
(1982) 07 SHI CK 0006
In the High Court Of Himachal Pradesh

State of Himachal Pradesh

APPELLANT

Vs

Madho Ram and Others

RESPONDENT

Date of Decision : 14-07-1982

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 407, 409
Penal Code, 1860 (IPC) — Section 302

Citation : (1983) CriLJ 65 : (1982) ShimLC 345

Hon'ble Judges : Vyas Dev Misra, C.J

Bench : Single Bench

Judgement

Vyas Dev Misra, C.J.—These two references have been made by Sessions Judge, Kangra. These arise out of the same incident.

2. Madho Ram, Bansi Lal, and Jonki Ram accused were duly committed by the Chief Judicial Magistrate, Kangra, to the Court of Session, for standing trial u/s 302 of the Penal Code. The trial was duly held and before the arguments could be concluded, it was brought to the notice of Sessions Judge that a cross case arising out of the same incident was pending trial whose proceedings had been stayed. The parties requested the Sessions Judge that that case should also be tried. The Sessions Judge, by his order dated 31st Aug. 1981, deferred the arguments in the Sessions trial till evidence in the counter case was recorded.

3. The present Sessions Judge succeeded to the then Sessions Judge who passed the aforementioned order. When the case came up for hearing before the present Sessions Judge, he was not sure whether he could try the second case (Sessions Trial No. 11 of 1980). The doubt had arisen because, according to the Sessions Judge, there has to be a commitment u/s 209 of the Cri P. C. before the Sessions Judge could take cognizance of a case. This commitment could only be done in respect of cases which are exclusively triable by the Court of Session. Since the case, which has been transferred from the court of Magistrate, was not exclusively triable by the Court of Session, the Sessions Judge was doubtful whether he had the jurisdiction to proceed with the case.

4. Learned Counsel for all the parties concede that the Sessions Judge could try it. However, I have decided to look at the law to satisfy myself about the powers of the Sessions Judge.

5. It is no doubt true that after commitment u/s 209 of the Cr. P.C. the Sessions Judge gets the jurisdiction to take cognizance and try the cases which are exclusively triable by him. However, there are other provisions in the Cr. P.C. which give jurisdiction to the Sessions Judge to try the cases without their having been committed under Rule 209 of the Code. For example Sub-section (2) of Section 199 of the Code gives jurisdiction to the Court of Session to take cognizance of an offence falling under Chap. XXI of the Code when it is alleged to have been committed against the President of India or other persons named in this sub-section. Even Section 323 of the present Code gives a right to a Magistrate to commit a case to the Court of Session. It reads:

If, in any inquiry into an offence or a trial before a Magistrate, it appears to him at any stage of the proceedings before signing judgment that the case is one which ought to be tried by the Court of Session, he shall commit it to that Court under the provisions hereinbefore contained and thereupon the provisions of Chapter XVIII shall apply to the commitment so made.

This envisages a situation where an offence is being tried by the Magistrate and the Magistrate thinks that it ought to be tried by the Court of Session. One of the circumstances may be that out of the same incident an accused may have committed an offence, say, u/s 302 of the Penal Code and another offence under the Arms Act. Now, the first offence is exclusively triable by the Court of Session whereas the second offence can be tried by the Magistrate. The Magistrate may commit the second case to the Court of Session on the ground that it ought to be tried by the latter. In other words u/s 323 the Magistrate may commit a case to the Court of Session though it is not exclusively triable by the latter.

6. It appears that the cross case under Sections 447, 325, 323, 379 read with Section 149 of the Penal Code was being tried by the Magistrate. He had examined one witness when he was informed that the cross case u/s 302 of the Penal Code had been committed to the Court of Session. The learned Counsel for the parties requested the Magistrate to transfer the case pending before him to the Court of Session since it arose out of the same incident. Reliance was placed on *Girijananda Bhattacharyya and Another Vs. The State of Assam and Others*, Thereafter, the Magistrate committed the case by an order dated 26th Nov., 1970 to the Court of Session.

7. Now, in the aforementioned case, which follows various decisions of the High Court of Madras, it was ruled that where two cases, one exclusively triable by the Court of Session and the other triable by the Magistrate, arise out of the same incident, it is in the interest of justice that both the cases should be tried together by the Sessions Judge. Of course, in that case the High Court was exercising its powers of transfer under the provisions of Section 407 of the Cr.

P.C. But the same reason can be used by the Magistrate for coming to the conclusion u/s 323 of the Code that the case ought to be tried by the Court of Session.

8. Now, the procedure to be adopted in such cases has been laid down as under:

It is a generally recognized rule that such cases should be tried in quick succession by the same Judge, who should not pronounce judgment till the hearing of both cases is finished.

This precludes the danger of an accused being convicted before his whole case is before the Court, and also prevents there being conflicting judgments upon similar facts.

9. A Division Bench of the Bombay High Court in *Anil Bhaskar Sonavane Vs. The State of Maharashtra*, considered the import of Section 323 of the Code. It observed:

Under Section 323 two contingencies might arise. When the charge is laid before the Magistrate in the form of a police report or otherwise, the offence disclosed may be exclusively triable by the Court of Session. When evidence is led it might transpire that the offence is exclusively triable by the Court of Session and the Magistrate has no option in that case but to commit the case for trial to the Court of Session. There may be another eventuality, where the offence will be triable by him and not exclusively by the Court of Session. However, in the circumstances, as we have detailed above in the present case cross complaints arise out of the same incident and it is desirable in view of the principle laid down by this Court that the two cases ought to be tried in quick succession by the same presiding Judge, if one of them is exclusively triable by the Court of Session, the Magistrate undoubtedly has no right to try that case, and Court of Session can try a case relating to any offence under the Penal Code as provided in Section 26 of the Code. The High Court and the Court of Session have been authorised to try any offence under the I.P.C. In these circumstances the Magistrate who is unable to try the other case must direct that the cross case arising out of the same incident requires to be tried by the same Court in view of the principle laid down by the case law of this Court and the compliance with that principle is possible if the other case, which is triable by him, is also committed to the Court of Session for trial along with the other case already committed.

It was further observed that the proper procedure would be that both the cases should be tried in quick succession. The first case should be completely heard and the decision reserved. Thereafter the second case should be heard. The judgment in both the cases should be pronounced simultaneously. However, the Judge should keep in view the fact that the evidence recorded in one case cannot be used in the other case. In other words, the decision in each case must be based on the evidence recorded in that case only.

10. In these circumstances I find that there was nothing wrong in the Magistrate

committing the case for trial to the Court of Session, It may be pointed out that even the Court of Session or the High Court could have transferred this case for trial to the Court of Session under Sections 409 and 407 respectively.

11. The references having been answered, the records be sent back to the Sessions Judge for proceeding with the case. The parties are directed to appear before the Sessions Judge on 9th Aug., 1982.