Ram Das And Ors. vs State And Anr. on 11 February, 1955

Equivalent citations: AIR1955ALL616, 1955CRILJ1441, AIR 1955 ALLAHABAD 616

ORDER

Mulla, J.

1. Ram Das and two others have filed an application under Section 215, Criminal P. C., read with Section 561A, Criminal P. C., praying that the order of committal passed by the Special Magistrates, Sitapur, dated 20-5-1954 be set aside and the proceedings be quashed. The applicants were committed under Section 307 read with Section 34. Penal Code to stand their trial in the Court of the Sessions Judge, Sitapur.

2. Several grounds were taken in this application, but the main contention of the counsel for the applicants is that the committing Magistrates did not examine the accused persons under Section 342, Criminal P. C., and this, has vitiated the entire proceedings.

3. On behalf of the opposite parties it was contested that no illegality has been committed, if Section 342, Criminal P. C., is correctly interpreted. It was argued that Section 342, Criminal P. C., contemplates two stages when a Court can examine the accused persons. The first stage extends upto the time when the accused is called upon his defence and it is discretionary with the Magistrate to examine him during this stage or not. The second stage, which is the mandatory part of this Section, is reached when the accused is called upon to enter upon his defence.

As in an inquiry under Chapter 18, Criminal P. C., the accused is not called upon to enter into his defence, it cannot be said that the Magistrate, if he omitted to examine the accused persons, committed any illegality. It is contested that the accused is called upon to enter into, his defence only when after committal the proceedings start in the Court of Session and he is asked to register his plea. In support of this contention art authority was cited.

This decision is reported in -- 'Emperor v. Ajahar Mandal, AIR 1935 Cal p. 605 (A). It was held in this case that in a case which is triable by a Sessions Court, it is the latter Court which tries the accused and calls upon him to enter on his defence and, therefore, it is to that Court that the mandatory provisions of Section 342, Criminal P. C., are applicable. That being so it cannot be said that the omission to examine the accused in the committing Court is a disregard of an express provision of law and, therefore, illegal.

4. I have carefully considered the decision given by the Calcutta High Court, but with respect to the Judges who gave that decision, I am unable to accept their point of view. I find myself in agreement

with the contrary view expressed in -- 'Queen-Empress v. Pandara Tevan', 23 Mad 636 (B). In this decision the Judges held:

> "It was the duty of the Magistrate, before committing the accused persons for trial to have examined them for the purpose of enabling them to explain any circumstances appearing in the evidence against them. The effect of Section 209, Criminal P. C., is that it is not left to the discretion of a Magistrate, who intends to commit to examine the accused person. He is bound to examine him, and if he makes an order of commitment without examining him the order is irregular.
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> Before, however, we can quash the order of commitment, we have to be satisfied that the irregularity has occasioned a failure of justice."

5. In my opinion the Madras view is a correct interpretation of the law. Section 342, Criminal P. C., cannot be interpreted without keeping in mind the provisions of Section 209, Criminal P. C. Under Chapter 18, Criminal P. C., a valuable right has been conferred on an accused person to prepare a ground for claiming a discharge and after doing so to plead for it. In other words a lefinite right to defend himself has been given to an accused person.

The option lies with him and it is open to him to defend himself in the Magistrate's Court or to waive this right. If he elects to defend himself, the Court cannot stop him from doing so. The right to claim a discharge given to an accused person under Chapter 18 is far wider than given to him under Chapter 21 in a warrant trial. A specific right to cross-examine the witnesses has been given to him under Section 208, Criminal P. C. A similar right has not been given to an accused person under Chapter 21.

Again the right to examine witnesses in defence, even before he makes his statement has been conferred on him under the same Section; while in a warrant trial the accused has no right to examine any defence before the charge is framed. The only limitations imposed upon his defending himself are, firstly, that the Magistrate can refuse to examine those defence witnesses whom, for reasons which he records, he deems unnecessary and, secondly, he cannot discharge him by assessing the evidence in the same manner as a trial Court does.

In other words in a case triable by the Court of Session an accused person is given two rights to defend himself. If he so desires he can defend himself in the Court of the Magistrate and the Magistrate cannot adopt any such procedure which would deny him this right. Where the accused person wants to defend himself, it is obvious that he would be highly prejudiced, if the committing Magistrate does not examine him. It indicates that the committing Magistrate is not willing to consider the question of a discharge at all.

The argument that the accused have not been, prejudiced, if the Magistrate has committed them to the Court of Session, since they have a right to defend themselves before the trial court, is falacious. If a person has two opportunities of defending himself and one is taken away from him, it is obvious that he would be prejudiced. A trial Court on the same reasoning might say that no prejudice has

been caused to an accused person by an order of conviction, because the accused has still a right to appeal against that order.

6. The question whether an accused person is prejudiced or not can always be determined by the fact whether he had been given a full opportunity to defend himself or not. If the accused does, not elect to defend himself in the committing Magistrate's Court, it is obvious that he would not feel aggrieved if he is committed to the Court of Session. The very fact he files an application under Section 215, Criminal P. C, shows that he feels aggrieved by the procedure adopted by the Committing Magistrate.

On a careful reading of Section 209, Criminal P. C., it is clear that the Magistrate can omit to examine an accused person only if he feels that there arc no circumstances for the accused to explain and he can be discharged without recording such a statement, but where a commitment has to be made, an accused person must be examined. The words "if any" used in Section 210, Criminal P. C., do not confer any discretion to the Magistrate. The words 'if any' are also used in Section 253, Criminal P. C., under which the Magistrate examines an accused person in a warrant trial.

It cannot for a moment be maintained that it is open to the Magistrate to frame a charge against an accused person in a warrant trial without examining the accused person. The words 'if any' are only used to cover those cases where the accused refuses to make a statement and does not reply to the questions put by the Court or where he is physically incapable to make a statement, for example if he is deaf and dumb. It is, therefore, incorrect to interpret the words 'if any' used in Section 210, Criminal P. C., to mean that the Magistrate has an option to examine the accused person.

7. A Sessions trial is held under Chapter 23, Criminal P. C. Section 287, Criminal P. C., runs as follows :

> "The examination of the accused duly recorded by or before the committing Magistrate shall be tendered by the prosecutor and read as evidence."

This Section makes it clear that an accused person must be examined by the committing Court. The words 'if any' do not find a place in this Section. If the option had been given to the Magistrate to examine the accused or not, these words would have been mentioned in this Section.

8. I am, therefore of the opinion that whenever an accused pleads for a discharge and his statement is not taken by the committing Magistrate, it is sufficient to prove that he has been prejudiced.

9. That the statement of an accused person before the committing Magistrate is a valuable piece of evidence in his favour can be gathered from the observations of the Supreme Court in --'Hate Singh v. State of Madhya Bharat', AIR 1953 SC 468 (C). The learned Judges observed:

> "The statements of an accused person recorded under Sections 208, 209 and 342 are among the most important matters to be considered at a trial. It has to be remembered that in this country an accused person is not allowed to enter the box

> and speak on oath, in his own defence. This may operate for the protection of the accused in some cases but experience elsewhere has shown that it can also be a powerful and impressive weapon pf defence in the hands of an innocent man.
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> The statements of the accused recorded by the Committing Magistrate and the Sessions Judge are intended in India to take the place of what in England and in America he would be free to state in his own way in the witness-box. They have to be received in evidence and treated as evidence and be duly considered at the trial.
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> This means that they must be treated like any other picca of evidence coming from the mouth of a witness and matters in favour of the accused must be viewed with as much deference and given as much weight as matters which tell against him. Nay more. Because of the presumption of innocence in his favour even, when he is not in a position to prove the truth of his story, his version should be accepted if it is reasonable & accords with probabilities unless the prosecution can prove beyond reasonable doubt that it is false." .

10. In the circumstances of this case I am satisfied that prejudice was caused to the applicants by the procedure adopted by the committing Court. I, therefore, set aside the order of committal passed in this case and direct that the case be sent back to the committing Magistrate to record the statements of the accused persons. I further direct that they should be given an opportunity to examine their witnesses in defence, if they so desire, and the Committing Magistrate, after considering these statements and evidence, should pass proper orders. I see no occasion to quash the entire proceedings, as prayed by the applicants.