
(1959) 08 BOM CK 0005

In the Bombay High Court

Case No : Criminal Revision Application No. 171 of 1959

Shankarlal Bholaram

APPELLANT

Vs

Mohammad Ayyub, Madaran Momin and Others

RESPONDENT

Date of Decision : 07-08-1959

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 190(1), 203

Citation : AIR 1960 Bom 116 : (1959) 61 BOMLR 1642 : (1960) CriLJ 326

Hon'ble Judges : Kotwal, J

Bench : Single Bench

Advocate : M.N. Phadke and V.M. Golwalkar, for the Appellant; M.S. Nandedkar, for the Respondent

Judgement

(1) This is an application for revision directed against an order passed on 20-1-1959 by Mr. G. R. Dewaika, Magistrate First Class, Kamptee, dismissing a complaint filed by the applicant Shankarlal against the four opponents.

(2) The complaint was filed on 6-10-1958 and the complainant Shankarlal was examined on 13-10-1958. Thereafter a police challan came to be filed before the same Magistrate on 21-10-1958. The challan alleged substantially the same facts and made out the same offences. The Magistrate, however, for some reason returned the challan. It was re-presented before him on 27-10-1958 when he felt that it was triable by a Second Class Magistrate and therefore ordered it to be sent to such a Magistrate after obtaining orders of the Additional District Magistrate. In consequence of this order, he further ordered on 28-10-58 that the complaint filed on 6-10-58 should be stayed to await the decision of the Additional District Magistrate upon the challan.

(3) Meanwhile the applicant applied for transfer of his complaint upon the ground, amongst others, that the Magistrate had already pronounced his opinion that the offences complained against in the complaint were triable by a Second Class Magistrate. The transfer application was dismissed by the Additional District Magistrate; but in passing the order the Additional District Magistrate observed

that the offences disclosed both in the challan and in the complaint were triable by Mr. Dewalkar himself, that is to say, a First Class Magistrate. Thus both the challan and the complaint went back to the file of Mr. G. R. Dewalkar. Thereafter he passed the impugned order on 20-1-1959 which is as follows:

"Already case No. 1500 of 1958 has been registered on these very facts on the report of the police. There cannot be two proceedings on the same allegations against the same accused by the same parties. This complaint which redundant is therefore dismissed File."

(4) Now, it is to be noticed that after the Additional District Magistrate had expressed the view that both the complaint and the challan were triable by Mr. Dewalkar, both of them were before the learned Magistrate. The complaint was filed earlier and if at all the Magistrate had a choice to make he might have exercised his choice in favour of retaining the complaint and dismissing the challan but it seems to me that the Magistrate had no such choice in the instant case.

(5) The complaint could not have been dismissed. Section 203 of the Code of Criminal Procedure confers a power on the Magistrate to dismiss a complaint.

"If after considering the statement on oath (if any) of the complainant . . . there is in his judgment no sufficient ground for proceeding."

The sufficient ground which the Magistrate advanced in the instant case was that there could not be two proceedings against the same accused by the same parties I do not see how the Magistrate could have come to the conclusion that there would have been two proceedings having regard to the provisions of section 190(1) of the Code of Criminal Procedure to which no reference appears to have been made by the Magistrate.

(6) Under S. 190(1), a Magistrate is empowered to take cognizance of an offence upon three grounds: (a) upon receiving a complaint of facts which constitute such offence; (b) upon a report in writing of such facts made by any police officer; and (c) upon information received from any person other than a police officer, or upon his own knowledge or suspicion, that such offence has been committed. Therefore, the Magistrate in the instant case could certainly have cognizance of the offence upon the complaint filed before him. There is nothing in sub-section (1) of S. 190 to indicate that the grounds for proceeding are mutually exclusive, and that if one of the grounds is already there, the Magistrate must reject a request to proceed on other grounds as he has done in the decision of a Division Bench of the Rajasthan High Court reported in *Mukania and Another Vs. Achalia and Others*, . Chief Justice Wanchoo delivering the Judgment on behalf of the Division Bench after quoting section 190(1), laid down:

"it is open to a Magistrate to act on any one of these three grounds but these three grounds are not, in our opinion, mutually exclusive and it is possible for a Magistrate to take cognizance of any offence upon two or more of such grounds

e.g., both upon receiving a complaint and on a police report. We may, in this connection, refer Pat 473 which is a Full Bench decision. In that case it was held that the alternatives upon which a Magistrate might take proceedings could not be treated as mutually exclusive and it was not correct to say that a Magistrate while taking cognizance of an offence should have done so under some one of the alternatives to the exclusion of the other. It follows therefore, that if a Magistrate has both a complaint and a police report before him about the same offence he can take cognizance of that offence on the basis of both. The further question whether after taking cognizance on the basis of both, he can amalgamate them and hold a joint trial of the accused named in the police report as well as in the complaint depends upon section 239 of the Criminal P. C. and the discretion of the Magistrate, which has to be exercised according to the circumstances of each case."

The application for revision is allowed and the order dismissing the complaint is set aside. The complaint shall now be amalgamated and tried jointly with Criminal Case No. 1500 of 1959.

(7) Revision allowed.