

State Through Bhagwati vs Bansu Singh And Ors. on 5 June, 1950

Equivalent citations: AIR1951ALL246

Author: V. Bhargava

Bench: V. Bhargava

ORDER

V. Bhargava, J.

1. This is an appln. for revn. of an order passed by the learned Ses. J. of Gorakhpur directing commitment of a case to the Ct. of session. It appears that in this case the accused appcts. were charged with committing offences punishable under Sections 147, 323 & 326, Penal Code. All these offences are triable by a Mag. & in such a case it is the function of the Mag. to weigh the evidence, come to a finding whether there is enough evidence to frame a charge & thereafter either to proceed to complete the trial & pass an order of acquittal or conviction, or to commit the case to the Ct. of Session if the Mag. considers that it is a fit case which should be tried by the Ct. of Session. There was a cross case in which the accused persons were being tried for an offence under Section 302, Penal Code, & that case had already been committed to the Ct. of Session. The learned Mag. dealing with this case cons. the evidence & discharged the accused on the finding that no prima facie case had been made out against them justifying the framing of the charge. The learned Ses. J. held that, in doing so, the learned Mag. committed an error as it was desirable that this case & the cross case under Section 302, Penal Code, should be tried by one & the same Ct. The learned Ses. J. was of the view that where one of the two cross cases was exclusively triable by the Ct. of Session & the other by a Mag. competent to try it, both the cases should be committed to the Ct. of Session to avoid creating any embarrassing situation by two different Cts. on the same issue. On this view, without discussing the evidence the learned Ses, J. held that a prima facie case was made out & he directed that the case be committed to the Ct. of Session. It appears that the learned Ses J. has gone too far in trying to apply the principle enunciated by him that, if there are two cross cases, one of which is triable by the Ct. of Session, both must be committed for trial to the Ct. of Session. The elenfentary principle is that no case should be sent to the Ct. of Session unless there is prima facie evidence in support of the charge & this principle necessarily overrides any other consideration. This is so, even if both the cases happen to be Cases exclusively triable by the Ct. of Session Even if there are two cross Cases both triable by the Ct of Session--the case, in which there is no prima facie evidence justifying the framing of a charge cannot be committed to the Ct. of Session simply because the cross case has to be committed to that Ct. The principle applies even more strongly where one of the cases happens to be triable by the Mag himself so that the Mag. has the power to pass final orders. In a case of the latter type, the Mag's duty is all the more to go into evidence in detail & see whether there is a prima

facie case for framing a charge or not & this is exactly what the learned Mag. in this case did. The learned Ses. J. in directing commitment of the case to the Ct. of Session without arriving at any finding that there was prima facie evidence in support of the charge went entirely wrong. I, therefore, set aside the order of the learned Ses. J. of Gorakhpur & restore that of the learned Mag.