queen-Empress v. Chotu ILR 9 All 52."

and then their Lordships go on to say that

"although the jurisdiction of this Court and of the Court of Sessions and of the District Magistrate is upon this view a very wide one. the discretion thus conferred is a judicial discretion. No court can properly set aside an order of discharge without having and assigning solid and sufficient reasons for doing so. And if there is reason to set aside an order of discharge, it is the duty of the Court which has to deal with the matter in each case to make such order as is

appropriate to the facts of the case. In a case triable only by the Sessions Court, to which Section 436 applies, if the Sessions Judge or the District Magistrate is satisfied that on the evidence taken there is a clear case for a committal, and there is no reason for desiring a further consideration by a Magistrate, I think it would ordinarily be his duty to direct a committal u/s 436, and not to order a further enquiry u/s 437. In the same way, in a case not triable only by the Court of Session, if the Sessions Judge or the District Magistrate is satisfied that on the evidence taken there is a clear case for charging and trying the accused, and there is no reason for desiring further magisterial examination, I think it is ordinarily his duty to refer the case to this Court, which can make a suitable order, and not to direct a further enquiry by a Magistrate."

The numbering of the sections has been slightly changed in the present Code, but the principles enunciated here are fully applicable even under the existing Code. Where, as in this case, the Judge felt that there was a prima facie case and as I have already said, the learned Judge in this case clearly said so, there is no scope for ordering a further enquiry at all and what the learned Judge has to do is to refer the case to the High Court in order to enable it to make a suitable order. The learned Judge therefore, on the findings he arrived at should have referred this case to this Court so that this Court might have ordered issue of process instead of himself directing further enquiry. But as I have already said, on the evidence recorded during the judicial enquiry there is really no ground for interference with the order of the learned Magistrate dismissing the complainant as no prima facie case appears to have been made out u/s 384 or u/s 342, I. P. C.

7. The order, therefore, of the learned Sessions judge directing a further enquiry and the order of the learned Magistrate directing issue of processes on the basis of the learned Judge's order are both set aside, the order of the learned Magistrate dismissing the complainant is restored, and the Rule made absolute.