
(1975) 08 SHI CK 0002

In the High Court Of Himachal Pradesh

Case No : Criminal Revision No. 35 of 1974

Roshan Lal

APPELLANT

Vs

The State of Himachal Pradesh etc.

RESPONDENT

Date of Decision : 05-08-1975

Acts Referred:

Constitution of India, 1950 — Article 227
Criminal Procedure Code, 1973 (CrPC) — Section 193, 193(1), 226, 227, 228
Essential Commodities Act, 1955 — Section 7, 9
General Clauses Act, 1897 — Section 6
Penal Code, 1860 (IPC) — Section 120B, 402, 409, 466

Citation : (1975) 4 ILR HP 531

Hon'ble Judges : D.B. Lal, J

Bench : Single Bench

Advocate : O.P. Sharma, for the Appellant; B. Sita Ram, General, for the Respondent

Final Decision : Allowed

Judgement

D.B. Lal, J.—This petition preferred under Article 227 of the Constitution as well as Section 401 of the Code of Criminal Procedure, 1973 is brought against the order of the learned Additional Sessions Judge, Kangra refusing to transfer the case u/s 228 of the said Code to the Chief Judicial Magistrate as the offences were not exclusively triable by the Court of Sessions. The matter arises in this way. The petitioner Roshan Lal along with three others were indicted for the offences under Sections 402, 466, 409 and 120B of the I. P. Code read with Sections 7 and 9 of the Essential Commodities Act, 1955. The learned Chief Judicial Magistrate held committal enquiry under the Code of Criminal Procedure, 1898 (hereinafter to be referred the Code of 1898) and committed the case for trial before the Court of Sessions vide his order dated 2-3-1970. Although the case was actually received by the Court of Sessions on 27-6-1970 yet no proceeding was taken and obviously the case was adjourned from one date to another. Finally the accused persons were summonsed for 26-4-1974 and on

that date the accused appeared or were brought before the Court in pursuance of the commitment of the case and the Court of Sessions was required to proceed u/s 226 of the Code of Criminal Procedure 1973 (hereinafter to be referred as the Code of 1973). At that stage an application was moved u/s 228 pointing out to the learned Sessions Judge that the four offences were not exclusively-triable by the Court of Sessions and therefore the Sessions Judge should transfer the case for trial by the Chief Judicial Magistrate. The learned Sessions Judge has not chosen to transfer the case, and by his order dated 27-4-1974 he has dismissed the Application u/s 228 of the Code of 1973. Against that order, the present proceedings have been instituted.

2. The learned Counsel submitted in the foremost that the learned Sessions Judge refused to exercise jurisdiction vested in him u/s 228 of the Code of 1973 which is, of course, a new provision to enable transfer of a case, where the offences are not exclusively triable by a Court of Sessions. As such he applied under Article 227 and wanted to invoke the power of superintendence reposed in this Court.

3 A reference was made before the learned Sessions Judge, as in this Court, to Section 484(2) of the Code of 1973 and it was submitted that the trial was not pending and as such the Code of 1898 was not applicable. The learned Sessions Judge has held that the trial was in fact pending and therefore the provisions of the Code of 1898 applied and since in the Schedule appended to that Code all the four offences were exclusively triable by a Court of Sessions, they were to be tried as such and no order of transfer could be made u/s 228 of the Code of 1973. The learned Counsel has tried to assail this argument and, to my mind, with stronger reasons. It is one thing to say that the learned Sessions Judge has taken cognizance but quite a different thing to say that the trial had commenced so as to attract Section 484(2) of the Code of 1973. The learned Sessions Judge no doubt took cognizance of the case no sooner the order of commitment was passed u/s 193 of the Code of 1898. This is so clear from the language used in Sub-section (1) of Section 193 and to that extent there could be no dispute. The question that falls for determination is, as to whether the trial was pending before the Court of Sessions. For that, reference can be made to Section 271 of the Code of 1898. This section stands in the following terms:

271. Commencement of trial-(1) When the Court is ready to commence the trial, the accused shall appear or be brought before it, and the charge shall be read out in Court and explained to him, and he shall be asked whether he is guilty of the offence charged, or claims to be tried.

Plea of guilty-(2) If the accused pleads guilty, the plea shall be recorded, and he may be convicted thereon.

It is evident from Section 271 that the commencement of trial begins when the accused appears or is brought before the Court and the charge is read out and explained to him. He is asked whether he is guilty of the offence charged or

claims to be tried. Till that stage the trial does not commence. Although in the Code of 1973 this Section is not repeated as such, yet u/s 228 after such consideration and hearing as under Sections 226 and 227, if the judge is of opinion that there is ground for presuming that the accused has committed an offence, the charge is framed and read out and explained to the accused, and he is asked whether he pleads guilty of the offence charged or claims to be tried. Taking assistance of Section 271 of the Code of 1898 the trial will commence at that stage. The opening of the case by the prosecution u/s 226 and discharge of the accused u/s 227 may be considered to be the commencement of the trial so far as the discharged accused are concerned. For those accused against whom an order of discharge cannot be made and the stage comes to Section 228, the trial commences only when the charge is read out and explained to the accused and he is asked either to plead guilty or claim to be tried. When the trial does not commence till that stage, how can the trial be considered pending at any subsequent stage? Before the learned Sessions Judge, in the instant case, the stage was yet of Sections 226 and 227 and the stage had not arrived of Section 228 when the trial could be stated to have commenced. When the trial had not commenced, how could the trial be stated to be pending ? Thus the learned Sessions Judge clearly fell into an error by holding that the trial was pending.

4. In this view of the matter when the trial was not pending, the provisions of the Code of 1973 applied. Section 228 is introduced because from the Schedule quite a number of offences have been taken away from being tried by a Court of Sessions. It is conceded that two of the offences under Sections 409 and 466 were not triable by a Court of Sessions. As such the offences were not exclusively triable by the Court of Sessions and an order u/s 228 was needed which the learned Sessions Judge refused to pass. As such he did not exercise jurisdiction vested in him and the Court proceeding has to be set right by the application of Article 227.

5. The learned Adv. General pointed out that Section 228 will not enable this Court to quash the commitment order which was validly made by the Court. He borrowed the analogy of Section 6 of the General Clauses Act and argued that the repeal of an enactment does not destroy the right which has been created under the repealed enactment. In short, his argument is that the commitment order was validly made and the said order has to be sustained. There is a flaw in this argument. Section 228 is a specific provision which curtails the jurisdiction of the Court of Sessions for a variety of offences which have been removed from the Schedule and such offences are not exclusively triable by a Court of Sessions. This is an enabling provision which applies, after the commitment order is made and the petitioner has sought application of this provision for transfer of case. There is no question regarding quashing of the commitment order. The law has provided a procedure and since the Code of 1973 applies, the said procedure has to be followed. Thus the present case is not one in which commitment order is to be quashed but one regarding application of Section 228 which is a provision meant to be followed. The commitment order is made and

was correctly made. Now Section 228 has come in and it has got to be complied with.

6. The learned Adv. General further contended that a revision against an interlocutory order is specifically barred under the Code of 1973. Nevertheless in an appropriate case Article 227 can be applied. In my opinion, the present case falls in that category. If the learned Sessions Judge has not exercised jurisdiction vested in him, the High Court can interfere in exercise of its power of superintendence.

7. The petition is allowed, and the order of the learned Additional Sessions Judge is quashed. He shall transfer the case to the Chief Judicial Magistrate u/s 228 and shall pass any appropriate order in compliance of that Section.