(1951) 06 BOM CK 0005

In the Bombay High Court

Case No : Criminal Application for Revision No. 1425 of 1950

The State of Bombay APPELLANT

Vs

Ramgopal Ganpatrai Ruia RESPONDENT

Date of Decision : 22-06-1951

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 209, 209(1), 210, 211, 212
Penal Code, 1860 (IPC) — Section 109, 405, 409

Citation : AIR 1952 Bom 76 : (1951) 53 BOMLR 827 : (1952) ILR (Bom) 189

Hon'ble Judges : Vyas, J;Bhagwati, J

Bench : Division Bench

Advocate : N.K. Petigara, Public Prosecutor, B.D. Boovariwala, B.G. Thakor, C.N. Kanuga and Upadhya, for the Appellant; M.P. Amin and S.A. Desai, Public Prosecutor Khambata, instructed by Pathare and Liladhar, for the Respondent

Judgement

Vyas, J.—(His Lordship after dealing with the facts and the evidence in the case proceeded in his judgment as follows:) This takes us immediately to the point about the powers of a Magistrate in a committal enquiry. Is he entitled to consider and weigh the evidence, and if so, to what extent and with what objective ? In this context our attention was invited by Mr. Amin to the decision of ''Emperor v. Ram-Chandra Gore'', 137 Bom L R 16. It was a case in which the accused was charged with the murder of his second wife Tulsa and the only material evidence was that of a witness who said that he had seen the dead body of the woman alleged to have been murdered being brought out of the hut of the accused and thrown into a well. The Magistrate considered that evidence and weighed it and came to the conclusion that it did not afford sufficient ground for committing the accused to the Court of Session. He accordingly discharged the accused. On revision to the Court of Session, the Sessions Judge set aside that order, and in further revision application to the High Court, the order of the Sessions Judge was set aside. It was held in that case that the committing Magistrate was entitled to weigh and appreciate the evidence led on behalf of the prosecution and on behalf of the defence, and, if, on a consideration of this evidence, at any stage of the preliminary enquiry, the Magistrate was of opinion that there were no sufficient grounds for committing the accused for trial, in other words there was no case which would fairly justify or sustain a conviction at the trial, or no evidence on which any reasonable person could hold the accused to be guilty, then it was his duty to discharge the accused. It was also held that the expression "sufficient grounds" meant when there was credible evidence which, if believed, would lead to a conviction of the accused. In the course of his judgment the learned Chief Justice observed that if the Magistrate came to the conclusion that there was evidence to be weighed, he ought to commit the accused for trial and he ought not to discharge the accused merely because he thought that if he were to try the case himself he would not be prepared to convict the accused on the evidence before him. But, said his Lordship, if he came to the conclusion that the evidence for the prosecution was such that no tribunal, whether a Judge or jury, could be expected to convict the accused, then he ought to discharge him. Mr. Justice Rangnekar, who also delivered a judgment in that case, pointed out that it seemed to him impossible to hold upon the plain construction of Ss. 209, 210, 211, 212 and 213 of the Code of Criminal Procedure that the Magistrate was a mere recording machine,--a view often pressed before the Courts. In his Lordship''s opinion these sections showed that a Magistrate holding an inquiry had wide powers, and for the proper and effective exercise of the same, he must weigh and appreciate the evidence before him. The question that arose in that case was whether it could be said that there were "sufficient grounds" for committing the accused for trial. The words "sufficient grounds" were considered In ''Queen Empress v. Namdev Satvaji'', 11 Bom 372 and the test which was laid down there was that when credible witnesses made statements which, if believed, would fairly sustain or justify a conviction at the trial, the Magistrate must commit the accused for trial. Ultimately Rangnekar J. summed up his view in the following terms (p. 27) :

...In my opinion the test laid down in this case is correct. To put it in simple language, all that the Magistrate has to see is whether there is a ''prima facie'' case on which the accused can be put on his trial. In most cases no difficulty arises, but cases do occur which are on the border line as to which no hard and fast rule can be Had down. But I do not see why a Magistrate cannot discharge the accused when on a consideration of the whole of the evidence before him he is of opinion that there is no credible evidence against the accused. I do not see why he cannot say so. There is no harm in taking this view as the Magistrate has to give his reasons, and if they do not appeal to the Sessions Judge, it is, as I shall presently show, open to him to set aside the order.

Mr. Amin for the accused has strongly relied on these observations and has sought to justify the order of discharge passed by the Magistrate, which order, according to Mr. Amin, was passed after a due consideration and weighing of the evidence before him.

The next case to which our attention was invited was ''Emperor v. Varjivandas'', 27 Bom 84. It was observed by Crowe J. who delivered the judgment of the Court in that case, that the words in Section 209 of the Code of Criminal Procedure, 1898, "sufficient grounds for committing" had been explained to mean, not grounds for convicting, but where the evidence was sufficient to put the accused on his trial, and such a case arose when credible witnesses made statements which, if believed, would sustain conviction. His Lordship said that the weighing of their testimonies with regard to improbabilities and apparent discrepancies was more properly a function of the Court having jurisdiction to try the case. It was not necessary, said his Lordship, that the Magistrate should satisfy himself fully of the guilt of the accused before making a committal. It was his duty to commit when the evidence for the prosecution was sufficient to make out a prima facie case against the accused, and he exercised a wrong discretion if he took upon himself to discharge an accused in the face of evidence which might justify a conviction. On this case Mr. Amirt has relied for contending that the Magistrate was justified in weighing the evidence and on this very case Mr. Boovari-wala has relied for his submission that the Magistrate exercised his discretion wrongly in coming to the conclusion that even after considering the mass of material in the case no Court would possibly come to a conclusion that the accused were guilty.

2. Another case to which our attention was invited was ''In re Bai Parvati'', 35 Bom 163. It was a case in which one Bai Parvati was accused of having attempted to commit murder by pushing another woman Jadav into a well. Parvati, the accused, was the mistress of Jadav''s husband, and a good deal of evidence was led for the prosecution. The Magistrate having heard all the evidence tendered came to the conclusion which he expressed in the following words (p. 165):

After having closely gone through the evidence as a whole I find that it will be a mere waste of the Sessions Court''s very valuable time if I commit the accused to it to take her trial there when I myself see that there are not sufficient grounds for committing her.

So saying, he discharged Bai Parvati u/s 209 of the Code of Criminal Procedure. The said order of discharge was set aside by the Sessions Judge, and from that order of the Sessions Judge an application was made to the High Court in revision. The High Court set aside the order of the Sessions Judge. In setting it aside it was observed by Mr. Justice Batchelor, who delivered the judgment of the Court, that the Sessions Judge himself did not materially dissent from the Magistrate in his view of the effect of the evidence which was tendered in the case and that upon the Sessions Judge''s own estimate of the value of the evidence the Magistrate was, in his Lordship''s view, within his rights in ordering the discharge of Bai Parvati and in considering that she should not be exposed to the expense and harassment of a Sessions trial which was practically foredoomed to failure. On this case also Mr. Amin has relied for his submission that, as observed by the learned Magistrate, a committal of this case to the Court of

Session would entail a waste of public time and harassment of the accused. On the other hand, it is contended by Mr. Boovariwala that it would not be a waste of time, but that the time would be profitably spent in the interests of the commercial morality.

3. The next case to which we are referred is ''Emperor v. Bai Mahalaxmi'', 17 Bom L R 910, in which the Sessions Judge had come to a conclusion that the Magistrate who had discharged the accused had strained his powers and had himself cross-examined the prosecution witnesses. The Sessions Judge had further held that it was no part of the duty of the committing Magistrate to decide about the truthfulness of witnesses. With that view of the learned Sessions Judge, Mr. Justice Shah who delivered the judgment of the Court was unable to agree. His Lordship said (p. 915):

.....It has been pointed out in a number of cases of this Court, of which I need refer to only one -- ''In re Bai Parvati'', 35 Bom 163 -- that if the evidence tendered for the prosecution is totally unworthy of credit, it is not only within the power of the Magistrate but it is his duty to discharge the accused u/s 209 of the Criminal P. C. It seems to me that in this case the Magistrate was well within his powers in cross-examining the prosecution witnesses and in considering whether the witnesses examined on behalf of the prosecution were credible.

Mr. Amin has relied on this case for submitting that not only was the Magistrate Justified in weighing the evidence, but even justified in cross-examining the prosecution witnesses in order to find out whether there were sufficient grounds for committing the accused person to a Court of Session.

4. The last case which is brought to our notice (by Mr. Boovariwala) is the case of ''Manikka Padayachi v. King Emperor'', 48 Mad 874. In that case the First Class Magistrate of Udaiyarpalaiyam had discharged all the accused, and the District Magistrate at Trichinopoly, setting aside the said order of discharge, had committed the accused for trial to the Court of Session at Trichinopoly. On a criminal revision application being made to the High Court, it was observed by Mr. Justice Shrinivasa Ayyangar that it was clear from the Code of Criminal Procedure that only one trial was contemplated and that the inquiry before the Magistrate in cases triable by a Court of Session was only in the nature of a preliminary inquiry. Mr. Justice Ayyangar went on to say that Sections 209 and 210 of the Criminal Procedure Code spoke only of there being or not being sufficient grounds for committing the accused for trial. When the Legislature speaks of sufficient grounds for committing for trial, it should not be supposed to have spoken of sufficient grounds for conviction, and similarly when the Legislature speaks of there not being sufficient grounds for committing for trial, it should not be supposed to have spoken of there not being sufficient grounds for conviction. His Lordship went on to say (p. 878):

It follows from this that the intention of the Legislature clearly is to make a distinction between grounds for conviction and grounds for committing for trial.

Satisfactory proof of the guilt of the accused is the ground for conviction. What then is the ground for committing for trial? Satisfactory evidence to go to trial must be regarded as the ground for committing for trial,

Consistently with these observations, it was held in that case that whenever the evidence was of such a nature that the guilt of the accused could be held to be proved or disproved only as the result of the valuing and weighing it by him, the Magistrate must commit the accused to the Court of Session; but if the evidence was of such a nature that no reasonable person would ever on that evidence hold the accused guilty, he must be discharged u/s 209 (1) of the Code of Criminal Procedure.

5. The legal position which emerges from the examination of these cases is that the Magistrate in a committal proceeding is entitled to examine and weigh the evidence, not for the purpose of deciding whether it would definitely result in conviction, but with a view to see whether the evidence is such as would lead to an expectation of a probable conviction. He is to consider the evidence in order to see whether there is a prima facie case which would justify committal to the Court of Session, a prima facie case which should go to the jury for ultimate decision. In other words, he should approach the evidence and go into it to decide whether he should commit or not. The correct position is not that he should commit the case to the Sessions Court only if a conviction, in his opinion, is bound to follow . If there are circumstances for and against, if there are probabilities for and against, if there is evidence for and against with which there is nothing wrong prima facie, which on an appraisement by the jury may lead to a conviction or may not, his duty is to commit the case and not discharge the accused. The test is that if there is credible evidence which, if accepted, may lead to conviction, he ought to commit. If the Magistrate comes to the conclusion that the evidence is such that no Court would ever convict, he should not commit the case. In other words, if the state of the evidence is such that in a Sessions Court the Judge, at the very outset, is likely to withdraw the case from the jury on, the ground of there being no evidence, or if he is likely, at the end, to direct the jury that ; they must acquit the accused for absence of credible evidence, he ought not to commit. Now, therefore, the point in this case is, can we say that the evidence is such that the Judge is in all probability likely to withdraw the case from the jury on the ground of there being no evidence. We have already been pointed out by Mr. Boovariwala in this case that the purchase memos are in the name of fictitious suppliers. It has also been brought to our attention that the various cheques were cashed not by the sellers or their representatives, but by the employees of the mills. We have also been referred to several receipts which were signed by Ganeshram Girdharlal and accused No. 2 for the fictitious agents of the fictitious persons. We have also been pointed out that in almost all the cases except two, the sales took place after the purchases. We have also been shown that the same number of bales of the identical classifications were purported to have been purchased and sold. If we turn to the Cotton Movements Information Form, we find that none of the alleged purchases was entered in

column No. 3. We have also been told that there were notifications of Government to the effect that the mills could not sell cotton to private individuals without the permission of the Textile Controller. The question, therefore, is, whether in face of this mass of material the Magistrate exercised his discretion properly in coming to the conclusion that no Court would ever convict the accused of a charge of criminal breach of trust. In our opinion, in coming to that conclusion, he exercised the discretion vested in him by Section 213 of the Code of Criminal Procedure improperly. In our view, he was further in manifest error in failing to appreciate that between September and December 1945 there were extensive transactions of purchases of cotton bales by accused No. 1 as the managing agent of the mills, and that entries in regard to those dealings had to be made and were made in the books of the mills, and that if a person wanted to dovetail 3 few bogus transactions in between, he would naturally dovetail the entries about them also in all the books, registers and documents of the mills. These entries are inter-connected and one entry cannot be made without making all the rest having any bearing on it. In our view, the Magistrate does not seem to have appreciated these circumstances of the case also.

6. There is another important question to which also we would like to refer. Mr. Amin''s strenuous contention has been that in this case, according to the books, the delivery of goods had taken place, and it is argued by him that if we are satisfied that the delivery of the goods was there, the charge of criminal breach of trust must fail. Therefore, a point arises as to what bearing the question of the delivery of goods has got on the question of the establishment of the charge of criminal breach of trust. In this context it is necessary to remember that the charges as framed against accused Nos. 1 and 2 do not contain any reference to the delivery of goods. If we turn to S. 405 of the Indian Penal Code we find that it says thus:

Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits ''criminal breach of trust''.

It would, therefore, have to be seen whether accused No. 1 in this case was entrusted with the domain over the funds of the mills. It is to be remembered, and it is not disputed, that accused No. 1 was in routine course drawing on the funds of the mills, by means of cheques, for the purposes legitimately connected with the mills. It is to be significantly remembered in this context that accused No. 1 was also a managing director of the managing agency firm of E. G. & Sons, Ltd. It is, therefore, clear that he was the managing agent of the mills, and a question would have to be considered whether a managing agent of the mills, who, in his day to day duties in regard to the conduct of the affairs of the mills, was drawing cheques and drawing on the funds of the mills, was or was not entrusted with the domain over the monies and funds of the mills. Supposing the jury were to come to the conclusion (and we arc expressing no opinion about it) that accused No, 1 was entrusted with the domain over the funds of the mills, supposing further (and here again we are expressing no opinion) that they were to come to the conclusion that the persons referred to in the purchase memos and sale memos were fictitious persons, and supposing still further that they were to come to the conclusion that the monies which were realised by the cashing of the cheques went into the account of accused No. 1 in the Netherland Trading Society and into the account of the Dhanraj Mills, of which accused "No. 1 was the managing agent, in the Bank of India, Ltd., the question for them to consider would be whether the prosecution must fail simply because the delivery of the goods was taken by the mills. Normally, if a seller sells his goods, the monies due under the cheque would go to him. But here we find that as many as 278 notes of the denominational value of thousand rupees each went into the account of accused No. 1 in the Netherland Trading Society. In these circumstances, the question with which the jury will have to be concerned would be whether there was a dishonest appropriation of the funds of the mills by accused No. 1 for his own purposes. We need not speculate whether the bales were supplied by accused No. 1 himself, for that is not the case of accused No. 1. But supposing the jury were to spell out for themselves that accused No. 1 was himself the supplier, they would still have to consider whether these transactions would amount to an offence of criminal breach of trust by him having regard to his position as managing director of the managing agency firm of the mills and also a managing agent of the mills. It is clear to us from a careful perusal of the judgment of the Magistrate that he has not paid adequate attention to these numerous questions which arise in this case while directing the discharge of the accused on a charge of criminal breach of trust. In our view if this case is committed to the Court of Session, it would not amount to a waste of public time, but the time would be well spent in the interests of the commercial morality, looking to the charges which have been made against accused Nos. 1 and 2 and looking to the enormity of the amount involved.

7. That being so, we allow the application, set aside the order of the learned Magistrate and direct that accused Nos. 1 and 2 shall stand committed to the Court of Session, accused No. 1 for a charge u/s 409 of the Indian Penal Code and accused No. 2 for a charge u/s 409 read with Section 109 of the Indian Penal Code. We are committing the accused on the charges as they were framed and directed to be framed by Bavde-kar and Chainani JJ., on March 1, 1950, and as adopted by the learned Magistrate himself On March 20, 1950.

8. The accused to be taken in custody. Both the accused shall be released on the same bail on which they were released in the Court of the Magistrate. A fresh bail bond to be executed by both the accused before the Registrar, High Court. One surety for Rs. 10,000 to be given by each accused and a personal recognizance to the same extent also to be given by each.

