

(1960) 12 AHC CK 0007
In the Allahabad High Court
Case No : Criminal Revision No. 1009 of 1960

Maharaj Singh

APPELLANT

Vs

Malkhan and Others

RESPONDENT

Date of Decision : 08-12-1960

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 209(1), 213(2)

Citation : AIR 1961 All 554 : (1961) 31 AWR 242 : (1961) CriLJ 602

Hon'ble Judges : M.C. Desai, J

Bench : Single Bench

Advocate : Syed Sadiq Ali and S. Haider Shaukat Abidi, for the Appellant; Asstt. Govt. Advocate and G.D. Srivastava, for the Respondent

Final Decision : Allowed

Judgement

M.C. Desai, J.—This application raises an interesting question of the right of a Magistrate holding an enquiry under Ch. 18 Cr. P.C. to cancel a charge framed by him against an accused on the basis of documentary evidence furnished by him after the framing of the charge.

2. The material facts are that the applicant filed a complaint against the opposite parties for the offences of Section 395 I.P.C. etc. He produced evidence in support of the complaint and the Magistrate after examining the opposite parties framed a charge against them for the offence of Section 395 I.P.C. u/s 210 Cr. P.C. He then called upon them to furnish a list of witnesses to be examined in defence but they furnished no list. They, however, produced a number of documents which the Magistrate received, and on considering them he passed an order, purporting to be one u/s 213 (2), cancelling the charge framed against them and discharging them on the finding that there was no sufficient ground for committing them.

3. The Magistrate is required after framing a charge to call upon the accused to give a list of the persons to be examined in defence at the trial. He is given

discretion to summon and examine any of the witnesses named in the list, if any given to him; vide Section 212. If the accused does not give a list or if he has given a list and the Magistrate has examined such of the witnesses included in it as he desires to examine, he is empowered by Sub-section (1), Section 213 to make an order committing the accused for trial. Sub-section (2) lays down that if after hearing the witnesses for the defence he is satisfied that there are no sufficient grounds for committing the accused he may cancel the charge and discharge the accused.

Here the opposite parties did not give a list of witnesses to be examined in defence at the trial and the Magistrate did not examine any witnesses in defence. He cancelled the charge on being satisfied that there were no sufficient grounds for committing them, the satisfaction, however, was derived not from statements of witnesses examined in defence but from perusal of the documents and Section 213 (2) did not permit this at all. The condition precedent for an order u/s 213 (2) is that witnesses for the defence should have been heard; if no witnesses for the defence were heard such an order could not be passed at all.

4. There is no provision in Ch. 18 relating to the production of documentary evidence by an accused. If the complainant or officer conducting the prosecution or the accused applies to the Magistrate to issue a process to compel the production of any document the Magistrate is bound to issue it, vide Section 208 (3), but that would be before the accused is examined and a charge is framed. After a charge is framed he is given no right whatsoever in respect of issuing a process for the production of any document; the only right given to him is that of furnishing a list of witnesses to be examined in defence at the trial.

There is no provision at all regarding production by an accused himself of any document in defence but it cannot be gainsaid that he has a right to produce documents in defence. The question is at what stage he has a right to produce documents. There is nothing in Ch. 18 to suggest that he has a right to produce documents at any stage or that he has a right to produce them even after a charge has been framed. In the absence of any provision, express or implied, entitling him to produce documents in defence it must be held that he gets the right of producing them u/s 209 (1) which confers upon him a right to be heard in order to explain circumstances appearing in the evidence against him.

In the course of explaining the circumstances he can tender documents in defence and the Magistrate would be bound to receive them. The examination of the accused referred to in Section 209 (1) must include reception of documents offered by him in defence, because otherwise there would be no provision which would give him the right to offer documents in defence. If this is the correct view, one can understand why the Legislature did not enact a provision allowing a charge to be cancelled on the basis of documents received after the framing of the charge.

Not only would no documents come on the record after the charge has been

framed (because the accused has no right to produce them at that stage), but also whatever documents he produced in the course of his examination would have been already considered by the Magistrate along with his oral statement and the Magistrate, having decided to frame the charge against him in spite of them, could not logically be empowered to cancel the charge on the strength of them. Since he had a right to produce the documents in the course of his examination there was no necessity of conferring on him the right of producing them after the framing of the charge.

5. A Magistrate had to be empowered to examine any witness mentioned in the list furnished u/s 211 because an accused has the onus of proving the existence of general exceptions mentioned in the I.P.C. and special exceptions in statutory provisions, vide Section 105, Indian Evidence Act. If the complainant's evidence makes out all the ingredients of the offence the Magistrate might not be required to examine defence evidence of the accused to rebut the prosecution evidence, but when the onus of proving the existence of general and special exceptions is placed upon the accused it would be reasonable for the Legislature to permit the Magistrate to examine defence witnesses so that if the exceptions were proved to exist the accused may not be committed.

No such consideration arises in the case of documentary evidence because documentary evidence by itself can ordinarily not be sufficient to prove the existence of the exceptions. Thus there is ample explanation for the Legislature's not providing for the Magistrate's receiving documentary evidence in defence after framing a charge against the accused. In view of the Legislature's deliberately retraining from empowering a Magistrate to receive documentary evidence after the charge, the Magistrate's act in this case of receiving documentary evidence of the opposite parties cannot be upheld. If he acted illegally in receiving it, he acted illegally in cancelling the charge on the strength of it.

6. The order that the Magistrate has passed is nothing but a judgment. He has dealt with the entire case as if he were trying the opposite parties. The documentary evidence was not of such a clinching nature as to justify his reversing his previous order that the prosecution evidence disclosed sufficient grounds for committing the opposite parties. He had no right to weigh the evidence in the manner that he has done.

7. I, therefore, set aside the order passed by the Magistrate on 31-12-1958 and remand the case to him for committing the opposite parties u/s 213 (1) Cr. p. C.