
(1974) 10 P&H CK 0002
In the Punjab And Haryana At Chandigarh

Kalu Ram and Others

APPELLANT

Vs

Bhagat Ram

RESPONDENT

Date of Decision : 18-10-1974

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 190, 203, 204, 239, 249
Penal Code, 1860 (IPC) — Section 109, 414, 417

Citation : (1975) CriLJ 1627

Hon'ble Judges : Gurnam Singh, J

Bench : Single Bench

Judgement

Gurnam Singh, J.—Firm M/s. Daulat Ram Tarlok Nath of Tarn Taran district Amritsar, despatched 125 bags of Toria to a party at Narela in truck No. PUA 6075 on the night of 28-1-1974. Ajaib Singh was the driver of the truck. Instead of taking the Toria to Narela, Ajaib Singh brought the truck to the shop of Devi Dayal of M/s. Babu Ram Sita Ram Commission Agents Samrala and unloaded the same there. It is alleged that Devi Dayal petitioner and the other petitioners concerted amongst themselves to purchase the Toria at cheaper rates with the knowledge or having reason to believe that the same was stolen property. The Toria was purchased by the petitioners Nos. 1 to 4 (r) Rs. 205/-, 207/- and Rs. 210/20 Ps. per quintal in different lots. Petitioners Nos. 1 to 4 sent the Toria purchased by them to Khanna for sale to Bhagat Ram of M/s. Bhagat Ram Ram Moorti Commission Agents, New Grain Market Khanna and he sold the same to M/s. Sukhdev Rakesih Kumar, M/s. Kanshi Ram Charanji Lal and M/s. Amar Nath Sutoha Chander @ Rs. 270/-, 230/- and 240/- per quintal, respectively. On behalf of M/s. Kalu Ram Rakesh Kumar, the payment was received by Vinod Kumar, petitioner No. 2 and on behalf of M/s. Sat Pal Jugal Kishore the payment was received by Piara Lal petitioner No. 5.

2. On 3-2-1974 a news item appeared in Hind Samachar that from Tarn Taran, Ajaib Singh a truck driver had brought Toria in the truck of yellow colour, owned by Amar Singh of Khanna and had not taken it to its destination and that whosoever gives information about the same, would get a reward of Rupees

2.000. Sat Pal petitioner No. 3, on reading the news item booked a lightening call to M/s. Daulat Ram Tarlok Nath at Tarn Taran informing that their Toria was lying at Khanna. The police of Tarn Taran came to Khanna and took the Toria into possession.

3. Bhagat Ram of M/s. Bhagat Ram Ram Moorti Commission Agents Khanna filed a complaint under Sections 414 and 417 read with Section 109, Indian Penal Code, against all the six petitioners in the Court of Judicial Magistrate 1st Class, Samrala. The Magistrate took cognizance of the offence and after recording the statement of the complainant and of one Dewan Chand, examined as a witness by the complainant, passed the following order on 27-4-1974:

Arguments heard. There are sufficient grounds for proceeding against the accused for offence u/s 417/109, I.P.C. Let them be summoned for 6-6-74 P. F. be paid.

4. Being aggrieved with the order of the learned Magistrate, the petitioners have filed this application (Criminal M. No. 2020-M of 1974) for quashing the complaint dated 22-2-1974, alleging that in pursuance of the order of the learned Magistrate they were now to stand their trial only u/s 417 read with Section 109, Indian Penal Code, and since no offence u/s 417 read with Section 109, Indian Penal Code, is disclosed from the complaint and from the preliminary evidence led by the complainant, further proceedings in the complaint would mean nothing but harassment to them and the complaint is merely an abuse of the process of the Court.

5. Bhagat Ram respondent as well as the State has opposed this petition.

6. The main contention of the learned Counsel for the petitioners is that the petitioners have only been summoned for the offence u/s 417 read with Section 109, Indian Penal Code, and the evidence produced by the complainant does not disclose that Bhagat Ram complainant had in any manner been deceived by the petitioners or was induced fraudulently or dishonestly by them to deliver Toria to any person, so the ingredients of Section 417, Indian Penal Code, and also that of abetment u/s 109, Indian Penal Code, are not made out and as such the complaint and further proceedings are liable to be quashed. With regard to the offence u/s 414, Indian Penal Code, alleged in the complaint by Bhagat Ram complainant, the learned Counsel for the petitioners urged that since the petitioners were not summoned for that offence, the complaint would be considered as dismissed for that offence. The learned Counsel for the petitioners has relied upon *In re K.V.M. Parmeshwarayya* AIR 1949 Mad 430 : 50 CriLJ 558; *Ganga Datte v. Emperor* AIR 1936 Nag 87 : 1936 Cri LJ 715 and *State Vs. Pabudan Singh*, . The ratio of all the abovesaid authorities is that where the accused is challaned u/s A of the Penal Code, but the Magistrate framed a charge u/s B and omitted to write anything in respect of Section A, his order would amount to discharge of the accused u/s A. On analogy the learned Counsel for the petitioners urged that in the instant case the complaint would be considered

as dismissed for the offence u/s 414, Indian Penal Code.

7. The second point urged to the learned Counsel for the petitioners in respect of the powers of the High Court for quashing the complaint when on its face value no offence is constituted, is not denied by the counsel for the respondent.

8. The learned Counsel for Bhagat Rain respondent very vehemently controverted the arguments of the learned Counsel for the petitioners and urged that cognizance of the case was taken by the Magistrate u/s 190(1)(a), Criminal Procedure Code, and he after recording the statement of the complainant examined Dewan Chand, a witness produced by him (complainant) and finding sufficient grounds for proceeding, summoned the accused. He further pointed out that since all the facts of the case were not placed before the Magistrate, there is no prohibition to take cognizance of the offence which will subsequently be disclosed from the evidence though it may be different from the one alleged in the complaint.

9. The Magistrate before whom a complaint is made can dismiss it, after considering the statement on oath of the complainant and of the witnesses produced by him, u/s 203, Criminal Procedure Code, but he is required to pass a specific and judicial order to that effect. The Magistrate is required to record his reasons for dismissing the complaint u/s 203, Criminal Procedure Code. I am supported in my view by Chandra Deo Singh Vs. Prokash Chandra Bose and Another, in which it has been observed that:

Where the Magistrate has dismissed the complaint without giving reasons as required by Section 203, Cr. P. C., the error is of a kind which goes to the root of the matter. It is possible to say that giving of reasons is a pre-requisite for making an order of dismissal of a complaint u/s 203, Cr. P. C. and absence of the reasons would make the order a nullity.

10. In the instant case the order of the Magistrate dated 27-4-1974 does not show that the complaint has been dismissed for the offence u/s 414, Indian Penal Code, rather the complaint has been taken on the file and process issued. In such a case there is no question of Section 203, Criminal Procedure Code, coming into operation. It has been observed in Yenduri Radhakrishnamurthy and Others Vs. G. Mahalatchayya and Another, :

That an implied order of dismissal is unknown to the Code of Criminal Procedure.

11. At the initial stage of the case, the Magistrate taking cognizance, has only to consider whether there is a sufficient ground for proceeding, i.e., sufficient ground for issuing process. The accused person is said to be discharged when the case against him is thrown out u/s 239 or 249, Criminal Procedure Code of 1973. In Appa Rao Mudaliar v. Janakiammal AIR 1927 Mad 19 : 28 CriLJ 129, it has been held that:

A person against whom no process has been issued u/s 204 is not a discharged person.

In *K. Shanmugasundara Nadar Vs. V. Sadasivam*, , it has been held that-

The Magistrate has got power at any stage before the judgment is delivered to alter the offence if it is warranted by the evidence on record and proceed with the enquiry or trial of such offence following the appropriate procedure provided under the Criminal Procedure Code.

In *Baburao Tatyrao v. Emperor* AIR 1936 Bom 379 : 38 Cri LJ 9, it has been observed that:

The expression taking cognizance of an offence u/s 190 deals with a matter of a purely technical nature. Cognizance is usually taken upon complaint when process is issued, but no restricted interpretation can be given to that expression in the consideration of the character of the action of a Magistrate at any particular stage of the proceeding before him. But from the terms of Section 190 cognizance is taken upon issue of process before evidence is recorded. It is the complaint therefore, which gives jurisdiction to the Magistrate. Consequently when under the provisions of Section 254 the Magistrate thinks upon the evidence heard that a charge different from the one indicated by the complaint should be framed, he does not take cognizance u/s 190(1)(c), for the power to frame charge in a warrant case of the offence disclosed is inherent in the jurisdiction assumed by the Magistrate upon the original complaint.

12. Thus it is clear that a Magistrate can and ought to frame a charge for the offence made out of the evidence though it may be different from the one alleged in the complaint provided that the other conditions mentioned in the section are present. In the complaint Bhagat Ram has specifically alleged in para. No. 4 that "Before selling the Toria accused No. 6 concerted amongst themselves with other accused to sell and purchase the Toria at a cheaper rate with the knowledge and with the reasons to believe that the said Toria was stolen property and thus caused the disposal of the same and committed an offence u/s 414, Indian Penal Code." Again in para. No. 9 of the complaint he alleged that "Since all the accused facilitated and helped in disposal of the stolen property in concert with each other and also cheated the complainant all the accused are guilty of committing an offence under Sections 414 and 417 read with Section 109, Indian Penal Code. The police did nothing in the matter despite information". In his statement recorded by the Magistrate he also stated that "the accused have cheated me of Rs. 13,200 with the knowledge that the Toria was stolen property and sent the same to my shop for sale". Dewan Chand, the witness examined by the complainant, went to the extent of saying that he went to the truck owner, that after getting the truck unloaded Devi Dayal was saying that the Toria in the truck was stolen property, that Devi Dayal and the truck owner talked to each other, that Kalu Ram Vinod Kumar, Sat Pal and Jugal Kishore were also called there, that they talked to each other and that thereafter the Toria was purchased at cheaper rates in a fictitious auction. In view of the contents of the complaint and the statements recorded by the Magistrate, it is difficult to hold that the allegations on the face of it do not constitute the offence

alleged. The complaint, therefore, shall have to be disposed of according to the provisions of law. The inherent powers of the High Court cannot be invoked to override an express provision of law. This petition is, therefore, dismissed.

Nothing observed in this order will affect the merits of the case.