

(1961) 11 KAR CK 0004
In the Karnataka High Court
Case No : Criminal Revision No. 370 of 1961

Manjoorkhan

APPELLANT

Vs

The State of Mysore

RESPONDENT

Date of Decision : 15-11-1961

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 251 A, 251 A (2), 251 A (3)

Citation : AIR 1962 Kar 106

Hon'ble Judges : A. Narayana Pai, J

Bench : Single Bench

Advocate : S.K. Venkataranga Iyengar and B.T. Chabria, for the Appellant; A.B. Mariappa, High Court Govt. Pleader, for the Respondent

Judgement

(1) The petitioner who is the third accused in Criminal Case No. 539 of 1961 on the file of the Court of the Special First Class Magistrate, Davangere, prays that the charge of the abutment framed against him by the Magistrate be quashed on the ground that the framing of the charge is opposed to the provisions of S. 251-A of the Code of Criminal Procedure.

(2) In Cr. R. No. 113 of 1961 decided on the 9th August 1961, this Court has held that the only materials on which the Magistrate may depend either for the purpose of discharging the accused or for framing a charge against him are the documents referred to in S. 173 of the Code and what might emerge from the examination of the accused if he is examined, and that the Magistrate should take into consideration the arguments that may be presented by the accused and the prosecution when the accused is afforded them an opportunity of being heard.

(3) In this case, there is no complaint that there has been any contravention of the principle laid down in the said decision of this Court by the Magistrate taking into account any material beyond the scope of sub-sections 2 and 3 of section 251-A as explained in that decision, nor is it contended by the learned counsel on behalf of the petitioner that the Magistrate is wrong in stating the principle that certainty of conviction is not the basis for framing a charge. The only contention

on behalf of the petitioner is that on the material placed before the Magistrate by the prosecution there is no ground for presuming that the accused has committed an offence and that what emerges on the examination of the accused actually makes the charge groundless, and that therefore the situation is one to which the provisions of sub-section (2) of S. 251-A and not those of sub-section (3) apply.

(4) The legal argument addressed by the learned counsel for the petitioner and the learned Government Pleader on behalf of the prosecution before me centered round the exact meaning to be assigned to the word "ground" used in sub-sections (2) and (3) of S. 251-A. Under sub-section (3), before a charge is framed the Magistrate must entertain the opinion that there is ground for presuming that the accused is to be discharged if the Magistrate considers the charge against him to be groundless.

In my opinion, there is nothing particularly recondite or abstruse in the language employed in sub-sections (2) and (3) of section. In the context, the word "ground" must be taken to have been used in its ordinary dictionary sense, meaning basis, foundation or valid reason. If the documents referred to in S. 173 of the Code and what emerges from the examination of the accused considered in the light of the arguments addressed on behalf of the accused as well as the prosecution furnish a reasonable basis or foundation for presuming that the accused has committed an offence triable under Chapter XXI, the Magistrate shall frame a charge against the accused. If, on the other hand, they furnish no reasonable basis or foundation for the charge against the accused, he should discharge him.

(5) The learned counsel for the petitioner relied upon the decision of Padmanabiah, J. Reported in Mahadevan v. Lakshminarayan AIR 1957 Mys 40 in which his Lordships observed that the words "charge against the accused to be groundless" appearing in S. 251-A (2) must be construed that mean "when there is no legal evidence in support of the charge brought against the accused and the acts do not make out any offence at all".

The learned counsel relies particularly on the expression "legal evidence" and contends that before a charge could be framed, the material on which the prosecution depends must be of such a character as to be capable of being accepted by a Court of Law in the light of the provisions of the Evidence Act. With the great respect to the learned Judge, it seems to me that the choice of the expression "legal evidence" is not appropriate to the stage at which the Magistrate is called upon by the section to make up his mind whether or not to frame a charge against the accused. The material which the statute expressly requires him to consider consists principally of the documents referred to in section 173 of the Code, considerable portions of which at the trial are not admissible in evidence but can be made use of only for a limited purpose stated in S. 162 of the code. At that stage, there is only the report of the police Officer stating the result of his investigation and supported by the written record of the

investigation conducted by him on the basis of which he moves the Magistrate to take cognizance of the offence said to have been committed by the accused. That material does not at that stage have the status of evidence tendered on oath nor has its veracity been tested by cross-examination or contradicted by the evidence which he accused may lead in defence. The prosecution at that stage must be taken merely to represent to the Court that the persons whose statements have been recorded in the course of investigation may be expected to depose to the facts recorded in those statements at the trial of the case.

The examination of the accused ----- the section itself indicates, --- is only such as the Magistrate thinks necessary. Obviously, the underlying purpose of such examination is to give an Opportunity to the accused to state facts or circumstances either explaining or tending to neutralise or nullify the effect of the facts and circumstances recorded in the course of the investigation. Thereafter the Magistrate is required to hear arguments on behalf of both the accused and the prosecution at which each side will place its own interpretation on the said material after considering which the Magistrate is to decide whether there is reasonable basis or foundation at all. It may be that at the trial the material on the basis of which a charge has been framed may not stand the test of cross-examination or may be completely displaced or rendered unacceptable by other evidence which the accused may adduce at the trial. But, those considerations become available only at or at the conclusion of the trial, and do not therefore enter into consideration at the stage when the Magistrate to make up his mind whether or not to frame a charge.

(6) Now, the material placed before the Magistrate in this case is briefly the following:

On the 5th of January 1961, a station -wagon bearing the number J and K 6241 was stopped at the toll-gate in Harihar. The first two accused were in that vehicle. Considerable quantities of contraband opium were found concealed in the vehicle at places which are described as secret chambers. The ownership of the vehicle was traced to the third accused in the course of the investigation and the relevant documents bearing on that question, also collected. The previous owner of the vehicle has stated in the course of the investigation and is expected to depose that when the vehicle was in her possession it had no secret chambers, and a driver employed by her is expected to corroborate her evidence. It emerges from the examination of the third accused his case is going to be that he knew nothing about the use to which the first two accused put the vehicle but that the same had been borrowed from him by a friend called Habib Sab of Rampur on 28-12-1960 on the pretext that it was required to convey his ailing mother to Lucknow, that he later discovered that the same was a false excuse, that he placed information to that effect before the police at Rampur on 2-1-1961 and later followed it up by a regular complaint before the Magistrate of that place against the said Habib Sab for cheating and that on learning that the said vehicle was concerned in this Criminal Case before the Special Magistrate at

Davangere and that the Mysore Police wanted to arrest him, he applied to the Magistrate at Rampur on 30-3-1961 for anticipatory bail. The final charge sheet filed before the Magistrate at Davanagere on 10-4-1961 shows the third accused-petitioner as absconding. On learning that the third accused had been released by the City Magistrate, Rampur, in connection with this case, the Magistrate issued process to him through the Rampur police on 10-5-1961. The third accused appeared on 27-6-1961. The other two in their statements do not make any reference to the third accused. One of them refers to one Habib Sab. Whether he is the same person as the one who the third accused says had borrowed his station-wagon is not clear.

(7) The argument on behalf of the third accused- petitioner is that the material which the prosecution has placed before the Magistrate can be said to furnish basis for tracing the ownership of the station-wagon to the third accused and nothing more. That circumstances, by itself, according to the third accused, is quite insufficient for presuming that the petitioner must have either instigated or intentionally aided the other accused in transporting contraband opium. So far as the alleged secret chambers concerned, the argument is that the statement of the previous owner tending to show that no such secret chambers existed at the time the vehicle was still with her is of no value because the same is not shown to have been made by her after actually having a look at the present condition of the vehicle. It is further contended that his case of his having lent the said station-wagon to Habib Sab of Rampur on the representation made to him that the said Habib Sab's ailing mother had to be conveyed from Rampur to Lucknow is fully supported by his having placed information to that effect and before the Rampur police so early as on 2-1-1961 and further by his having actually preferred a complaint to the City Magistrate at Rampur subsequently.

(8) The argument on behalf of the prosecution is that the existence of secret chambers in which contraband opium was actually found concealed is a material circumstance suggesting that the said chambers must have been specially designed for the purpose of smuggling opium. Taken along with the statement of the previous owner mentioned above, this circumstance, it is concluded, would furnish a reasonable basis for imputing to the third accused knowledge of not only their existence but also the purpose for which they had been designed. Regarding the petitioner's conduct in laying information with the police at Rampur and preferring a complaint to the City Magistrate, Rampur, against Habib Sab for alleged cheating in respect of the vehicle, it is argued that such conduct may well be conduct of a guilty person trying to provide himself with evidence which tends to give to the facts of the case an appearance favorable to himself, especially when it is viewed in the light of what prima facie appears to be abscondence on the part of the third accused.

(9) In the light of provisions of the statute and the principles already explained by me, it is not for the Magistrate at this stage, that definitely prefer the interpretation of the material suggested by one side and totally reject that

suggested by the other side. The only question is whether the material considered in the light of the arguments can lead to the view that the charge against the third accused is groundless in the sense that the material so considered furnishes no reasonable basis or foundation whatever for the accusation. Applying this test it is not possible to say that the view taken by the Magistrate that the charge against the third accused cannot be considered for be groundless is not a reasonable view to take at this stage of the case.

(10) The Revision Petition fails and is dismissed.

(11) The papers of the case will be returned to the Magistrate forthwith.

(12) AF/L/ V.B.B.

(13) Revision Petition dismissed.