

(1977) 12 AHC CK 0072
In the Allahabad High Court
Case No : Criminal Revision No. 1461 of 1977

Waqar Ahmad and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 06-12-1977

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 209
Penal Code, 1860 (IPC) — Section 307, 323, 324

Citation : (1978) ACR 87

Hon'ble Judges : V.N. Varma, J

Bench : Single Bench

Advocate : Palok Basu, for the Appellant; Kamini Mohan, for the Respondent

Final Decision : Allowed

Judgement

(Para 3) Cases Referred: V.N. Varma, J.—This revision is directed against an order dated 10--9--77 passed by Sessions Judge, Ghazipur directing the Magistrate concerned to commit the case against the applicants to the Court of Session for standing their trial u/s 307 IPC.

2. The case put forward by the prosecution was that the applicants had assaulted O. P. No. 2 (Rizwan) and one Kuddu causing several injuries to them. The injuries received by Rizwan were in the nature of lacerated wounds, contusions and incised wounds. The injuries received by Kuddu were in the nature of lacerated wounds and contusions. The injuries of both of them were, however, found to be simple. The investigating Officer recorded the statements of material witnesses, perused the injury-reports of Rizwan and Kuddu and submitted a charge-sheet against the applicants u/s 307 IPC in the Court of Additional Munsif Magistrate, Ghazipur. Before the Additional Munsif Magistrate could make an order of commitment u/s 209 Code of Criminal Procedure, the applicants filed an application before the learned Magistrate wherein it was inter alia, stated that the facts alleged against them did not constitute an offence u/s 307 IPC. A prayer, therefore, was made by them that they should not be committed to the

Court of Session as the offence alleged against them was not exclusively triable by the Court of Session. The learned Magistrate went through the material on record and feeling satisfied that prima facie no offence u/s 307 IPC was made out against the applicants, allowed their application and refused to commit them to the Court of Session. At the same time he remarked that the case before him shall proceed as a warrant case under Sections 323 and 324 IPC and if after the evidence had been recorded, he came to the conclusion that a prima facie case u/s 307 IPC was made out, he would commit the applicants to the Court of Session at that stage. O. P. No. 2 felt dissatisfied with the order passed by the learned Magistrate and went up in revision to the Court of Session. The Sessions Judge was of the view that as a charge-sheet u/s 307 IPC had been submitted against the applicants, the Magistrate was left with no option but to commit the case to the Court of Session. Accordingly, he allowed the revision, remanded the case to the Court of Addl. Munsif Magistrate and directed him to commit the case against the applicants to the court of Session. Aggrieved, the applicants have come up in revision to this Court.

3. The learned Counsel for the applicants contended that the order passed by the learned Sessions Judge in this case was not in accordance with law and must, therefore, be struck down. I think this contention of the learned Counsel is not incorrect. Section 209 Code of Criminal Procedure deals with commitment of cases to the Court of Session. This section says that when in a case instituted on a police report 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 commit the case to the Court of Session. The question is whether he is to be guided solely by what is written in the police report and act upon it blindly or he is to exercise his own discretion in the matter and commit the case to the Court of Session only when it "appears" to him that the offence is triable exclusively by the Court of Session. According to the learned Counsel for the opposite parties, the Magistrate has to act blindly on the report of the police and if it is mentioned in the police report that the case is one which is triable exclusively by the Court of Session, then the Magistrate has no option but to commit the case to the Court of Session. I am afraid I cannot persuade myself to agree with this contention of the learned Counsel because if his contention were to be accepted, then the position of the Magistrate would become that of a dummy and he would be deprived of all his judicial discretion in the matter. In that event the word "appears" occurring in Section 209 would become redundant and lose all its significance. The word "appears" denotes that the discretion is always with the Magistrate to find out whether the case of which he is seized, is triable by the Court of Session or not. To say that the Magistrate has no discretion in the matter and he is bound to commit the case to the Court of Session in the light of the" police report would be doing violence to the language of Section 209. The Magistrate is not to be solely guided by what the police has stated about the nature of the offence in its report. He has to scan the material placed before him and then come to his own conclusion whether the offence

committed by the accused is an offence triable exclusively by the Court of Session or not. To hold a view contrary to this would mean subordinating the judgment of the Magistrate to that of the police. This could never have been the intention of the law makers. A simple illustration will make the position clear. Suppose A assaults B with a lathi and causes some injuries to him. Those injuries are found to be simple and located on non-vital parts of B's body. If despite this the Investigating Officer chooses to submit a charge-sheet against A u/s 307 IPC, can the Magistrate be said to be in the wrong when he does not commit A to the Court of Session and instead himself proceeds to decide the case against A as a warrant case u/s 323 IPC ? In my opinion, the Magistrate would certainly not be in the wrong in adopting this course. As one charged with the duty of performing judicial functions, the Magistrate is not to go blindly by what the police mentions in the charge-sheet, but he has to apply his" own mind to the facts of the case. If on the facts of the case it appears to him that the case is exclusively triable by the Court of Session, then and then alone he has to commit it to the Court of Session, and not otherwise.

4. In his judgment the learned Sessions Judge has referred to Lakshmi Brahman and Another Vs. State, and on the basis of that case has remarked that if according to the police report the case is one exclusively triable by a Court of Session, then the Magistrate has got to pass an order committing the case to the Court of Session u/s 209 Code of Criminal Procedure. I have gone through Lakshmi Brahman's case carefully and I find that it no where lays down the legal position as stated by the learned Sessions Judge in his judgment. What the learned Judges have said is that "Section 209 of of the Code merely requires the Magistrate taking cognizance of an offence on the basis of a police report, to look into the report and if he finds that the case is triable exclusively by the Court of Session, to make an order committing the case to Sessions". These remarks cannot be construed to mean that if the police report mentions that the case is one which is exclusively triable by the Court of Session, then the Magistrate is left with no option but to commit the case to the Court of Session. The Magistrate is to commit the case to the Court of Session only "if he finds" that the case is triable exclusively by the Court of Session. Thus, the discretion of the Magistrate to find out whether the case before him is or is not triable by the Court of Session, has in no way been eroded by Lakshmi Brahman's case.

5. In the instant case, seeing the injuries of Rizwan and Kuddu the Magistrate was of the opinion that the case against the applicants is not one which is exclusively triable by the Court of Session. This opinion of the Magistrate cannot be said to be wrong because the injuries which the injured persons had received were simple in nature. The Magistrate, therefore, rightly allowed application 18-B and refused to commit the applicants to the Court of Session. The order passed by the Sessions Judge setting aside the order of the Magistrate was uncalled for and cannot, therefore, be allowed to stand.

6. In the result, I allow this revision and set aside the impugned order dated

10--9--1977. Order dated 30--7--1977 passed by the Magistrate is confirmed.