
(1979) 05 PAT CK 0008

In the Patna High Court

Case No : Criminal Miscellaneous No. 2252 of 1978

Ram Lagan Singh, Jagarnath Singh and Praduman Singh

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 15-05-1979

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 395, 412

Citation : (1979) PLJR 468

Hon'ble Judges : Brishketu Saran Sinha, J

Bench : Single Bench

Advocate : Prabha Shankar Mishra and Surendra Kumar Singh, for the Appellant; I.T. Gour and U.P. Chainpuri for the State, for the Respondent

Judgement

Brishketu Saran Sinha, J.—By an order dated 30th June, 1978, passed in C. Suit No. 594 of 1977, Shri D.P. Sinha Chief Judicial Magistrate, Gaya has directed the three petitioners to be summoned for commitment proceedings to be started against them. The commitment proceedings in this case were to be out up along with G.R. Case No. 1639 of 1977. Aggrieved by this order the petitioners have filed this application u/s 482 of the Code of Criminal Procedure, 1973, (hereafter referred to as "the Code"). On the basis of a fardbeyan lodged at Imamganj notice station on 15th August, 1977, Imamganj police station case No. 4(8)77 was instituted. On the first information report instituted on the basis of the Fardbeyan, several persons including the petitioners were charged of offences u/s 395, Indian Penal Code. In the Fardbeyan lodged the petitioners were named as persons who had been identified in the light of torch while dacoity was being committed. The police; after investigation, submitted chargesheet against eight persons but no chargesheet was submitted against the petitioners, The chargesheet was submitted on 31st December, 1977, and ultimately, by an order dated 1st March, 1978, cognizance was taken against the other accused persons under Sections 395 and 412; Indian Penal Code.

2. During investigation, a protest petition had been filed as early as on 23rd August, 1977, in which it was stated that the investigation was being conducted in a slipshod manner and it was further stated that the names of the petitioners were being excluded by the police. On 10th March, 1978, the learned Chief Judicial Magistrate, examined the complainant on solemn affirmation and started case No. 594 of 1977. An enquiry was conducted u/s 202 of the Code. Thereafter, the impugned order has been passed.

3. In support of this application, it has been contended that in a case exclusively triable by a court of session and which had been instituted on a police report, a Magistrate had no jurisdiction to hold any enquiry except the one contemplated u/s 209 of the Code. On the Other hand, on behalf of the State, it has been submitted that the impugned order is not a part of the police case; rather it is a separate proceeding which is permissible u/s 210(3) of the Code. It is further submitted that if cognizance is taken in a complaint case, there is no bar in instituting a commitment proceeding on the basis of such cognizance.

4. Under the Code, the jurisdiction once vested in Magistrate in commitment proceedings to launch on a process of finding that prima facie case has been made out, has been eliminated. It has been pointed out in the case of (1) Sanjay Gandhi Vs. Union of India (UOI) and Others, that to hold that the Magistrate can go into the merits even for a prima facie satisfaction is to frustrate the purpose of the Parliament in remoulding Section 207-A of the old Code of Criminal Procedure into its present non-discretionary shape. "Expedition was intended by this change and this will be defeated successfully, if interpretatively we hold that a dress rehearsal of a trial before the Magistrate is in order." It was further stated that if in a police report, the offence made out is one which is triable exclusively by the court of session, the Magistrate has simply to commit the case for trial before the court of session. However, if a wrong section of the Penal Code was quoted, the Magistrate may look into that aspect. Therefore; in determining the rival submissions made, it would be relevant to bear in mind the intention of the Legislature under the Code which is to eliminate the discretion given to Magistrates under the old Code to find out whether a prima facie case had been made out.

5. It is also relevant to take into account that under Chapter XVIII of the Code of Criminal Procedure, 1898 (hereafter referred to as "the old Code") a Magistrate had power to commit to the court of session not only such cases which were exclusively triable by a court of session but also cases which, in the opinion of the Magistrate, ought to be tried by such court. Under the old Code an accused was committed for trial before the court of session.

6. Section 209, of the Code which is the only provision for commitment of a case to the court of session reads thus:--

When in a case instituted on a police report or otherwise, the accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence

is triable exclusively by the court of session, he shall--

- (a) commit the case to the court of session;
- (b) subject to the provisions of this Code relating to bail, remand the accused to custody during, and until the conclusion of the trial;
- (c) send to that court the record of the case and the documents and articles, if any which are to be produced in evidence;
- (d) notify the public prosecutor of the commitment of the case to the court of session.

The salient features of this provision for the purposes of the present case are that the Magistrate has to determine whether the offence is exclusively triable by the court of session and what is committed to the court of session is the case and not the accused. Of course this is done when the accused is produced before him.

7. In the Full Bench case of (2) Tuneshwar Prasad Singh V. The State of Bihar (1978 P.L.J.R. 403 : 1978 B.B.C.J. 111) it has been held that a proceeding u/s 209 of the Code is an enquiry within the meaning of Section 2(g) of the Code. This enquiry; however, may have to be conducted in a most expeditious and limited manner as pointed out in Sanjay Gandhi's case.

8. The question that falls for consideration in this case, however, is not free from difficulty, it is not disputed that Section 204 of the Code applies both in complaint cases as well as cases instituted on police report. Section 207 deals exclusively with a case instituted on a police report and Section 208 deals with cases instituted otherwise than on a police report. In either of these two cases, when it appears to the Magistrate that the offence is triable exclusively by the court of session Section 209 comes into play and the Magistrate has to act in the manner as provided therein.

9. Section 210 of the Code provides the procedure when there is a complaint case and a police investigation in respect of the same offence. Sub-section (1) of this section provides that when it appears to the Magistrate in a complaint case that an investigation by the police is in progress in relation to the offence which is the subject matter of the enquiry or trial being held by him in the complaint case, he shall stay the proceeding of such enquiry and trial and call for a report from the police officer conducting the investigation. Sub-section (2) lays down that if on receipt of the report of the police investigation, cognizance is taken by the Magistrate against any person who is an accused in the complaint case the Magistrate shall enquire into or try together both the cases as if they were instituted on a police report. Sub-section (3) is as follows:--

If the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the inquiry or trial, which was stayed by him; in accordance with

the provisions of this Code.

Under this sub-section, if on the police report, cognizance has not been taken with regard to an accused as in the complaint case, the Magistrate shall proceed with the enquiry or trial which was stayed by him under Sub-section (1). In other words, if the cognizance taken on the police report does not relate to a person against whom a complaint case is pending, the Magistrate, after taking cognizance on the police report, can proceed with the enquiry or trial with regard to such an accused. On the face of it, it seems that under this provision a Magistrate can proceed even after he has taken cognizance with regard to some other accused persons of an offence which is triable by the court of session. There does not seem to be any bar u/s 210(3) which would prohibit the Magistrate from proceeding u/s 209 with regard to an accused against whom a police report has not been submitted for an offence and against whom the Magistrate has not taken cognizance on the basis of such police report.

10. On a closer consideration; I am inclined to take the view, and it is on first impression, that Sub-section (3) of Section 210 of the Code will not apply to proceedings u/s 209 of the Code. There seems to be two reasons for arriving at this conclusion; (1) as I have pointed out earlier, u/s 209 of the Code a case is committed to the court of session and not an accused, as was done under the old Code; and, (it) as has been pointed out by the Supreme Court in Sanjay Gandhi's case (supra) by incorporating Section 209 of the Code, expedition has been intended and that is why it is in its present non-discretionary shape."

11. In taking this view, it is not that the complainant is left without any remedy. u/s 319(1) of the Code if it appears to the court of session that any person, not being an accused, has committed any offence for which such person could be tried with the accused who are facing trial, the court can proceed against such person for the offence which he appears to have committed. In other words, if the court of session is satisfied that the petitioners had also committed the offence of dacoity or one u/s 412 of the Penal Code, it can always summon the petitioners.

12. A question that might also arise is whether u/s 319(1) the Magistrate, while holding an enquiry u/s 209, can proceed against the petitioners. This sub-section, however, lays down that a person can only be proceeded against, when, in an enquiry or trial for an offence, it appears from "the evidence" that any person not being an accused, has committed any offence then he may be proceeded against such person. It is manifest, therefore, that in order to act under this sub-section, there must be some evidence before the court. In a proceeding u/s 209, there is no evidence before the court. It is either the statements as recorded by the police and documents as produced before it or statements as recorded u/s 200 or Section 202 of the Code or u/s 161 or Section 164 of the Code. I am, therefore, inclined to the view that Section 319(1) has no application in a proceeding u/s 209 of the Code.

13. The submission on behalf of the State that the police case and the complaint case are two distinct proceedings also cannot be accepted. I have already stated above that on 1st March, 1978 the learned Magistrate took cognizance of the offences on the basis of the chargesheet submitted by the police on 31st December, 1977. Thereafter, with regard to the same case, the learned Magistrate, treating the protest petition filed by the informant as a complaint, took cognizance on 10th March, 1978, when the complainant (informant) was examined on solemn affirmation. It is obvious that cognizance cannot be taken twice over for the same offence [see the case of (3) Jamuna Singh and Others Vs. Bhadaï Sah, . Even in the case of (4) Aditya Narain Rai Vs. Ramasis Rai and Others, , relied upon on behalf of the State, it was held that cognizance can be taken only once and where cognizance had been taken on a complaint having been filed even though the case was started on the submission of a chargesheet by the police, it was deemed to be a complaint case. Merely because in the impugned order the learned Magistrate has stated that two separate proceedings for the purposes of commitment were being amalgamated, it cannot be said that there were two separate cases. For the reasons given above, the impugned order cannot be sustained and is, hereby, set aside. The application is allowed.