# Bipat Gope vs State Of Bihar on 1 February, 1962

## Equivalent citations: 1962 AIR 1195, 1962 SCR SUPL. (2) 948, AIR 1962 SUPREME COURT 1195, 1962 BLJR 562, (1962) 2 ANDHLT 311, 1962 ALLCRIR 341

## Author: M. Hidayatullah

## Bench: M. Hidayatullah, J.C. Shah

PETITIONER:
BIPAT GOPE

Vs.

RESPONDENT:
STATE OF BIHAR

DATE OF JUDGMENT:
01/02/1962

BENCH:
HIDAYATULLAH, M.
BENCH:
HIDAYATULLAH, M.
SHAH, J.C.

CITATION:
1962 AIR 1195 1962 SCR Supl. (2) 948
CITATOR INFO :
E 1967 SC 740 (18)
R 1970 SC1015 (6,7,8)
R 1975 SC 146 (8)

ACT:
Criminal Procedure-Committment proceeding-Order of discharge by Magistrate, First Class, after trying the whole case -Procedure under s. 207A(6), Criminal Procedure Code followed-If in excess of jurisdiction-Code of Criminal Procedure, 1898 (Act V of 1898), s. 207A(6).

HEADNOTE:
In proceedings under s. 207A(6) of the Code of Criminal Procedure the Magistrate discharged the accused after recording the evidence in the case. The High Court on revision set aside the

order and directed the Magistrate to commit the accused to stand trial before the court of session. The Magistrate examined witnesses, held spot inspection. He did not stop to find out if there was evidence which, if believed, would establish, at least, a prima facie case, but went on further to disbelieve that evidence, by an elaborate and painstaking process of examination, in aid of which he brought to bear his own appraisal of inconsistencies, improbabilities etc. In short, he tried the whole case from one and to the other and established his point in a fairly elaborate order.
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Held, that the jurisdiction conferred by sub-s. (6) of s. 207A, does not entitle the Magistrate to try the case on his own, and forestall the decision of the court of session. The order of discharge passed by him in the present case, therefore, was in excess of jurisdiction, and must be set aside.
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JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 153 of 1960.

Appeal by special leave from the judgment and order dated July 28, 1960, of the Patna High Court in Criminal Revision No. 1243 of 1959.

Sarjoo Prasad, B.K. Banerjee, P.K. Chatterjee, and A.K. Nag, for the appellants.

S.P. Varma, for the respondent.

1962. February 1.-The Judgment of the Court was delivered by HIDAYATULLAH, J.-This is an appeal by special leave against an order of the High Court of Patna, by which an order passed by the Magistrate, First Class, discharging the appellants under s. 207A(6) of the Code of Criminal Procedure, was set aside, and the Magistrate was directed to commit the appellants to the Court of Session to stand their trial under ss. 307/34 and 148 of the Indian Penal Code. The only question that is argued is whether the High Court was justified in setting aside the order of the Magistrate, which, it is claimed was passed in the proper exercise of the jurisdiction conferred by s. 207A(6) of the Code.

The facts of the case, in brief, are as follows: On March 26, 1959, at about 10-15 p.m. one Rajbahadur Rai alias Chhote Rai, was alleged to have been assaulted by the appellants at a place where Chhote Rai was sitting, at the pan shop of one Raghunath Prasad. The appellants are said to have arrived there in a private car and a tandem, and after assaulting Chhote Rai, to have gone away

in these two vehicles. After investigation, the appellants were prosecuted under ss. 307/34 and 148 of the Indian Penal code, with the result already mentioned.

Before the order of discharge was made, the Magistrate heard the evidence of nine witnesses including Chhote Rai and Raghunath, who had given the first information report. The witnesses also included two other alleged eye-witnesses, Bhushan Singh (P.W. 2), and Sheonandan Yadev (P.W. 6). The Magistrate, after recording the evidence and holding a spot inspection and hearing the parties, discharged the appellants as he was of opinion (in his own words)-

> "in view of the aforesaid discrepant, unreliable and incredible and highly interested prosecution evidence, no Court can consider it worthwhile prima facie even for a trial. In a case of this nature, it is the legal obligation of a Magistrate to discharge the accused persons, as discussed above."

The Magistrate reached this conclusion on a fairly long appraisal of the evidence in the case, discussing it from the angle of credibility of witnesses, their antecedents, the probabilities of the case, the nature of the alleged weapon, the medical evidence and so on. In short, it will not be wrong to say that he tried the case, instead of finding out whether there was no ground for sending up the appellants to stand their trial before the Court of Session. The High Court, in the order under appeal, held that the Magistrate went beyond the powers conferred upon him of enquiring into the case with a view to committing it to the court of Session.

Section 207A is a new section, which has been introduced by the Code of Criminal Procedure (Amendment) Act, 1955 (26 of 1955). It lays down the procedure which the Magistrates must follow in an enquiry in proceedings started on a police report, preparatory to commitment of cases to the Court of Session. Sub-sections (1), (2) and (3) deal with the fixing of dates, issuing of processes and ensuring that copies of the documents referred to is s. 173 of the Code of Criminal Procedure have been furnished to the accused. Sub- section (4) then enjoins upon the Magistrate that he shall proceed to take the evidence of such persons, if any, as may be produced by the prosecution as witnesses to the actual commission of the alleged offence, and also enables him to take the evidence of any one or more of the other witnesses for the prosecution as he considers, in his opinion, necessary. The sub-section divides the witnesses into two categories, viz., witnesses to the actual commission of the offence and other witnesses like formal witnesses, or those who cannot depose to the actual commission of the offence. Of the first category, those that the prosecution produces, must be examined; but the other witnesses may be examined, only if the Magistrate considers it necessary. It seems, prima facie, that the prosecution cannot insist on their examination. An accuses is given by subs. (5) a right to cross-examine the witnesses, who are examined, and the prosecution can also reexamine them. Then comes sub-s (6), which reads as follows:-

> "When the evidence referred to in subsection (4) has been taken and the Magistrate has considered all the documents referred to in sections 173 and has, if necessary, examined the accused for the purpose of enabling him to explain any circumstances appearing in the evidence against him and given the prosecution and the accused an opportunity of being heard, such Magistrate shall, if he is of opinion that such

> evidence and documents disclose no grounds for committing this accused person for trial, record his reasons and discharge him, unless it appears to the Magistrate that such person should be tried before himself or some other Magistrate, in which case he shall proceed accordingly."

This sub-section, it is contended, gives the Magistrate the option not to commit an accused but to discharge him, if he is of opinion, for reasons to be recorded, that the evidence discloses no grounds for committing the accused person, unless it appears to him that the person should be tried before himself or some other Magistrate. The Magistrate, in this case, thought that the power conferred upon him by this sub-section enabled him to examine the evidence thoroughly, and if it did not satisfy him, to discharge the accused. This view of the Magistrate was not accepted by the High Court.

Mr. Sarjoo Prasad for the appellants, contends, on the basis of the ruling of this Court in Ramgopal Ganpatrai Ruia v. The State of Bombay (1), that the course followed by the Magistrate in determining whether there was credible evidence or not was the right course, and points to certain passages in the judgment in the above case as supporting his proposition. The cited case interpreted s. 209 of the Code of Criminal Procedure, which, after amendment of the Code by Act 26 of 1955, deals with proceedings instituted otherwise than on a police report, and under which the Magistrate can. discharge an accused if he finds that there are not sufficient grounds" for committing the accused person for trial. The words of the two sections are not the same, and it is possible to say that the force of the two sections is also not the same, and that s. 209 gives a power to enter upon the merits of a case in a manner which s. 207A does not warrant. Whether the change of the language is deliberate or due to the fact that different draftsmen drafted the two sections, the test for discharging the accused must, in a large way. be the same under both the sections, and it is hardly necessary to decide the full of ambit of s. 207A and contrast it with that of s. 209. If there is any indication in the language, it is altogether on the side that the Magistrate must find a stronger case for discharging an accused under s. 207A than under s. 209. But, whatever the meaning of the two expressions, neither of them invests the Magistrate with the jurisdiction to decide the case, as if the sessions trial was before him. To this extent, Mr. Sarjoo Prasad fairly concedes, s. 207A (6) cannot be carried. Put in other words, the section can only mean that if there is a prima facia case triable by the Court of Session, the Magistrate must commit the accused to the Court of session to stand his trial. What those cases would be, which would satisfy the test, may not generally be stated here, because, in our opinion, this case is far from the borderline, where only difficulties are likely to be met.

In this case, we are clear, on a reading of the reasons recorded by the Magistrate, that he did not stop to find out that there was evidence which, if believed, would establish, at least, a prima facie case but went on further to disbelieve that evidence by an elaborate and painstaking process of examination, in aid of which he brought to bear his own appraisal of inconsistencies, improbabilities etc. In short, he tried the whole case from one end to the other and established his point, as has been said already, in a fairly elaborate order. In this process, he disbelieved the injured person, other eye-witnesses, contrasted the oral testimony of how the offence took place with the medical evidence and his own conclusions drawn from an inspection of the site and other matters, to numerous to

detail here.

In our opinion, whatever the jurisdiction conferred by sub-s.(6) of s. 207A, it does not entitle a Magistrate to try the case on his own, and forestall the decision of the Court of Session, and this is what the Magistrate, is fact, did here. We, therefore, agree that the order of discharge passed by him was in excess of his jurisdiction, and it is hardly necessary in this case to show how far a Magistrate can go to find that there is no ground for committing the accused to stand his trial in a Court of Session. We see no reason to interfere with the order of the High Court, and dismiss the appeal It is a matter of regret that much delay has taken place in this case, and it may harm the case or the one side or the other. We hope that now the case will be heard from day to day, and disposed of, as expeditiously as possible. We further make it clear to the Court or courts dealing with this case that any expression of opinion on the merits of the case whether by us or by the High court or the Magistrate, who first heard it, or else where, in this order or the orders preceding this, is to be completely ignored and the case shall be decided without being influenced in any way by such expression of opinion.

Appeal dismissed.