Chhotey Lal And Ors. vs State on 27 April, 1951

Equivalent citations: AIR1951ALL714, AIR 1951 ALLAHABAD 714

ORDER

Brij Mohan Lall, J.

1. This is a petn. Under Sections 215 & "61A. Cr. P. C. for quashing an order of commitment passed by a learned Mag. first class, of Agra. It arises under the following circumstances, viz:--Twelve persons, including the present appcts. were alleged to have commenced an assault on one Ram Singh & several others. After a while, eight of them were said to have run away but the remaining four were said to have continued the assault. The result was that Ram Singh died. A charge sheet was submitted against all the twelve persons including the appcts. Under Sections 302/149 & 147 I. P. C. The learned Mag. split up the trial into two. He charged the four persons who continued the assault up to the end Under Sections 302/149 I. P. C. & committed them to the Ct. of session. Against the remaining eight, he framed charges Under Sections 325/149 & 147 I. P. C. He decided to keep that case on his own file & to try it himself. This order was passed by the learned Mag. on 18-11-1950. In that order he rejected the contention that simply because this case arose out of the same transaction as the other one it should be committed to sessions. He recognised the fact that it was a connected case, but still he refused to commit it to sessions. At the same time, he add-ed that "it will be seen at the proper time if this case be also committed due to gravity of the offence."

2. The complainant went up in revn. to the learned Ses. J. & his prayer was that the Mag. be directed to commit the case to the Ct. of session. The learned Ses. J. rejected the revn., but he made the following observation, viz.

> "But the Mag. will do well to reconsider the matter & commit the present case to the Ct. of session so that his earlier mistake can be rectified & both the cases can be tried together. It will mean saving of time & expenditure for the accused also." Against this order of the learned Ses. J. the accused persons came up in revn. to this Ct. This revn. was rejected by me on 10-1-1951 on the ground that the learned Ses. J. had not passed any order against the applts. & had not directed their commitment. He had given an advice only & not passed an order & therefore the revn. did not lie.

3. The copies of the orders of the learned Ses. J. & of this Ct. were produced before the learned Mag. & he passed the following order on 7-2-51, viz: "In view of the orders & advice received from the Hon'ble H .C. & the learned Ses. J., the order dated 18-11-50 is reconsidered & this case is also committed to the Ct. of sessions so that the two cases be tried there together. It will mean saving of time & expenditure to the accused also." Obviously the learned Mag. has misunderstood the order of this Ct. This Ct. had not directed the learned Mag. to order any commitment. Even if it be assumed that the learned Mag. has not misunderstood the order & has simply acted on the advice contained

in the order of the learned Ses. J., still his order cannot be sustained. He has, in substance, reviewed his previous order dated 18-11-50 which, by virtue of the provisions of Section 369, Cr. P. C he was not competent to do. It is true that power did exist Under Section 347 Cr. P. C. to pass an order of commitment provided he was satisfied that it was a case fit for commitment. He had himself made an observation in his order dated 18-11-50 that in case it was established that the offence was a grave one he would pass an order of commitment. Had he come to the conclusion that on the evidence the case was found to be a serious one & that he could not pass an adequate sentence in it, the order could have been justified Under Section 347 Cr. P. C. But this is not the view taken by him. He has given grounds for commitment which existed even on 18-11-50 on which date he had rejected the prayer for commitment. He has, in substance, gone back upon his own order for no new grounds.

4. In the circumstances, I have come to the conclusion that his order of commitment is without jurisdiction and it is hereby quashed.