

(1957) 09 AHC CK 0015

In the Allahabad High Court

Case No : Criminal Rev. No. 806 of 1956

Munshi Lal, S.I. Police, P.S. Bharthana, District Etawah

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 20-09-1957

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 209, 210

Criminal Procedure Code, 1898 (CrPC) — Section 209, 210

Criminal Procedure Code, 1898 (CrPC) — Section 209, 210

Citation : (1958) 28 AWR 229

Hon'ble Judges : B.R. James, J

Bench : Single Bench

Advocate : Sri C.S. Saran and Sri Asif Ansari, for the Appellant; Sri Behariji Dass and Sri Moti Lal, for the Respondent

Final Decision : Dismissed

Judgement

B.R. James, J.—The facts which have given rise to this Revision are briefly as follows. Govind Ram, a resident of Kanpur, is the contractor of a licensed liquor shop in Etawah City, while Ram Bharosey and Jagannath are respectively the salesman and the munim of the shop. A report about the theft or misappropriation of some liquor from another shop was received at the Etawah Kotwali, and Sub Inspector Munshi Lal was deputed to enquire into the matter. In the course of the enquiry suspicion was thrown on Govind Ram's liquor shop, and accordingly at about 3 p.m. on 29-11-1954 S. I. Munshi Lal searched it in the presence of Ram Bharosey salesman and Jagannath munim. Nothing incriminating was found. Next day at 1-15 pm. Ram Bharosey despatched this telegram to his matter Govind Ram at Kanpur: "Shop searched. Come immediately." Govind Ram arrived on 1st December. On the 6th December Ram Bharosey filed a complaint against S. I. Munshi Lal and some police officials and private persons-eight accused in all-for an offence of dacoity(sic) u/s 395, IPC. In this complaint it was alleged that the Sub-Inspector accompanied by the other accused persons raided the shop and searched it but did not find any stolen

liquor, that Ram Bharosey and jagannath were beaten, that Rs. 910 was forcibly taken away from the cash box, that Jagannath was handcuffed and that after the money had been appropriated his handcuffs were removed. After a preliminary enquiry u/s 202, Code of Criminal Procedure a commitment enquiry u/Ch. XVIII Code of Criminal Procedure was made by a first class Magistrate. The learned Magistrate recorded all the evidence produced on behalf of Ram Bharosey, and also examined the accused persons He then wrote out a detailed order in which he discussed all the evidence and came to the following conclusion:

I am not at all prepared to believe the version of the complainant and it will be a clear waste of public money and time to send up such a rotten case to the Court of session, and under such circumstances I have no option but to discharge the accused as this is not a fit case to be committed to the Court of Session u/s 395, IPC." Ram Bharosey went up in Revision to the Third Addl. Sessions Judge of Etawah, contending that the learned Magistrate's order was "a clear instance of what is called a perverse judgment in the eye of law." The learned Judge proceeded to examine this contention by considering a large number of rulings. Unfortunately he did not study the body of the judgments in order to see what the facts of each case were; instead he got his law from the headnotes in the Law Reports. As a result he came to the conclusion that the learned Magistrate had usurped the functions of the Sessions Court and had wrongly examined the evidence in detail. The learned Judge then made a cursory review of the evidence, and holding that "there is a possibility of its (i.e., the prosecution evidence) being believed," reversed the Magistrate's order of discharge and directed him to commit all the accused persons to the Court of Sessions for offences u/s 395 and 342, IPC. It is worthy of note that nowhere in his judgment did he hold that in his opinion a prima facie case had been made out. Incidentally, in examining the evidence he did notice several doubtful features about the prosecution case, but in each case decided to give the benefit of the doubt to the prosecution.

2. Aggrieved by the learned Judge's order for commitment S. I. Munshi Lal has approached this Court for redress.

3. The relevant powers of the Magistrate are found given in S. 209 and 210, Code of Criminal Procedure wherein it is provided that after taking the necessary evidence and (if necessary) examining the accused, if he is satisfied that there are "sufficient grounds for committing the accused for trial" he shall frame a charge, but he shall "if he finds that there are not sufficient grounds for committing the accused person for trial, record his reasons and discharge him." For committing the accused person to the Court of Session the Magistrate must be satisfied that there is a prima facie case against him, that is to say, a case in which the evidence is such that if unrebutted it should reasonably lead to a conviction. There is no finding by the Sessions Judge that the present case is of this description. Then, the very fact that for discharging the accused it is mandatory for the Magistrate to record his reasons and it is well settled that the

reasons must be sufficient to enable the superior Court to know whether or not he has applied his mind to the subject implies that he must make an adequate examination of the evidence on the record. No doubt the learned Sessions Judge took a good deal of trouble in consulting reported cases. But where he failed was in studying the facts on which those decisions were based: had he examined the facts he would have realised that the Magistrate is not only entitled to, but ought to, examine the evidence with due care in order to decide whether or not the accused should be committed for trial.

4. It would be well for Sessions Judges to bear in mind that a sessions trial involves much expenditure of public time and money, so that they must be jealous in guarding both: it is contrary to the public interest to hold a sessions trial which is bound to result in acquittal.

5. The issue in all such matters is: does the evidence on the record make out a *prima facie* case, i.e., a case in which the evidence is such that if unrebutted it should reasonably lead to a conviction? In the case before me the evidence is so patently untrustworthy that it is surprising how the learned Sessions Judge persuaded himself to hold that "there is a possibility of its being believed." A brief discussion of the direct and circumstantial evidence on the record will establish the correctness of this view.

6. There are four witnesses who have come forward to support the case set out in Ram Bharosey's complaint. These are the two employees of the shop, Ram Bharosey and Jagannath, and two outsiders, Ram Narain and Har Swarup. The first two are of course vitally interested parties. Neither of them suffered a single scratch. Although they had the whole of the afternoon and night of the 29th and the forenoon of the 30th, neither of them complained to any person in authority. Even the telegram to their master Govind Ram was despatched next day at 1-15 p.m. The absurd explanation attempted for the delay is that they had to hunt out Govind Ram's address. The telegram itself merely mentioned the search of the shop; it did not even hint at robbery or hurt or wrongful confinement. One should have thought that at least the robbery of the money would figure prominently in the telegram. The complaint itself was filed with a delay of seven days. The explanation offered is that the arrival of Govind Ram had to be awaited. But this man arrived by the 1st December, so that even then there was an unaccountable delay of five days. The shop is situated in the bazar, yet not a single person from the neighbouring shops who alone would have been natural witnesses of the incident, has been produced. These circumstances clearly point to a deliberately manufactured case.

7. As regards the other two witnesses, neither Ram Narain nor Har Swarup belongs to the locality. Ram Narain asserts that he had gone to the shop to purchase liquor and stayed on there for two and a half hours. A man who starts taking alcohol from 3 p.m. must be deemed a wine-bibber and hence a person of low morals. Har Swarup says that he went to the shop on hearing of the police raid. He professes to be the Secretary of the Excise Contractors' Association and

says that he brings public grievances to the notice of the Ministers of the Govt. Yet although he had supposedly witnessed a dacoity committed in broad day light by public servants, he did not care to inform any Minister nor any other person in authority. He is a person who on his own showing pokes his nose into other people's affairs. His appearance in the witness box is without doubt due to the fact that he feels bound to support a member of an Association of which he is the Secretary. Both Ram Narain and Har Swarup are thus self discredited witnesses.

8. The learned Sessions Judge appears to have attached importance to certain reports which S. I. Munshi Lal and head constable Agha Beg made at the police station that day. But both are accused persons, hence by virtue of the decision in *Nisar Ali v. State of Uttar Pradesh* 1957 AWR (SC) 461 their reports are wholly inadmissible in evidence.

9. In view of the above discussion of the facts and circumstances of the case it is ridiculous to suggest that there is a "possibility" of the prosecution evidence being believed not that a mere "possibility" is sufficient to justify an order of commitment, for a commitment must be made on the establishment of a prima facie case, not on possibilities of belief or disbelief. The contention of the learned Sessions Judge is untenable. It is the view of the learned Magistrate which is the correct one, and I should like to commend him for his carefully drawn up order, and to venture to express the wish that more Magistrates followed his example in dealing with cases under Chapter XVIII CrPC.

10. There are two other aspects of the matter to which I should like to draw attention. The first stems from the special protection which the law gives to public servants who are engaged in the execution of their duty.

11. In the execution of such duty public servants have often to take unpleasant action against individuals or arouse their resentment, consequently the aggrieved individual always has a temptation to give out a distorted version of the public servant's action so as to attract the operation of penal laws. To guard against this it becomes the duty of the Court to make a strict examination of the evidence before holding a complainant's case against a public servant to be prima facie true, for otherwise it will become difficult for honest and conscientious public servants to discharge their public duties. Secondly the law places a police chalan on a higher footing than a private complaint, as is clear from a reading of S. 207A, Code of Criminal Procedure on the one side and Ss. 208 to 210, Code of Criminal Procedure on the other. The reason clearly is that a police chalan is instituted after an investigation by a police officer under the supervision of experienced officers and without any personal bias against the accused person, whereas there is little to deter a private person from filing a complaint without a sense of responsibility and for reasons or malice. Consequently the Court would be perfectly justified in demanding clear and cogent evidence from a private complainant before it decides to commit his case to the Court of Session. It is a matter of regret that in the instant case the learned Sessions Judge has paid no attention to either of these matters.

12. In view of the discussion attempted in the foregoing this Revision is allowed, the Sessions Judge's order set aside and that of the Magistrate restored.

13. Although S. I. Munshi Lal is the only applicant in this Revision, and the seven other accused have neither joined in it nor filed a separate petition, I am firmly of opinion that in their case too the order for commitment is unwarranted, for the case against them rests on precisely the same evidence as that against S. I. Munshi Lal. Ram Bharosey's Learned Counsel has argued before me that since these seven men have not approached this Court they should be assumed to have no grievance against the Sessions Judge's order, and hence their sessions trial should be allowed to take place. But I have given sufficient reasons for showing Ram Bharosey's case to be a manufactured one, and I refuse to become a party to allowing time and money to be wasted in a trial the result of which is a foregone conclusion. Accordingly in exercise of the inherent powers of the High Court, I set aside the Sessions Judge's order with regard to the remaining accused persons also. Thus Ram Bharosey's complaint is dismissed in toto and each one of the eight accused stands discharged.