

(2006) 09 DEL CK 0209

In the Delhi High Court

Case No : Criminal Revision Petition 539 of 2006

Kanahaya Lal Kanodia

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 01-09-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 323, 325

Citation : (2006) 133 DLT 330

Hon'ble Judges : Badar Durrez Ahmed, J

Bench : Single Bench

Advocate : Mohit Mathur and Anirudh Chaudhary, for the Appellant; Richa Kapur and A.K. Padhi, for the Respondent

Final Decision : Disposed Off

Judgement

Badar Durrez Ahmed, J.—The learned Counsel for the petitioner submits that the petitioner is aggrieved by the order dated 31.07.2006 whereby the learned Metropolitan Magistrate has directed that the case be tried by the court of Sessions. He points out that hitherto the matter was being tried by the Magistrate's Court. He submits that this order has been passed and would amount to a review of a previous order dated 24.03.1999 passed by his learned predecessor when he heard arguments on this very issue as to whether the case is liable to be committed to the Sessions Court or not and decided that it was a case which was not liable to be committed to the Sessions Court. He submits that between 24.03.1999 and 31.07.2006, nothing has happened to enable the learned Metropolitan Magistrate to take a different view. That being the case, the passing of the order dated 31.07.2006, according to him, would amount to a review of the earlier order which he is not empowered to do. He submits that on this ground alone, the impugned order is liable to be set aside.

2. He further pointed out that while passing the order on 24.03.1999, the learned Metropolitan Magistrate had examined the entire issue with regard to the gravity of the offence and he had specifically noted that neither in the certificate

issued by Director CFL, Calcutta nor in the report issued by Public Analyst, has it been mentioned that consumption of such type of oil was likely to cause death or was injurious in nature. He submits that the finding of the Public Analyst as well as the Director CFL, Calcutta is to the extent that the oil was adulterated and/or did not conform to standards. There is no finding therein which indicates that it is likely to cause death or was injurious in nature. He submitted that in the complaint, the report of the Public Analyst is sought to be quoted and it is quoted in the following manner:

The sample does not conform to the standards laid down under item No. A. 17.06 of Appendix "B" of PFA Rules, 1955 because the sample shows the presence of Argemone oil", it is injurious to health and also likely to cause death.

He pointed out, with reference to the above extract, that the quotation marks begin at the words "The sample does" and end with the words "...presence of Argemone oil". The words following it, namely, " it is injurious to health and also likely to cause death" do not form part of the report of the Public Analyst but have been added by the complainant. Therefore, the earlier order dated 24.03.1999 has correctly recorded that neither the certificate of the Director CFL Calcutta nor the report of the Public Analyst mentions that the consumption of such type of oil was likely to cause death or was injurious in nature.

3. The learned Counsel for the State advanced arguments in support of the order on committal, which is impugned herein. She submitted that this was a discretion which vested with the Magistrate as to whether a case was fit for committal or not and power could be exercised by the Magistrate u/s 323 of the Code of Criminal Procedure, 1973 at any stage. She placed reliance on the decision of a learned single Judge of this Court in *Bal Kishan v. Local Health Authority* 2002 (2) FAC 113. The Court after referring to the various provisions of law and other decisions, came to the following conclusions:

16. From the aforesaid following conclusions can be drawn:

i) The expression "it appears to him at any stage of proceedings" will not be a substitute for satisfaction of the Magistrate that offence as such has been committed. This opinion can be formulated at any stage of the case before signing the judgment;

ii) As a general rule if the case is triable by a Magistrate, he should so try it;

iii) However, if the learned Metropolitan Magistrate has to act u/s 323 which would come in the form of an exception to what has been stated above he must record his reasons before committing the case to the Court of Sessions.

iv) It should only be in rare cases that such commitment should be made to the court of Sessions when it is triable by a Magistrate;

v) Even if a special Act provides that the case should be tried by a Magistrate still unless the Code of Criminal Procedure does not apply the Magistrate can act in

rare cases u/s 323 of the Code of Criminal Procedure;

vi) The High Court ordinarily will not interfere in the discretion exercised unless it is totally arbitrary, without jurisdiction and no cogent reasons exist.

4. Reading the aforesaid conclusions, it is clear that this Court held that as a general rule if the case is triable by a Magistrate, he should so try it and that if the Magistrate has to act u/s 323 which would come in the form of an exception to the said general rule, he must record reasons before committing the case to the Court of Sessions. It is further indicated in the aforesaid decision that it should only be in rare cases that such commitment should be made to the Court of Sessions when it is otherwise triable by a Magistrate's Court. Of course, one of the conclusions arrived at in Bal Kishan's case (supra) is that the High Court ordinarily will not interfere in the discretion exercised unless it is totally arbitrary, without jurisdiction and no cogent reasons exist.

5. Having considered the arguments advanced by the counsel for the parties, I feel that this is one of those cases which fits into the category of cases where the High Court ought to interfere. The reason being that normally the present case would have been triable by a Magistrate. If the Magistrate were to act u/s 323 as he has purported to do in the present case, then it would come in the form of an exception and reasons for so committing the case to the Court of Sessions must be given. The only reason ascribed in the impugned order is that the case is committed to the Court of Sessions considering the gravity of the offence. Unfortunately, the learned Metropolitan Magistrate did not make any reference to the previous order dated 24.03.1999 wherein a detailed order had been passed as to why the matter was not required to be committed to the Court of Sessions. No contrary reasons have been provided in the impugned order. Therefore, apart from the fact that a second order passed by the Magistrate without anything happening in the intervening period would itself not be proper and correct, the fact is that there exists no cogent reason as to why, at this stage, the case ought to have been committed to the Sessions Court.

6. In these circumstances, the impugned order is set aside. It is open to the Court of the Magistrate, in future, if upon leading of evidence an eventuality arises that the provisions of Section 323 and or Section 325 of the Code of Criminal Procedure can be invoked, to invoke the same.

This revision petition stands disposed of.