

(1998) 02 PAT CK 0012

In the Patna High Court

Case No : Criminal W.J.C. No"s. 750 and 758 of 1997

Mishri Yadav @ Mishri Gope Etc.

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 03-02-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 170, 2, 207, 208, 209

Citation : (1998) 3 BLJR 2111 : (1998) 1 PLJR 915

Hon'ble Judges : N. Pandey, J;I.P. Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Initially in these cases moot questions were raised for consideration whether after submission of charge-sheet within the statutory period, an accused can be remanded to custody without taking cognizance of the offence. But having gone through different orders, passed by the learned Magistrate and submission advanced on behalf of the learned Counsel appearing for the respondents, Mr. Pandey fairly agreed and rightly so, that such a question was no longer available, as cognizance in these cases were already taken. Undisputedly, stand taken by the learned Advocate is also supported by a Full Bench decision of this Court in the case of Rabindra Rai Vs. State of Bihar, , which says that after submission of charge-sheet, it may not be necessary for the Magistrate to pass an express or formal order, saying that cognizance has been taken. The moment Magistrate looks to the charge-sheet and proceeds to the next stage of the proceeding, cognizance is deemed to have been taken.

2. The next question which, however, relevant for determination is whether in a case exclusively triable by a Court of Session, the Magistrate after taking cognizance and before an order of commitment u/s 209 of the Code of Criminal Procedure (hereinafter to be referred as the Code), in absence of any other express provision, can remand an accused to custody under Sub-section (2) of Section 309 of the Code.

3. In these cases there is no dispute that offences are triable exclusively by a Court of session. This also stands admitted that no order for commitment, as required u/s 209 of the Code has yet been recorded by the Magistrate.

4. It was contended that in view of the provisions as contemplated under Sub-section (2) of Section 309 of the Code, no order for remand against an accused can be recorded, unless an "inquiry" or "trial" has commenced. It was submitted that in the case of Raj Kishore Prasad Vs. State of Bihar and another, , the Apex Court has already held that a proceeding before a Magistrate at the stage of Section 209 cannot be called inquiry as defined u/s 2(g) of the Code. Therefore, the Magistrate at this stage will have no power to remand an accused under Sub-section (2) of Section 309 of the Code.

5. It will be appropriate to notice that in the aforesaid case before the Supreme Court, the question relevant for consideration was whether a Magistrate undertaking commitment u/s 209 of a case, triable by Court of Sessions, associate another person as accused in exercise of power u/s 319 of the Code, or under any other provision.

6. After examining the facts of the said case and relevant provisions as incorporated u/s 209 of the Code, the Court observed that the Magistrate at this juncture has a limited function to see that the package sent to the Court of Session is in order, so that it can proceed straightway with the trial and that nothing is lacking in contents, as per requirement of Section 207 and 208 of the Code. The Magistrate at this stage is not required to apply his mind in order to determine issues raised or to adjudicate whether any other accused is guilty or not. Because such proceedings at the stage of Section 209 of the Code, do not fall squarely within the ambit of inquiry, as defined in Section 2(g) of the Code. While expressing such views, their Lordships prima facie disagreed with the views taken by the same Court in the case of State of Uttar Pradesh Vs. Lakshmi Brahman and Another, .

7. From the Acts, noticed above, it would appear that a Magistrate is forbidden to apply his mind to the merit of the matter in order to summon additional accused. Because such power can only be exercised u/s 319(1) of the Code, which contemplates existence of some evidence appearing in the course of trial, whereby, the Court can prima facie conclude that the person concerned was also involved in the commission of offence.

8. But the question to which we are concerned may not have much bearing with regard to the facts and the proposition, which was raised before the Apex Court in the case of Raj Kishore Prasad v. State of Bihar and Anr. (supra). Because in that case moot question was whether in order to summon additional accused, a Magistrate after making order of commitment was empowered to conduct "inquiry" as defined u/s 2(g) of the Code.

9. In the case of State of U.P. v. Laxmi Brahman (supra) no doubt it was held that from the time, the accused appears or is produced and the Magistrate

proceeds to inquire u/s 207 of the Code, Rendency of such proceeding before the Magistrate would be called an inquiry as contemplated by Section 2(g) of the Code. The relevant findings in this regard can be usefully noticed as under:

The making of an order committing the accused to the Court of Session will equally be a stage in the inquiry and the inquiry culminates in making the order of commitment. Thus, from the time the accused appears or is produced before the Magistrate with the police report u/s 170 and the Magistrate proceeds to enquire u/s 207 has been complied with and then proceeds to commit the accused to the Court of Session, the proceeding before the Magistrate would be an inquiry as contemplated by Section 2(g) of the Code. We find it difficult to agree with the High Court that the function discharged by the Magistrate u/s 207 is something other than a judicial function and while discharging the function the Magistrate is not holding an inquiry as contemplated by the Code.

10. It would appear from paragraph No. 10 of the judgment of Lakshmi Brahman (supra) that in the facts and circumstances of that case, the Apex Court had taken note of the provisions of Section 209(a) as it existed before replacement of Clause, (a) of Section 209 by Act 45 of 1978. Clause (a) of Section 209 prior to its replacement was in these words:

Section 209:...;

(a) commit the case to the Court of Session.

The said clause was replaced with effect from 18-12-1978 as under:

Section 209...

(a) commit, after complying with the provision of Section 207 or Section 208, as the case may be, the case to the Court of Session, and subject to the provisions of this Code relating to bail, remand the accused to custody until such commitment has been made.

11. A combined reading of both the provisions would show that prior to replacement of Section 209(a) by Act 45, a Magistrate was only required to commit the case to the Court of Session, subject to the provisions of the Code relating to bail and remand to the accused. But now the newly replaced Clause (a) clarifies that commitment of a case is to be made after complying with the provisions of Sections 207 or 208 of the Code and while doing so, the committing Court will also have the power to make an order for remand of the accused to custody until the commitment is made. In our view, probably having noticed similar problems in other cases, the Legislatures by replacing the provisions intended to remove the difficulty, experienced by the committing Magistrates, where due to such requirements, commitments could not be made on the day of filing of the charge-sheet.

12. Section 207 of the Code requires a Magistrate to furnish police report and other papers, as detailed in that Section, without any delay to the accused.

Similar compliance will be necessary with regard to the provisions of Section 208 in a case instituted otherwise than a police report at the time of issuing processes, provided the offense is exclusively triable by a Court of Session. The provisions of Section 209 pre-supposes that all the materials, which are required to be furnished to the accused are already available before the Magistrate, the moment a charge-sheet was filed by the police. But there may be cases, where certain requirements of Section 207 or Section 208 of the Code are still lacking. Therefore, to meet such a situation, the Magistrate will have no option but to record order of remand until the commitment is made.

13. Taking all the facts and circumstances into consideration and the issues involved in these applications, in our opinion in order to have full compliance of the provisions of Section 207 or Section 208 of the Code, a committing Magistrate has jurisdiction to make an order for remand of the accused in custody until commitment is made. In order of remand in such circumstance cannot be held illegal and unauthorized.

14. In the result, while taking such views, we have no option, but to dismiss both the writ petitions. The same are accordingly, dismissed.