
(1976) 08 PAT CK 0001
In the Patna High Court

Mahendra Prasad Sharma and Others APPELLANT
Vs
The State of Bihar RESPONDENT

Date of Decision : 03-08-1976

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 149, 307, 323

Citation : (1977) CriLJ 1025

Hon'ble Judges : Uday Sinha, J;C.N. Tiwary, J

Bench : Division Bench

Judgement

C.N. Tiwary, J

1. These two applications have been heard together and the same Judgment shall govern both of them.
2. Pursuant to an order of reference to a Division Bench by a learned Single Judge this has come before us.
3. Criminal Miscellaneous application No. 1270 of 1973 is directed against an order dated the 25th May, 1973 by which the learned Sub-divisional Magistrate took cognizance of an offence under Sections 324, 325 etc. of the Indian Penal Code against the petitioners on receipt of police report and transferred the case to Sri A.K. Sinha, Munsif Magistrate for disposal, Cr. Misc. No. 1271 of 1973 is directed against an order dated 23rd June, 1973 by which the learned Munsif Magistrate cancelled the bail bond executed by the accused petitioners in the court of the Sub-divisional Magistrate and issued non-bailable warrant of arrest against them.
4. It appears that on the basis of first information lodged by one Purushottam Singh at Dhanarua police station on 15-2-1973 a case under Sections 147, 148, 149, 324, 323 and 341 of the Indian Penal Code was instituted against the petitioners. On completing investigation the police submitted charge-sheet against the petitioners. The learned sub-divisional Magistrate, on receipt of the charge sheet, sought certain clarifications from the police, On perusal of the

charge-sheet and the clarifications received from the police the learned Magistrate took cognizance of offence under Sections 148, 149, 307, 323, 324, and 325 of the Indian Penal Code and transferred the case to Sri A.K. Sinha, Munsif-Magistrate 1st Class for disposal by his order dated 25-5-1973 and directed the accused petitioner to appear before the Munsif Magistrate on 23-6-1973. On 23-6-1973 the accused petitioners did not appear in the court of the Munsif Magistrate. The learned Munsif Magistrate, therefore, cancelled the bail granted to the accused petitioners by the Sub-divisional Magistrate and issued non-bailable warrant of arrest against them.

5. The learned Counsel for the petitioners submits that this is a case instituted on police report and therefore, the Sub-divisional Magistrate had no jurisdiction to transfer the case to the Munsif Magistrate for disposal without issuing process against the accused persons, and that the transferee Magistrate had no jurisdiction to cancel the bail bond executed by the petitioners in the court of the sub-divisional Magistrate and to issue non-bailable warrant of arrest against them. The learned Counsel has relied upon a Bench decision of this Court in *S.M. Nazim Baboo v. State* 1976 BBCJ 359.

6. If the Bench decision of this Court in *S.M. Nazim Baboo's* case 1976 BBCJ 359; (*supra*) applies to the facts of this case, the Subdivisional Magistrate had no jurisdiction to transfer the case to the Munsif Magistrate without issuing process against the accused persons. But in my view the facts of this case are quite distinguishable from the facts of *Nazim Baboo's* case and therefore, the Bench decision in *Nazim Baboo's* case is not applicable to the facts of this case.

7. The order sheet of the court of the Sub-divisional Magistrate shows that the petitioner Rabin Singh (petitioner No. 6) was produced in custody before the learned Sub-divisional Magistrate on 18-3-1973 and he was granted bail. The remaining petitioners also appeared and were enlarged on bail by the learned Sub-divisional Magistrate on 22-3-1973. The accused petitioners used to appear in person or through lawyers (when allowed to be represented through lawyers) on different dates fixed in the case. On 25-5-1973 when cognizance was taken against them, four of the accused persons were present before the learned Sub-divisional Magistrate and the remaining accused persons were represented through their lawyer u/s 540-A of the Code of Criminal Procedure, 1898 (hereinafter referred to as the Code). It was in presence of the accused petitioners and the lawyers, through whom some of the accused persons had been allowed to be represented, that the learned Magistrate, on perusal of the charge-sheet and clarifications received from the police, took cognizance of the offences against the petitioners and transferred the case to the Munsif Magistrate for disposal. The learned Sub-divisional Magistrate while transferring the case fixed 23-6-1973 for the appearance of the accused persons before the learned Munsif Magistrate. From what has been stated above, it is evident that the learned Sub-divisional Magistrate applied his mind to the charge sheet and on being satisfied that there were sufficient materials to proceed against the

accused, took cognizance. As all the accused persons had already appeared in the case and were on bail, no question of issuing process against them u/s 204 of the Code could arise. Process is issued u/s 204 of the Code to compel the attendance of the accused. The order taking cognizance and transferring the case to a Munsif Magistrate was passed in presence of the accused persons and their lawyers. Therefore, they knew that the cognizance had been taken against them. They also knew that the case had been transferred to the Munsif Magistrate for disposal and that 23-6-1973 was the date fixed for their appearance before the Munsif Magistrate. In such circumstances, the fact that a formal order for issue of process was not passed by the Sub-divisional Magistrate u/s 204 of the Code does not appear to have caused any prejudice to the accused persons.

8. The provisions of Section 204 of the Code under which the Magistrate taking cognizance issues process run thus:

204, (1). If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be one in which, according to the fourth column of the second schedule a summons should issue in the first instance, he shall issue his summons for the attendance of the accused. If the case appears to be one in which, according to that column, a warrant should issue in the first instance, he may issue a warrant, or, if he thinks fit, a summons, for causing the accused to be brought or to appear at a certain time before such Magistrate or (if he has not jurisdiction himself) some other Magistrate having jurisdiction.

9. From the words of Section 204(1) it would appear that the order for issuance of process is indicative of the fact that in the opinion of the Magistrate taking cognizance there is sufficient ground for proceeding against the accused. Section 202 of the Code has no application to a case instituted on a police report and therefore, a Magistrate to whom a case is transferred u/s 192 of the Code for inquiry or without issuing process cannot take any action u/s 202 for ascertaining the truth or falsehood of the case, instituted on police report. It is, therefore, necessary that the Magistrate taking cognizance on police report must apply his mind to the facts of the case and if he finds that there is sufficient material to proceed against the accused he should issue process for the attendance of the accused. There is no provision under which a Magistrate taking cognizance on a police report can delegate the power of ascertaining truth or falsehood of the case to the transferee Magistrate. It is for this reason that Section 204(1) says that if in the opinion of the Magistrate taking cognizance there is sufficient ground for proceeding he shall issue process. It is for this reason that in the case of Nazim Baboo 1976 BBCJ 859 (supra) the Division Bench has held that in cases other than the cases to which Section 202 is applicable the process must be issued by the Magistrate, who has taken cognizance and the Magistrate taking cognizance in such a situation can transfer the case to another Magistrate for inquiry or trial only after issuance of process. With respect I agree with the general principles of law laid down by their Lordships in S.M. Nazim Baboo's case

(Supra). But the question that has arisen for consideration in the instant case was not for consideration before their Lordships in S.M. Nazim Baboo's case. The question as stated above, is whether it shall be obligatory on the part of the Magistrate taking cognizance to issue process before transferring a case to another Magistrate for inquiry or trial, if in that case accused persons have already appeared and the order taking cognizance and transferring the case to another Magistrate for inquiry or trial is passed in their presence.

10. Process u/s 204 of the Code is issued to compel the attendance of the accused persons if accused persons are already in custody or on bail granted by the court and if the order taking cognizance and transferring the case is passed in their presence it may not be necessary for the Magistrate taking cognizance to issue process under, Section 204 of the Code before transferring the case to another Magistrate for inquiry or trial. In such a case the order for issuance of process against the accused persons would be an empty formality of complying with the provisions of Section 204 of the Code.

11. In Criminal Misc. No. 534 of 1972 disposed of on 16-7-1976 (Pat), we have distinguished the decision in S.M. Nazim Baboo's case 1976 BBCJ 359 and have held that if all the accused persons have already appeared in the case and are on bail granted by the Magistrate on the date on which cognizance is taken against them on police report and the order taking cognizance shows that the Magistrate is of opinion that there is a sufficient ground for proceeding and the order is passed in their presence, the order taking cognizance and transferring the case to another Magistrate for inquiry or trial without issuing process will not be invalid or without jurisdiction. The instant case is fully covered by the decision in Cr. Misc. No. 534 of 1972 (Pat).

12. In Cr. Misc. No. 534 of 1972 (Pat) we have further held that if the Magistrate taking cognizance has not fixed any date for the appearance of the accused before the transferee Magistrate, the transferee Magistrate may issue process against the accused intimating to them the date on which they are required to appear before the transferee Magistrate. In the instant case the learned Magistrate taking cognizance fixed 23-6-1973 for the appearance of the accused persons before the transferee Magistrate. The bail bond executed by the accused persons in the court of the Sub-divisional Magistrate shows that the accused persons bound themselves to attend the court of the Sub-divisional Magistrate or such other Magistrate, before whom the case might be pending. Therefore, the accused persons were bound to appear before the learned Munsif Magistrate on the date fixed for their attendance. As they did not appear before the Munsif Magistrate on the date fixed the learned Munsif Magistrate cancelled their bail bond and issued non-bailable warrant of arrest against them to enforce their appearance.

13. In view of the aforesaid discussions I do not find any illegality in the order of the sub-divisional Magistrate, dated 25-5-1973 or in the order of the Munsif Magistrate, dated 23-6-1973. There is no merit in any of these two applications.

Both the applications are therefore, dismissed.

Uday Sinha, J.

14 I agree.